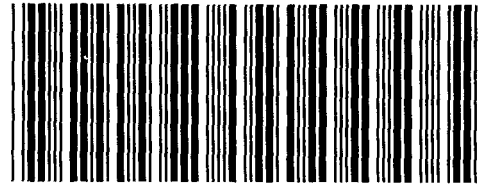


1472087v06
PHX-FS1



OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL
2005-1325333 09/09/05 11:56
1 OF 1

TOMUTAC

First American Title

When recorded return to:
Donna Phillips
Engle Homes
3150 South 48th Street, Suite 100
Phoenix, AZ 85040

**DECLARATION OF CONDOMINIUM
AND
DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS
FOR
THE VILLAGE AT RIO PASEO CONDOMINIUM**

TABLE OF CONTENTS

| | |
|---|---|
| ARTICLE I DECLARATION OF CONDOMINIUM..... | 1 |
| 1.1 Name of Condominium..... | 1 |
| 1.2 Declaration..... | 1 |
| 1.3 Identifying Numbers of Units..... | 2 |
| 1.4 Description of Common Elements..... | 3 |
| 1.5 Description of Limited Common Elements..... | 4 |
| 1.6 Allocation of Common Element Interest and Common Expense Liabilities..... | 4 |
| 1.7 Allocation of Additional Limited Common Elements..... | 5 |
| ARTICLE II DEFINITIONS..... | 5 |
| 2.1 "Annual Assessment"..... | 5 |
| 2.2 "Articles"..... | 5 |
| 2.3 "Assessment" or "Assessments"..... | 5 |
| 2.4 "Assessment Lien"..... | 5 |
| 2.5 "Assessment Period"..... | 5 |
| 2.6 "Association"..... | 5 |
| 2.7 "Board"..... | 5 |
| 2.8 "Building"..... | 5 |
| 2.9 "Bylaws"..... | 5 |
| 2.10 "Cable Service Assessment"..... | 5 |
| 2.11 "Capital Reserve Fund"..... | 5 |
| 2.12 "Charges"..... | 5 |
| 2.13 "Common Elements"..... | 6 |
| 2.14 "Common Expenses"..... | 6 |
| 2.15 "Condominium"..... | 6 |
| 2.16 "Condominium Act"..... | 6 |
| 2.17 "Constituent Documents"..... | 6 |
| 2.18 "Covenants"..... | 6 |
| 2.19 "Declarant"..... | 6 |
| 2.20 "Declaration"..... | 7 |
| 2.21 "Design Guidelines"..... | 7 |
| 2.22 "Design Review Committee"..... | 7 |
| 2.23 "Development Rights"..... | 7 |
| 2.24 "Family Members"..... | 8 |
| 2.25 "General Common Elements"..... | 8 |
| 2.26 "Limited Common Elements"..... | 8 |
| 2.27 "Member"..... | 8 |
| 2.28 "Membership"..... | 8 |
| 2.29 "Mortgage"..... | 8 |
| 2.30 "Mortgagee"..... | 8 |
| 2.31 "Mortgagor"..... | 8 |
| 2.32 "Owner"..... | 8 |
| 2.33 "Owner's Interest"..... | 8 |

| | | |
|--|--|----|
| 2.34 | "Party Walls" | 8 |
| 2.35 | "Period of Declarant Control" | 8 |
| 2.36 | "Plat" | 9 |
| 2.37 | "Property" | 9 |
| 2.38 | "Record Owner" | 9 |
| 2.39 | "Resident" | 9 |
| 2.40 | "Rules" | 9 |
| 2.41 | "Special Assessment" | 9 |
| 2.42 | "Special Declarant Rights" | 9 |
| 2.43 | "Special Use Fees" | 10 |
| 2.44 | "Unit" | 10 |
| 2.45 | "Visible From Neighboring Property" | 10 |
| ARTICLE III PROPERTY SUBJECT TO DECLARATION..... | | 10 |
| 3.1 | General Declaration Creating the Condominium | 10 |
| 3.2 | Association Bound | 10 |
| ARTICLE IV EASEMENTS; DEVELOPMENT RIGHTS AND SPECIAL DECLARANT RIGHTS | | 10 |
| 4.1 | Easements of Enjoyment..... | 10 |
| 4.2 | Delegation of Use | 12 |
| 4.3 | Rights of Ingress and Egress..... | 12 |
| 4.4 | Utility Easements | 12 |
| 4.5 | Declarants Rights and Easements. | 12 |
| 4.6 | Easements for Support | 14 |
| 4.7 | Easements in Favor of the Unit Owners | 14 |
| 4.8 | Easements in Favor of Association Over Common Elements..... | 14 |
| 4.9 | Easements in Favor of Association Over Units and Limited Common Elements..... | 15 |
| 4.10 | Easement for Unintended Encroachments | 15 |
| ARTICLE V USE RESTRICTIONS | | 16 |
| 5.1 | Improvements and Alterations..... | 16 |
| | 5.1.1 Exterior | 16 |
| | 5.1.2 Interior..... | 16 |
| 5.2 | Temporary Occupancy and Temporary Buildings..... | 16 |
| 5.3 | Nuisances, Construction Activities..... | 16 |
| 5.4 | Diseases and Insects..... | 16 |
| 5.5 | Antennas | 16 |
| 5.6 | Mineral Exploration | 17 |
| 5.7 | Trash Collection..... | 17 |
| 5.8 | Clothes Drying Facilities | 17 |
| 5.9 | Residential Use | 17 |
| 5.10 | Animals | 18 |
| 5.11 | Machinery and Equipment..... | 18 |
| 5.12 | Signs..... | 18 |

| | | |
|--|---|----|
| 5.13 | Restriction on Further Subdivision and Combining of Units, Property Restrictions and Rezoning | 18 |
| 5.14 | Vehicles and Parking. | 19 |
| 5.15 | Air Conditioning and Heating Units | 19 |
| 5.16 | Basketball Hoop and Backboards | 20 |
| 5.17 | Roofs | 20 |
| 5.18 | Common Walls | 20 |
| 5.19 | Repair of Units | 20 |
| 5.20 | Overhead Encroachments | 20 |
| 5.21 | Overflow Parking for Guests Only | 20 |
| 5.22 | Garages; Resident Parking | 20 |
| 5.23 | Size Limitation for Parked Vehicles | 21 |
| 5.24 | Motorized Scooters Prohibited | 21 |
| 5.25 | Window Treatments | 21 |
| 5.26 | Drainage | 21 |
| 5.27 | Health, Safety and Welfare | 21 |
| 5.28 | Leases | 21 |
| 5.29 | Patios | 21 |
| 5.30 | Utilities | 21 |
| 5.31 | Model Units | 22 |
| 5.32 | Declarant and Record Owner Exemption | 22 |
| 5.33 | Variances | 22 |
| 5.34 | Right of Entry | 22 |
| ARTICLE VI ORGANIZATION OF ASSOCIATION | | 23 |
| 6.1 | Formation of Association | 23 |
| 6.2 | Board of Directors and Officers; Committees | 23 |
| 6.3 | The Rules and Design Guidelines | 24 |
| 6.4 | Intentionally Omitted | 24 |
| 6.5 | Personal Liability | 24 |
| ARTICLE VII MEMBERSHIPS AND VOTING | | 24 |
| 7.1 | Owners of Units | 24 |
| 7.2 | Declarant | 25 |
| 7.3 | Voting | 25 |
| 7.4 | Right to Vote | 25 |
| 7.5 | Membership Rights | 25 |
| 7.6 | Transfer of Membership | 25 |
| 7.7 | Period of Declarant Control | 25 |
| ARTICLE VIII COVENANT FOR ASSESSMENTS AND CREATION OF LIEN | | 26 |
| 8.1 | Creation of Lien and Personal Obligation for Assessments and Maintenance Charges | 26 |
| 8.2 | Annual Assessments | 26 |
| 8.3 | Uniform Rate of Annual Assessment | 26 |
| 8.4 | Maximum Annual Assessment | 27 |

| | | |
|--|--|----|
| 8.5 | Special Assessments for Capital Improvements and Extraordinary Expenses | 27 |
| 8.6 | Rate of Assessment | 27 |
| 8.7 | Notice and Quorum for any Action Authorized Under Paragraphs 8.4 and 8.5 | 28 |
| 8.8 | Establishment of Assessment Period | 28 |
| 8.9 | Billing and Collection Procedures | 28 |
| 8.10 | Collection Costs and Interest on Delinquent Assessments | 29 |
| 8.11 | Evidence of Payment of Assessments..... | 29 |
| 8.12 | Remedial Assessments..... | 29 |
| 8.13 | Capital Reserve Fund..... | 29 |
| | 8.13.1 Reserve Studies During Period of Declarant Control | 30 |
| | 8.13.2 Reserve Studies After Period of Declarant Control | 30 |
| | 8.13.3 Reserve Fund; Cash Flow Reserve | 30 |
| 8.14 | Working Capital Fund..... | 30 |
| 8.15 | Fines and Penalties for Violations of the Declaration | 30 |
| 8.16 | Special Assessment for Cable Service..... | 30 |
| ARTICLE IX ENFORCEMENT OF PAYMENT OF ASSESSMENTS AND | | |
| | ASSESSMENT LIEN | 31 |
| 9.1 | Association as Enforcing Body..... | 31 |
| 9.2 | Association Remedies to Enforce Payment of Assessments | 31 |
| 9.3 | Subordination of Assessment Lien | 31 |
| ARTICLE X USE OF FUNDS; BORROWING POWER | | 32 |
| 10.1 | Purposes for Which Association Funds May Be Used | 32 |
| 10.2 | Borrowing Power | 32 |
| 10.3 | Association Rights in Spending Funds From Year to Year | 32 |
| 10.4 | Eminent Domain | 33 |
| 10.5 | Insurance | 33 |
| 10.6 | Fidelity Bonds..... | 36 |
| ARTICLE XI MAINTENANCE AND REPAIR | | 36 |
| 11.1 | By the Owner | 36 |
| 11.2 | By the Association | 37 |
| 11.3 | Property Outside of the Condominium..... | 37 |
| 11.4 | Standard of Care | 37 |
| 11.5 | Periodic Inspections..... | 37 |
| 11.6 | Delegation of Responsibilities | 37 |
| 11.7 | Assessment of Certain Maintenance Costs | 38 |
| 11.8 | Improper Maintenance and Use of Units | 38 |
| ARTICLE XII DESIGN REVIEW COMMITTEE | | 38 |
| 12.1 | Establishment..... | 38 |
| 12.2 | Meetings; Guidelines | 39 |
| 12.3 | Discretion of Committee..... | 39 |
| 12.4 | Response Within Forty-five (45) Days..... | 40 |

| | | |
|--|---|----|
| 12.5 | No Liability for Action/Inaction of Design Review Committee.. | 40 |
| 12.6 | Committee's Certificate..... | 40 |
| 12.7 | Fee..... | 40 |
| ARTICLE XIII RIGHTS AND POWERS OF ASSOCIATION..... | | 41 |
| 13.1 | Association Rights and Powers As Set Forth in Articles and Bylaws..... | 41 |
| 13.2 | Enforcement..... | 41 |
| 13.3 | Legal Proceedings..... | 41 |
| 13.4 | Contracts with Others for Performance of Association Duties..... | 42 |
| 13.5 | Procedure for Change of Use of General Common Elements..... | 42 |
| 13.6 | Procedure for Alteration of Common Elements; Contracts Concerning the Common Elements..... | 43 |
| ARTICLE XIV TERM; AMENDMENTS; TERMINATIONS..... | | 43 |
| 14.1 | Term; Method of Termination..... | 43 |
| 14.2 | Amendments..... | 43 |
| ARTICLE XV MISCELLANEOUS..... | | 44 |
| 15.1 | Interpretation of the Covenants..... | 44 |
| 15.2 | Severability..... | 45 |
| 15.3 | Change of Circumstances..... | 45 |
| 15.4 | Rules and Regulations..... | 45 |
| 15.5 | Declarant's Disclaimer of Representations..... | 45 |
| 15.6 | No Warranty of Enforceability..... | 45 |
| 15.7 | References to this Declaration in Deeds..... | 45 |
| 15.8 | Gender and Number..... | 45 |
| 15.9 | Captions and Titles..... | 45 |
| 15.10 | Notices..... | 46 |
| 15.11 | Agency Approval..... | 46 |
| 15.12 | Ad Valorem Taxation..... | 46 |
| 15.13 | Mortgagee Protection..... | 46 |
| 15.13.1 | Limitations on Amendment..... | 46 |
| 15.13.2 | Subordination of Assessments..... | 47 |
| 15.13.3 | Notice to Mortgagees..... | 47 |
| 15.13.4 | Other Rights of Mortgagees..... | 47 |
| 15.14 | Notification Upon Sale of a Condominium..... | 48 |
| 15.15 | Limitation on Declarant's Rights..... | 48 |
| 15.16 | Termination of the Option Agreement..... | 48 |
| 15.17 | Record Owner Rights..... | 48 |
| 15.18 | No Implied Obligations..... | 48 |
| 15.19 | Declaration of Annexation..... | 48 |

**DECLARATION OF CONDOMINIUM
AND
DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS
FOR
THE VILLAGE AT RIO PASEO CONDOMINIUM**

THIS DECLARATION OF CONDOMINIUM AND DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR THE VILLAGE AT RIO PASEO CONDOMINIUM (hereinafter "Declaration") is dated September __, 2005, and is made by TOUSA HOMES, INC., a Florida corporation doing business as Engle Homes ("TOUSA"), ENGLE/SUNBELT, LLC, a Delaware limited liability company (hereinafter "Declarant"), and APEXCAPITAL FUND 1, LLC, an Arizona limited liability company ("Record Owner").

RECITALS

A. Record Owner is the record owner of the real property identified on Exhibit "A" attached hereto (the "Property"). TOUSA has the right to acquire the Property from Record Owner pursuant to that certain Option Agreement dated December 9, 2004 (the "Option Agreement") between Record Owner and TOUSA, as evidenced by that certain Memorandum of Option Agreement recorded in the Official Records of the Maricopa County, Arizona Recorder as Instrument No. 2004-1450503.

B. TOUSA, Declarant and Record Owner desire to create a condominium in accordance with the Arizona Revised Statutes, Title 33, Chapter 9, Article I, Section 33-1201, et seq., as amended and supplemented from time to time (the "Condominium Act"), and further intend to ensure the attractiveness of the Property, including the Units and other improvements constructed on it and to guard against construction on the Property of improvements of improper or unsuitable materials or with improper quality or methods of construction; to protect and enhance the values and amenities of the Property; to provide for the operation, administration, use and maintenance of the Common Elements within the Property; to preserve, protect and enhance the values and amenities of the Property; and to promote the health, safety and welfare of the Owners of the Property.

NOW, THEREFORE, TOUSA, Declarant and Record Owner hereby declare, covenant and agree as follows:

ARTICLE I

DECLARATION OF CONDOMINIUM

1.1 Name of Condominium. The name of the Condominium is The Village at Rio Paseo Condominium.

1.2 Declaration. Declarant and Record Owner do hereby submit the Property, including all improvements thereto or to be constructed thereon, and all easements, rights and

appurtenances belonging thereto (the "Condominium") to the provisions of the Condominium Act for the purpose of creating a condominium, and said Declarant and Record Owner do further hereby declare that all of such Property shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved, subject to the following covenants, conditions and restrictions, all of which are declared to be in furtherance of a plan for the improvement, development and sale of said Property and are established for the purpose of enhancing and perfecting the value and desirability of said Property and every part thereof. No property other than the Property is deemed subject to this Declaration unless and until specifically made subject hereto.

1.3 Identifying Numbers of Units.

1.3.1 Units and Buildings are configured as generally shown on the Plat, with three Building types, each containing three Units. Units will consist of three floor plan types. Each one story Unit shall be constructed using Floor Plan "C". Two story Units will be constructed using Floor Plans "A" or "B", depending upon Building type. Floor Plans "A", "B" and "C" are generally depicted on Exhibits B-1, B-2, and B-3, attached hereto. Except as may be specified in the Plat, each Building within the Condominium may be constructed using one of the three Building types. Units are one or two stories as identified below. The one story Units consist of one story of living space above the garage spaces, a single car garage below the living space and a stairway area adjacent to the garage and the living space which may or may not include an elevator. The two story Units consist of two stories of living space and a connecting stairway and a two car garage on the first floor of the same Building below the adjacent one story Unit. The typical locations of garages and stairway areas are shown on the Plat.

One story Units: 2003, 2006, 2009, 2012, 2015, 2018, 2021, 2024, 2027, 2030, 2033, 2036, 2039, 2042, 2045, 2048, 2051, 2054, 2057, 2060, 2063, 2066, 2069, 2072, 2075, 2078, 2081, 2084, 2087, 2090, 2093, 2096, 2099, 2102, 2105, 2108, 2111, 2114, 2117, 2120, 2123, 2126, 2129, 2132, 2135, 2138, as shown on the Plat.

Two story Units: 1001-1002, inclusive, 1004-1005, inclusive, 1007-1008, inclusive, 1010-1011, inclusive, 1013-1014, inclusive, 1016-1017, inclusive, 1019-1020, inclusive, 1022-1023, inclusive, 1025-1026, inclusive, 1028-1029, inclusive, 1031-1032, inclusive, 1034-1035, inclusive, 1037-1038, inclusive, 1040-1041, inclusive, 1043-1044, inclusive, 1046-1047, inclusive, 1049-1050, inclusive, 1052-1053, inclusive, 1055-1056, inclusive, 1058-1059, inclusive, 1061-1062, inclusive, 1064-1065, inclusive, 1067-1068, inclusive, 1070-1071, inclusive, 1073-1074, inclusive, 1076-1077, inclusive, 1079-1080, inclusive, 1082-1083, inclusive, 1085-1086, inclusive, 1088-1089, inclusive, 1091-1092, inclusive, 1094-1095, inclusive, 1097-1098, inclusive, 1100-1101, inclusive, 1103-1104, inclusive, 1106-1107, inclusive, 1109-1110, inclusive, 1112-1113, inclusive, 1115-1116, inclusive, 1118-1119, inclusive, 1121-1122, inclusive, 1124-1125, inclusive, 1127-1128, inclusive, 1130-1131, inclusive, 1133-1134, inclusive, 1136-1137, inclusive, as shown on the Plat.

1.3.2 The lower horizontal boundary of the living space of each one story Unit, of each story of living space of each two story Unit and of each garage is the top of the unfinished floor thereof.

1.3.3 The upper horizontal boundary of the living space of each one story Unit, of each story of living space of each two story Unit and of each garage is the bottom of the unfinished ceiling or ceilings thereof.

1.3.4 The lateral boundaries of each one story Unit including the adjacent stairway area, of each story of each two story Unit and of each garage (including the adjacent stairway area for garages of one story Units) are the unfinished interior surfaces of the perimeter walls, windows and doors thereof and vertical planes coincidental with the unfinished interior surfaces of the perimeter walls thereof (except that the one story Units each include the balcony and the two story Units each include the patio), extended upwards and downwards to intersect the upper and lower horizontal boundaries.

1.3.5 Each Unit includes the surfaces so described and the airspace contained within said boundaries. Each such Unit shall also include the range, garbage disposal units, dishwasher, microwave, water heaters, elevator, if any, and other facilities, systems and appliances lying within the boundaries of the Unit.

1.3.6 Unless otherwise indicated, all airspace boundary lines intersect at approximately right angles.

1.3.7 The following are not part of a Unit: structural parts of the Building of which the Unit is a part, bearing walls, columns, vertical supports, roofs, floors, foundations, slabs, all waste, water and gas pipes, tubing for delivery of insecticide, ducts, flues, chimneys, conduits, wires and other utility and installation lines wherever located, except the outlets and traps thereof when located within the Unit. Air conditioning and heating units located on a Limited Common Area and not within a Unit are owned by the Owner of the Unit served by same. The existing physical boundaries of a Unit constructed or reconstructed in substantial accordance with the original plans thereof shall be conclusively presumed to be its boundaries rather than the description expressed in any deed, plat, plan or declaration, regardless of settling or lateral movement of the Building, and regardless of minor variances between the boundaries as shown on same and those of the Unit.

1.4 Description of Common Elements. The Common Elements shall include all portions of the Condominium other than the Units, including, without limitation, the land upon which the Buildings are located, the structural part of Buildings, all bearing walls, columns, vertical supports, roofs, space above the upper horizontal boundaries of Units (except as provided below), floors, foundations, slabs, all waste, Water and gas pipes, ducts, flues, chimneys, conduits, wires, swimming pool and pool equipment, recreation buildings, cabanas, landscaping, exterior lighting (including lights attached to the Buildings), fences, trash collection bins, walkways, streets, private drives, guest parking spaces, utility meters, outdoor cooking facilities, patios and all other devices and premises not situated within a Unit; provided, however, air conditioning and heating units not located within a Unit but serving the Unit are owned by the Owner of the Unit and, provided further, any portion of a stairway or elevator from one story of a Unit to another that passes through the space above or below the upper or lower horizontal boundary of a Unit are part of the Unit.

1.5 Description of Limited Common Elements. The following portions of the Common Elements are Limited Common Elements and are allocated to the exclusive use of the Unit or Units indicated below:

(a) Each Unit shall have exclusive use of the mailbox designated with the corresponding Unit number.

(b) Each one story Unit shall have the exclusive use of the uncovered exterior parking space adjacent to the Unit; provided, however, assignments of parking spaces during construction phases may be temporarily changed by Declarant. Unassigned parking spaces are for guest use only and may not be used by Owners or residents of a Unit.

(c) Each Unit shall have the exclusive use of space within the Common Elements of a size and location adequate to install, operate and maintain air conditioning and heating units and appurtenant facilities, said areas to be as originally designed, designated and installed by or on behalf of Declarant or as subsequently approved by the Board. The air conditioning and heating units and appurtenant facilities shall be owned and maintained by the Unit Owner.

(d) Each Unit shall have the exclusive use of the utility meter serving the Unit as originally designed, designated and installed by or on behalf of Declarant.

(e) Each two story Unit shall have exclusive use of the portion of the patio/entryway adjacent to that Unit.

(f) Any light(s) attached to a Building shall be for the exclusive use of the Units in that Building.

(g) Each Unit shall have the exclusive use of any Limited Common Elements prescribed by statute.

Unless otherwise provided herein, all costs associated with maintenance, repair, replacement and insurance of Limited Common Elements shall be borne equally by the Owner(s) of the Unit(s) to which such Limited Common Elements are allocated, either by way of Special Use Fee(s) or by way of Assessments imposed upon the Units.

1.6 Allocation of Common Element Interest and Common Expense Liabilities. Each Unit is allocated an undivided fractional interest in the Common Elements (other than Limited Common Elements) and in the Common Expenses of 1/144. The fractional interest of each Unit in the Common Elements shall be an undivided interest, and the Common Elements shall be owned by the Unit Owners as tenants in common in accordance with their respective fractional interests. The ownership of each Unit shall not be conveyed separate from the fractional interest in the Common Elements allocated to the Unit. The undivided fractional interest in the Common Elements allocated to any Unit shall always be deemed conveyed or encumbered with any conveyance or encumbrance of that Unit, even though the legal description in the instrument conveying or encumbering the Unit may refer only to the fee title to the Unit.

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

ARTICLE II

DEFINITIONS

2.1 "Annual Assessment" shall mean the charge levied and assessed each year against each Unit and Owner pursuant to Paragraph 8.2 hereof.

2.2 "Articles" shall mean the Articles of Incorporation of the Association as amended from time to time.

2.3 "Assessment" or "Assessments" shall mean an Annual Assessment, Special Assessment, Maintenance Charge, Special Use Fee, or any other fees, fines or charges assessed hereunder.

2.4 "Assessment Lien" shall mean the lien created and imposed by Article VIII.

2.5 "Assessment Period" shall mean the term set forth in Paragraph 8.8.

2.6 "Association" shall mean The Village at Rio Paseo Condominium Association, an Arizona non-profit corporation, its successors and assigns.

2.7 "Board" shall mean the Board of Directors of the Association.

2.8 "Building" shall mean a building located on the Property and shown as a building on the Plat.

2.9 "Bylaws" shall mean the Bylaws of the Association as amended from time to time.

2.10 "Cable Service Assessment" shall mean any assessment levied pursuant to Paragraph 8.15 for cable communication service.

2.11 "Capital Reserve Fund" shall mean that portion of the funds of the Association allocated to the repair, reconstruction or replacement of capital assets owned by the Association or for which the Association is responsible.

2.12 "Charges" shall mean any and all costs assessed pursuant to Paragraph 8.10.

2.13 "Common Elements" shall mean all portions of the Condominium other than the Units, including, without limitation: (a) streets located within the Condominium and (b) any other land, together with all improvements situated thereon, which the Association at any time owns in fee or in which the Association has a leasehold interest for as long as the Association is the owner of the fee or leasehold interest. To the extent that any streets within the Condominium are to be dedicated to the City of Goodyear, the Association shall be responsible for meeting all City requirements. All private streets, sidewalks, signage and street lighting constructed by Declarant shall be maintained by Declarant until such time as any portions thereof are dedicated to the City of Goodyear or until such time as the Association becomes bound by the Covenants, as provided in Paragraph 3.2.

2.14 "Common Expenses" shall mean expenditures made by or financial liabilities of the Association, together with any allocations to reserves.

2.15 "Condominium" shall mean the real property, including the easement rights, described on Exhibit "A" attached hereto and all improvements thereto or to be constructed thereon and all easements, rights and appurtenances belonging thereto.

2.16 "Condominium Act" shall mean A.R.S. § 33-1201, et seq., as amended from time to time.

2.17 "Constituent Documents" shall mean and include this Declaration, the Plat, the Articles, the Bylaws, the Rules, the Design Guidelines, any other rules and regulations established by the Association and any other documents used to create and/or govern the project as all such documents are presently constituted or may hereafter be amended.

2.18 "Covenants" shall mean the covenants, conditions, restrictions, assessments, charges, servitudes, liens, reservations and easements set forth herein.

2.19 "Declarant" shall mean ENGLE/SUNBELT, LLC, a Delaware limited liability company, and any successor or assign to whom it may expressly assign any or all of its rights as Declarant under this Declaration by an instrument recorded with the County Recorder of Maricopa County, Arizona. So long as the Option Agreement remains in effect, any assignment of the Declarant's rights under this Declaration shall require the prior written consent of Record Owner. Any purported assignment without such consent shall be deemed void and of no force and effect. Notwithstanding the foregoing, in the event the Option Agreement terminates prior to the purchase of all of the Units (excluding any Units which may subsequently be excluded from said option), the rights of Declarant hereunder shall be deemed automatically assigned to Record Owner and this sentence shall constitute the express recorded assignment contemplated by the first sentence of this Paragraph 2.19, after which Engle/Sunbelt (as hereinafter defined) shall no longer be the Declarant under this Declaration; provided, however, Record Owner shall not be liable to any Member or any other person for any act or omission of Declarant including, without limitation, Declarant's failure to pay any amounts owing or to be paid or reserved for hereunder or as may otherwise be required by statute or at law to perform any act or obligation required to be performed by Declarant under this Declaration or as otherwise may be required by statute or at law, arising prior to the effective date of the deemed assignment of the Declarant's rights to Record Owner, and Record Owner shall assume the obligations under this Declaration only for

matters and obligations arising or to be performed from and after the effective date of the deemed assignment of the Declarant's rights to Record Owner, and Record Owner is hereby released and discharged from any and all obligations under this Declaration accruing prior to the effective date of the deemed assignment of the Declarant's rights to Record Owner; further provided, however, Engle/Sunbelt, LLC, a Delaware limited liability company, shall continue to be exempt from Sections 5.1, 5.11, 5.12, 5.23, and 5.31 and Sections 4.5(a) and 4.5(c) through (e) shall continue to apply to Engle/Sunbelt, and Engle/Sunbelt shall have the right to complete construction of any Units owned by Engle/Sunbelt at the time the option terminates. This Section can only be amended with the consent of Engle/Sunbelt.

2.20 "Declaration" shall mean this Declaration of Condominium and Declaration of Covenants, Conditions, Restrictions and Easements for The Village at Rio Paseo Condominium, as amended or supplemented from time to time.

2.21 "Design Guidelines" shall mean guidelines that may be established by the Design Review Committee or the Board and may include design standards for the appearance and development of property in The Village at Rio Paseo Condominium, as well as the review and approval procedures for the Design Review Committee.

2.22 "Design Review Committee" shall mean a committee that may be appointed by the Board pursuant to Article VI below.

2.23 "Development Rights" shall mean any right or combination of rights reserved by or granted to Declarant in this Declaration to do any of the following:

- (a) Add real estate to the Condominium;
- (b) Create easements, Units, Common Elements or Limited Common Elements within the Condominium;
- (c) Subdivide Units, convert Units into Common Elements or convert Common Elements into Units;
- (d) Withdraw real estate from the Condominium;
- (e) Make the Condominium part of a larger condominium or planned community;
- (f) Amend the Declaration during the Period of Declarant Control to comply with applicable law or to correct any error or inconsistency in the Declaration if the amendment does not adversely affect the rights of any Unit Owner;
- (g) Amend the Declaration during the Period of Declarant Control to comply with the rules or guidelines, in effect from time to time, of any governmental or quasi-governmental entity or federal corporation guaranteeing or insuring mortgage loans or governing transactions involving mortgage instruments.

2.24 "Family Members" A group of natural persons related to each other by blood or legally related to each other by marriage or adoption, or a group of natural persons not all so related, but who maintain a common household in a Unit, all as subject to and in compliance with all applicable federal and Arizona laws and local health codes and other ordinances.

2.25 "General Common Elements" means all Common Elements other than the Limited Common Elements.

2.26 "Limited Common Elements" means a portion of the Common Elements specifically designated in this Declaration as a Limited Common Element and allocated by this Declaration or by operation of law for the exclusive use of one or more but fewer than all of the Units.

2.27 "Member" shall mean any person holding a Membership in the Association pursuant to this Declaration.

2.28 "Membership" shall mean a Membership in the Association and the rights granted to the Owners and Declarant pursuant to Article VII to participate in the Association.

2.29 "Mortgage" shall mean a mortgage, a deed of trust, a deed to secure debt, or any other form of security deed.

2.30 "Mortgagee" shall mean a beneficiary or holder of a Mortgage.

2.31 "Mortgagor" shall mean any person who gives a Mortgage.

2.32 "Owner" (when so capitalized) shall mean the record holder of legal, beneficial or equitable title to the fee simple interest of any Unit, including, without limitation, one who is buying a Unit under a recorded contract, but excluding others who hold such title merely as security. Owner shall not include a lessee or tenant of a Unit. In the case of Units, the fee simple title to which is vested of record in a trustee pursuant to Arizona Revised Statutes, Section 33-801 et seq., legal title shall be deemed to be in the trustor. In the case of Units, the fee simple title to which is vested in a trustee pursuant to a trust agreement, the beneficiary of any such trust entitled to possession shall be deemed to be the Owner. An Owner shall include any person who holds record title to a Unit in joint ownership with any other person or holds an undivided fee interest in any Unit. Anything herein to the contrary notwithstanding, in the event the record owner of fee simple title to a Unit has granted Declarant the option to purchase the Unit, Declarant shall be deemed to be the Owner of the Unit for so long as the option remains in effect.

2.33 "Owner's Interest" shall mean and refer to a fee simple interest in a Unit, together with a fractional undivided fee interest in and to the Common Elements.

2.34 "Party Walls" shall mean a wall constructed on or immediately adjacent to the common boundary of Units, Common Elements or other areas in the Condominium.

2.35 "Period of Declarant Control" shall mean the time period commencing on the date this Declaration is recorded and ending on the earlier of: (a) ninety (90) days after conveyance of seventy-five percent (75%) of the Units to Unit Owners other than Declarant or Record Owner;

or (b) four (4) years after all Declarants have ceased to offer Units for sale in the ordinary course of business.

2.36 "Plat" shall mean and refer to thru certain Condominium Plat of The Village at Rio Paseo Condominium, recorded on July 14, 2005, at Book 761 of Maps, Page 38, Official Records of Maricopa County, Arizona, and all duly recorded amendments thereto.

2.37 "Property" shall mean that certain real property legally described on Exhibit "A" attached hereto.

2.38 "Record Owner" shall mean APEXCAPITAL FUND I, LLC, an Arizona limited liability company, and any successor or assign to whom it may expressly assign any or all of its rights as Record Owner under this Declaration by an instrument recorded with the County Recorder of Maricopa County, Arizona.

2.39 "Resident" shall mean:

2.39.1 Each Owner, tenant or lessee actually residing in any Unit; and

2.39.2 Family Members of each Owner, tenant or lessee.

Subject to such rules and regulations as the Association may hereafter specify (including the imposition of special non-resident fees for use of recreational amenities if the Association shall so direct), the term "Resident" also shall include guests or invitees of any such Owner, tenant or lessee.

2.40 "Rules" shall mean any rules and regulations adopted by the Board pursuant to Paragraph 6.3.

2.41 "Special Assessment" shall mean any assessment levied and assessed pursuant Paragraph 8.5.

2.42 "Special Declarant Rights" shall mean any right or combination of rights reserved by or granted to Declarant in this Declaration to do any of the following:

(a) Construct improvements provided for in this Declaration or shown on the PI;

(b) Exercise any Development Right;

(c) Maintain sales offices, management offices, signs advertising the Condominium and models;

(d) Use easements through the Common Elements for the purpose of making improvements within the Condominium or within real estate which may be added to the Condominium; and

(e) Appoint or remove any officer of the Association or any member of the Board during the Period of Declarant Control.

2.43 "Special Use Fees" shall mean any fees charged by the Association for the use of any recreational or other facility situated upon the Common Elements or for the operation, maintenance, repair or replacement of recreational facilities within the Common Elements.

2.44 "Unit" means a portion of a Building designated for separate ownership or occupancy, the boundaries of which are described in Paragraph 1.4.

2.45 "Visible From Neighboring Property" shall mean, with respect to any given object, that such object, or any portion thereof, is or would be visible to a person six (6) feet tall standing on any portion of an adjoining Unit, adjoining Common Elements, surrounding public rights-of-way or parking areas, on the same plane as the object being viewed.

ARTICLE III

PROPERTY SUBJECT TO DECLARATION

3.1 General Declaration Creating the Condominium. Declarant and Record Owner hereby declare that all of the Property (except any property which is hereafter excluded or abandoned pursuant to the provisions of this Declaration) is and shall be held, conveyed, hypothecated, encumbered, leased, occupied, built upon or otherwise used, improved or transferred, in whole or in part, subject to this Declaration, as amended or supplemented from time to time. Declarant intends to develop the Property into various Units and other areas and to sell and convey such Units. This Declaration is declared and agreed to be in furtherance of a general plan for the subdivision, development, improvement and sale of the Property and is established for the purpose of enhancing and perfecting the value, desirability and attractiveness of the Property and every part thereof. All provisions of this Declaration shall run with the land for all purposes and shall be binding upon and inure to the benefit of Declarant, Record Owner, the Association, all Owners and Residents and their successors in interest. This Declaration shall not be construed to prevent Declarant or Record Owner from dedicating or conveying portions of the Property, including streets or roadways, for uses other than as a Unit or Common Elements, subject to the provisions of Paragraph 4.1 (c).

3.2 Association Bound. Upon approval by the Arizona Corporation Commission of the Articles of Incorporation of the Association, the Covenants shall be binding upon and shall benefit the Association.

ARTICLE IV

EASEMENTS; DEVELOPMENT RIGHTS AND SPECIAL DECLARANT RIGHTS

4.1 Easements of Enjoyment. Every Owner of a Unit shall have a nonexclusive easement for the use and enjoyment of the Common Elements, which nonexclusive easement shall be appurtenant to and shall pass with the title to every Unit. All Residents that are not Owners shall have a nonexclusive, nontransferable temporary easement to use and enjoy the

Common Elements so long as they remain Residents. The foregoing grant and rights are subject, among other things, to the following limitations:

(a) The right of the Association to charge reasonable admission and other Special Use Fees for the use of any recreational or other facility situated upon the Common Elements or for the operation, maintenance, repair or replacement of recreational facilities within the Common Elements.

(b) The right of the Association to impose fines, suspend the voting rights and suspend the right to use Common Elements or recreational facilities thereon by any Member (i) for any period during which any Assessment against his Unit remains delinquent; (ii) for a period not to exceed sixty (60) days for any infraction of this Declaration, the Design Guidelines or the Rules; and (iii) for successive 60-day periods if any such infraction is not corrected during any preceding 60-day suspension period. Notwithstanding the foregoing, the Association shall not have the right hereunder to Suspend any Owner's right to use any portion of the Common Elements necessary for such Owner to gain access to his Unit.

(c) The right of the Association to dedicate or transfer all or any part of the Common Elements to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Association. Unless otherwise required by zoning stipulations or agreements with Maricopa County or another governmental entity effective prior to the date hereof, unless specified on a recorded subdivision plat or unless required by law, no such dedication or transfer shall be effective unless an instrument signed by the Owners holding eighty percent (80%) of the votes agreeing to such dedication or transfer has been recorded, except that all Owners of Units to which any Limited Common Element is allocated must agree in order to convey that Limited Common Element, and except that the Board, to the extent permitted by law, shall have authority without Membership approval to transfer to such public agencies, authorities or utilities, easements and rights-of-way which are intended to benefit the Property and which do not have any substantial adverse affect on the enjoyment of the Common Elements by the Members.

(d) The right of the Association to regulate the use of the Common Elements through the Rules and to prohibit access to those Common Elements, such as landscaped areas, not intended for use by the Owners or Residents.

(e) The right of the Association to change the use of Common Elements and to change the size, shape or location of the Common Elements as provided in Paragraphs 13.5 and 13.6.

(f) The right of Owners of Units to which Limited Common Areas are allocated to the exclusive use of such Limited Common Areas as provided in this Declaration.

(g) Notwithstanding anything contained herein to the contrary, in the event ingress or egress to any Unit is through the Common Elements, any conveyance or encumbrance of such Common Elements shall be subject to the grant of an easement for ingress and egress in favor of that Unit.

4.2 Delegation of Use. Any Owner may, in accordance with this Declaration, the Rules and the limitations therein contained, delegate his right of enjoyment in the Common Elements and facilities to the members of his family, his tenants or lessees, his guests or invitees or to his tenant's family, guests or invitees.

4.3 Rights of Ingress and Egress. Every Owner shall have an unrestricted right of ingress and egress to his Unit(s), which right shall be perpetual and shall be appurtenant to and shall pass with the title to said Unit(s) over the following areas:

(a) for pedestrian traffic over, through and across sidewalks, paths, walks and lanes that from time to time may exist upon the General Common Elements and/or such Limited Common Elements, if any, as are allocated to such Owner's Unit(s); and

(b) for pedestrian and vehicular traffic over, through and across paved streets, roadways, parking areas and drives that from time to time may exist upon the General Common Elements and/or such Limited Common Elements, if any, as are allocated to such Owner's Unit(s);.

Any Owner may, in accordance with this Declaration and the Rules, delegate his right of ingress and egress to the members of his family, his guests, and his tenants (including his tenants' family and guests).

4.4 Utility Easements. There is hereby granted and created a blanket easement upon, across, over and under the Property for installing, replacing, repairing and maintaining all utility and service lines and systems, including, but not limited to, water, sewer, gas, telephones, electricity, cable television or communication lines and other systems and access in connection therewith as such utilities are installed in connection with the initial development of the Property. Pursuant to this easement, a providing utility or service company, Declarant or the Association may install and/or maintain facilities or equipment on the Property and affix and maintain wires, circuits and conduits on, in and under the roofs and exterior walls of the Buildings. Notwithstanding anything to the contrary contained in this Paragraph, no utility or service lines may be installed or relocated on any area of the Property except as initially approved by Declarant.

4.5 Declarants Rights and Easements.

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

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

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

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

(e) Declarant and its employees, agents, contractors and subcontractors shall have an easement through the Units for the purpose of completing any construction, renovations, warranty work or modifications to be performed by Declarant.

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

(g) To the extent not expressly reserved by or granted to Declarant by other provisions of this Declaration, Declarant reserves all Development Rights and Special Declarant Rights. The real estate to which the Development Rights and Special Declarant Rights apply is the property legally described on Exhibit "A" attached hereto and any real estate which may be added to the Condominium.

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

(i) In the event of any conflict or inconsistency between this Paragraph 4.5 and any other provision of the Constituent Documents, this Paragraph 4.5 shall control and prevail over such other provisions. The rights of Declarant set forth in this Paragraph

4.5 shall be enforceable by injunction, by any other remedy available at law or in equity and/or by any means provided in this Declaration.

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

4.7 Easements in Favor of the Unit Owners. The Common Elements and Units are hereby made subject to the following easements in favor of the Units and Unit Owners benefited:

(a) For the installation, repair, maintenance, use, removal or replacement of wiring, pipes, ducts, heating and air conditioning systems, electrical, telephone and other communication wiring and cables and all other utility lines and conduits which are a part of or serve any Unit and which pass across, under, over or through a portion of the Common Elements or any other Unit if same was originally designed or constructed by or on behalf of Declarant or is subsequently approved by the Board; provided that the installation, repair, maintenance, use, removal or replacement of any such item does not unreasonably interfere with the common use of any part of the Common Elements or the use of any other Unit, adversely affect either the thermal or acoustical character of a Building, damage any part of the Common Elements or any other Unit, impair or structurally weaken a Building or result in entering a Unit without the permission of the Owner of the Unit, which permission will not be unreasonably withheld or delayed.

(b) For the installation, repair, maintenance, use, removal or replacement of lighting fixtures, electrical receptacles, panel boards and other electrical installations which are a part of or serve any Unit but which encroach into a part of a Common Element adjacent to such Unit; provided that the installation, repair, maintenance, use, removal or replacement of any such item does not unreasonably interfere with the common use of any part of the Common Elements or the use of any other Unit, adversely affect either the thermal or acoustical character of a Building, damage any part of the Common Elements or any other Unit, impair or structurally weaken a Building or result in entering a Unit without the permission of the Owner of the Unit, which permission will not be unreasonably withheld or delayed.

(c) For the performance of the Unit Owners' obligation to maintain, repair, replace and restore those portions of the Limited Common Elements or items situated thereon that the Unit Owner is obligated to maintain under this Declaration.

4.8 Easements in Favor of Association Over Common Elements. The Common Elements are hereby made subject to the following easements in favor of the Association and its directors, officers, agents, employees and independent contractors:

(a) For inspection, maintenance, repair and replacement of the Common Elements situated in or accessible from the Common Elements;

(b) For the correction of emergency conditions situated in or accessible from the Common Elements;

(c) For the purpose of enabling the Association, the Board or any committees appointed by the Board to exercise and discharge their respective rights, powers, duties and obligations under the Constituent Documents; and

(d) For the purpose of performing such pest control activities as the Association may deem necessary to control or prevent the infestation of the Condominium by insects, rodents or other pests or to eradicate insects, rodents or other pests from the Condominium.

4.9 Easements in Favor of Association Over Units and Limited Common Elements. The Units and the Limited Common Elements are hereby made subject to the following easements in favor of the Association and its directors, officers, agents, employees and independent contractors:

(a) For inspection at reasonable times and upon reasonable notice to the Unit Owner or Resident of the Unit and Limited Common Elements in order to verify the performance by Unit Owners of all items of maintenance and repair for which they are responsible;

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

(c) For correction of emergency conditions in one or more Units, Common Elements or Limited Common Elements or casualties to the Common Elements, the Limited Common Elements or the Units;

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

(e) For inspection, at reasonable times and upon reasonable notice to the Unit Owner or Resident, of the Units and the Limited Common Elements in order to verify that the provisions of the Constituent Documents are being complied with by the Unit Owners and Residents of the Unit; and

(f) For the purpose of performing such pest control activities as the Association may deem necessary to control or prevent the infestation of the Condominium by insects, rodents or other pests or to eradicate insects, rodents or other pests from the Condominium.

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

ARTICLE V

USE RESTRICTIONS

Except as otherwise expressly provided herein, the following Covenants and rights shall apply to all Units, Common Elements and other areas of the Property and the Owners and Residents thereof:

5.1 Improvements and Alterations.

5.1.1 Exterior. No exterior changes whatsoever shall be commenced, erected, maintained, made or done without the prior written approval of the Board or the Design Review Committee. By way of illustration, but not of limitation, the following are considered exterior changes: painting, landscaping, repairs, excavation, patio covers, addition or removal of storm windows, doors, air conditioning and heating units, fireplaces, skylights, storage buildings, solar collectors, storm windows, awnings, window coating or tinting, decorative alterations or other work which in any way alters the exterior appearance of any Unit or other portion of the Property. The Board or Design Review Committee may designate design, style, model and manufacturer of any exterior improvement or alteration which is acceptable to the Board or Design Review Committee. Such designations shall be for the purpose of achieving uniformity of appearance and preservation of property values. Nothing herein shall be deemed to permit exterior changes by an Owner.

5.1.2 Interior. No interior structural changes whatsoever shall be commenced, erected, maintained, made or done without the prior written approval of the Board or Design Review Committee.

5.2 Temporary Occupancy and Temporary Buildings. No trailer, basement (if any) of any incomplete building, tent, shack, garage or barn, and no temporary buildings or structures (or buildings or structures under construction) of any kind, shall be used at any time for a residence, either temporary or permanent.

5.3 Nuisances, Construction Activities. No rubbish or debris of any kind shall be placed or permitted to accumulate on the Property, and no odors or loud noises shall be permitted to arise or emit from any Unit, so as to render any such property or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to the occupants of such other property. No condition shall be permitted to exist or operate upon any Unit so as to be offensive or detrimental to any other property in the vicinity thereof or to its occupants.

5.4 Diseases and Insects. No individual or entity shall permit any thing or condition to exist at any Unit which shall induce, breed or harbor infectious plant diseases or noxious insects.

5.5 Antennas. No exterior radio antenna or aerial, television antenna or aerial, microwave antenna, aerial or satellite dish, "C.B." antenna or other antenna or aerial of any type, which is visible from any street or from anywhere in the Property, shall be erected or maintained on any Residential Unit, unless approved by the Architectural Committee; provided, however, "Permitted Devices" (defined as antennas or satellite dishes: (i) which are one meter or less in

diameter and designed to receive direct broadcast satellite service; (ii) which are one meter or less in diameter or diagonal measurement and designed to receive video programming services via multi-point distribution services; (iii) designed to receive television broadcast signals or (iv) any similar antenna or satellite dish, the residential use of which is protected under the Telecommunications Act of 1996 and applicable regulations promulgated thereunder, as either may be amended from time to time (collectively "Telecommunications Laws")) shall be permitted. When permitted by the Telecommunications Laws, the Architectural Committee may adopt rules and regulations requiring Permitted Devices to be placed in specific locations, or screening devices so long as the restrictions do not impair the installation, maintenance, or use of the Permitted Devices. If an Owner reasonably determines that a Permitted Device cannot be located in compliance with such rules without precluding reception of an acceptable quality signal, then the Owner may install such Permitted Device in the least conspicuous alternative location within the Unit where an acceptable quality signal can be obtained; provided further that Permitted Devices shall be reasonably screened from view from the street or any other portion of the Property, and shall be subject to any further rules and regulations adopted by the Architectural Committee or Board, establishing a preferred hierarchy of alternative locations, so long as the same do not unreasonably increase the cost of installation, or use of the Permitted Device.

5.6 Mineral Exploration. No portion of the Property shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth or any earth substance of any kind.

5.7 Trash Collection. Each Owner and Resident shall remove from its Unit and Lot, on a regular basis, all rubbish, trash and garbage so same does not accumulate in, on or at any Unit or Lot. All rubbish, trash and garbage shall be placed in the receptacles designated for same located at the Property. The Association shall be responsible for contracting for the removal of rubbish, trash and garbage from such receptacles and the cost of such removal shall constitute part of Common Expenses. There shall be no trash collection at individual Units. No outdoor incinerators shall be kept or maintained on any portion of the Property.

5.8 Clothes Drying Facilities. No outside clotheslines or other outside facilities for drying or airing clothes shall be erected, placed or maintained at or around any Unit.

5.9 Residential Use. All Units shall be used, improved and devoted exclusively to residential use and no trade or business may be conducted in or from any Unit, except that an Owner or other Resident of a Unit may conduct a business activity within a Unit so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Unit; (b) the business activity conforms to all applicable zoning ordinances or requirements for the Property; (c) the business activity does not involve persons coming on to the Property or the Unit other than on an infrequent basis nor does it involve the door-to-door solicitation of Owners or other Residents at the Property; and (d) the business activity is Consistent with the residential character of the Property and does not constitute a nuisance or a hazardous or offensive use or threaten the security or safety of other Residents at the Property, as may be determined from time to time in the sole discretion of the Board. The terms "business" and "trade" as used in this Section shall be construed to have ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or

activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether: (a) such activity is engaged in full or part time; (b) such activity is intended to or does generate a profit; or (c) a license is required for such activity. The leasing of a Unit by the Owner thereof shall not be considered a trade or business within the meaning of this Section, provided, however, no lease shall be of less than an entire Unit.

5.10 Animals. No bird, reptile, livestock or other animal may be kept on any Lot, except that dogs, cats, fish, birds or similar household pets may be kept on a Lot if they are kept, bred or raised thereon solely as domestic pets and not for commercial purposes; provided, however, that in no case shall (a) the number of dogs kept on a Lot exceed two (2), (b) the number of cats exceed two (2), or (c) the combined number of dogs and cats exceed three (3). Animals belonging to an Owner or Resident or any family member, licensee, tenant or invitee of same must either be kept within an enclosure, an enclosed yard or on a leash or other restraint being held by a person capable of controlling the animal. No animal shall be allowed to make an unreasonable amount of noise or to become a nuisance. No structure for the care, housing or confinement of any dog, cat, bird, fish, reptile, livestock or other animal shall be maintained so as to be Visible From Neighboring Property. It shall be the absolute duty and responsibility of each Owner and Resident to clean up the Property and any abutting streets or property after all animals belonging to or in the care of such Owner or Resident or any family member, licensee, tenant or invitee of same.

5.11 Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated or maintained at the Property except such machinery or equipment which Declarant or the Association may require for the operation and maintenance of the Property.

5.12 Signs. No signs whatsoever (including, but not limited to, commercial, political "for sale," "for rent," and similar signs) shall be erected or maintained on or around a Unit or in the window of a Unit or otherwise so as to be Visible From Neighboring Property, except signs required by legal proceedings or as are provided by the Association for the benefit of Owners of Units within the Property.

5.13 Restriction on Further Subdivision and Combining of Units, Property Restrictions and Rezoning. No Owner shall convey a timeshare interest or other fractional portion of a unit. No Unit shall be further subdivided or separated into smaller Units by any Owner, and no portion less than all of any such Unit, nor any easement or other interest therein, shall be conveyed or transferred by any Owner, without the prior written approval of Declarant and Record Owner, so long as Declarant or Record Owner, as applicable, has an interest in the Property, and the written approval of the Board. This provision shall not, in any way, limit Declarant from subdividing or separating into Units any property at any time owned by Declarant; provided, Record Owner consents in writing to such further subdivision or separation by Declarant. Separate Units or portions thereof shall not be combined. No subdivision plat or further covenants, conditions, restrictions or easements shall be recorded by any Owner or other person against any portion of the Property. No application for rezoning of any Unit, and no applications for variances or use permits shall be filed with any governmental authority unless the proposed use of the property has been approved in writing by Declarant or Record Owner, so long as Declarant or Record

Owner, as applicable, has an interest in the Property, and the Board and the proposed use otherwise complies with this Declaration and the general plan of development for the Property.

5.14 Vehicles and Parking.

5.14.1 As used in this Section 5.14, the term "Motor Vehicle" means, whether motorized or not, a car, van, truck, sport utility vehicle, recreational vehicle, motor home, motorcycle, all terrain vehicle, utility vehicle, pickup truck, other motor vehicle, mobile home, travel trailer, tent trailer, trailer, camper shell, or boat trailer or other similar equipment.

5.14.2 No Motor Vehicle belonging to any Owner or Resident or family member of same residing at the Unit may be parked, kept or stored anywhere at the Property except in the garage that is a part of the Unit or in any assigned parking space allocated to the Unit; provided, however, no recreational vehicles (RVs), boats, campers or trailers may be kept within any garage that is part of the Unit or in any assigned parking space allocated to the Unit.

5.14.3 A Motor Vehicle owned by a guest or invitee of an Owner or other Resident may be parked in an unassigned visitor parking space for no more than forty-eight (48) consecutive hours or no more than seventy-two (72) hours within any seven (7) day period. The Board or any committee appointed by the Board may adopt rules regarding visitor parking which may include implementing fees for same. So that the community may function in an orderly manner, it shall be the duty and obligation of every Owner on behalf of himself, his family, tenants, servants, guests and invitees, to observe and enforce the parking restrictions. No Owner shall permit any Motor Vehicle, bicycle, basketball goal (either fixed or portable), motorized skateboards or scooters, go-carts or other object to be or remain parked on any street or sidewalk or in any courtyard.

5.14.4 No Motor Vehicle shall be constructed, reconstructed or repaired on any portion of the Property or on any street within or surrounding the Property, and no inoperable vehicle may be stored or parked on any portion of the Property or on any street within or surrounding the Property; provided, however, that this provision shall not apply to emergency vehicle repairs completed within seventy-two (72) hours.

5.14.5 The Board shall have the right to have any Motor Vehicle which is parked, kept, stored, maintained, constructed, reconstructed or repaired in violation of any of the Constituent Documents towed away at the sole cost and expense of the owner of the Motor Vehicle. Any expense incurred by the Association in connection with the towing of any Motor Vehicle shall be paid to the Association by the owner of the Motor Vehicle upon demand. If the Motor Vehicle is owned by an Owner, any amounts payable to the Association shall be secured by an Assessment Lien, and the Association may enforce collection of such amounts in the same manner provided for in the Declaration for the collection of Assessments.

5.15 Air Conditioning and Heating Units. Air conditioning and heating units and appurtenant facilities shall be located only in the Limited Common Element(s) allocated to a Unit for such use and the placement of same shall be subject to the approval of Declarant, so long as Declarant has an interest in the Property, and thereafter the Board. The air conditioning and heating units and appurtenant facilities shall be owned and maintained by the Owner of the

Unit they serve and the Owner and its designees shall have access to the Limited Common Elements to maintain the air conditioning and heating units and appurtenant facilities.

5.16 Basketball Hoop and Backboards. No basketball backboard, hoop or similar structure or device shall be attached to a Unit or Building.

5.17 Roofs. No solar panel, air conditioning or heating unit, television antennae, satellite dish or other apparatus, structure or object shall be placed on the roof of a Unit or Building without the prior written consent of the Board or Design Review Committee. Any solar panel approved by the Board or Design Review Committee for placement on a roof must be flush mounted if Visible From Neighboring Property. No evaporative coolers shall be installed at or on a Unit.

5.18 Common Walls. The Owners of contiguous Units who share a common wall shall both equally have the right to use such wall provided that such use by one Owner does not interfere with the use and enjoyment of same by the other Owner. There shall be no impairment of the structural integrity of any portion of any common walls, Building, or other Common Element without the prior consent of Declarant, so long as Declarant has an interest in the Property, and the Board.

5.19 Repair of Units. No Unit shall be permitted to fall into disrepair and each such Unit shall at all times be kept in good condition and repair and adequately painted or otherwise finished. In the event any Unit is damaged or destroyed, then, subject to the approvals required by Paragraph 5.1 and Article XII, such Unit shall be promptly repaired. In the event an Owner fails to comply with this provision, the Board may give notice to the offending Owner, and may then proceed to repair the Unit and charge the Owner therefore as permitted in Paragraph 11.3.

5.20 Overhead Encroachments. No tree, shrub or planting of any kind on any Unit or other area shall be allowed to overhang or otherwise to encroach upon any other Unit or the Common Elements from ground level to a height of eight (8) feet without the prior written approval of the Design Review Committee.

5.21 Overflow Parking for Guests Only. No visitor parking space shall be used by an Owner or resident at any time. The Board shall, upon request, determine whether the owner of a vehicle is a "resident."

5.22 Garages; Resident Parking. The development plan provides two (2) parking spaces for every Unit. Parking shall be provided and assigned to the Units and no Unit shall be entitled to more spaces than any other Unit. No garage door shall remain open except when necessary for access to and from the garage. The interior of all garages shall be maintained by the Owner in a neat, clean and sightly condition. No courtyard, parking area or garage shall be used to store junk or other unsightly material. Garage space shall not be converted into any use (such as a recreational room or storage) which would prevent its use as a parking space for the number of vehicles it is designed to contain. Owners shall be responsible for keeping the interior of their assigned garage in good condition and repair and adequately painted or otherwise finished. Maintenance, repair or replacement of the automatic or manual garage door opening and closing mechanism and appurtenant facilities shall be the responsibility of the Owner.

5.23 Size Limitation for Parked Vehicles. Any vehicle which is appropriately parked on the Property must be of a size which will fit entirely within one parking space, allowing reasonable access to the vehicle and adjacently parked vehicles.

5.24 Motorized Scooters Prohibited. No Owner shall permit any motorized skateboards or scooters, go-carts or other similar motorized object to be used on any street or sidewalk or in any courtyard or any other part of the Property.

5.25 Window Treatments. Within thirty (30) days of occupancy, each Owner of a Unit shall install permanent draperies or suitable window treatments on all windows. In no event shall windows be covered with paper, aluminum foil, bed sheets or any other materials or temporary coverings not specifically intended for such purpose. No interior or exterior reflective material shall be used as a window covering unless such material has been approved by the Design Review Committee. Further, no metal or rigid plastic awnings of any nature whatsoever shall be permitted to be placed or installed on or attached to the outside of any Building or elsewhere on the Property, except as has been approved by the Design Review Committee.

5.26 Drainage. No Owner or Resident shall interfere with or obstruct the drainage pattern over his Unit or the Common Elements as that pattern may be established or altered by Declarant.

5.27 Health, Safety and Welfare. In the event additional uses, activities and facilities are deemed by the Design Review Committee to be a nuisance or to adversely affect the health, safety or welfare of Owners or Residents, the Design Review Committee may make rules restricting or regulating their presence at the Property as part of the Design Guidelines.

5.28 Leases. Any agreement for the lease of all or any portion of a unit must be in writing and shall be for a period of not less than ninety (90) days. Transient occupancy or hotel use shall be prohibited. Any agreement for lease must be expressly subject to the Constituent Documents. Any violation of the Constituent Documents shall be a default under the lease. An Owner shall notify the Association regarding the existence of all leases and shall provide a copy of the written lease agreement to the Association. The Owner shall remain liable for compliance with the Constituent Documents and shall be responsible for any violations thereof by his tenant or his tenant's family and guests. All notices shall be sent to the Owner. Each Owner shall provide a copy of the Constituent Documents to each tenant of his Unit. By becoming a tenant, each tenant agrees to be bound by the Constituent Documents, and recognizes and accepts the right and power of the Association to evict a tenant for any violation by the tenant of the Constituent Documents.

5.29 Patios. Nothing shall be placed or installed on or affixed to any patio, terrace, deck or balcony without the approval of the Board or the Design Review Committee or in accordance with rules promulgated from time to time by the Board or the Design Review Committee.

5.30 Utilities. No lines, wires or other devices for the communication or transmission of electric current or power, including electric, telephone, television and radio signals, shall be erected, placed or maintained anywhere on the Property unless the same shall be contained in

conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures, except for boxes on the ground for electrical or communication connections, junctions, transformers and other apparatus customarily used in connection with such underground lines, wires and other devices. Notwithstanding the foregoing, no above-ground electrical apparatus shall be installed without the approval of Declarant. All lines for the transmission of water and sewage shall also be installed and maintained underground or concealed in, on or under structures approved by Declarant. The installation and location of all utility lines and equipment must be approved in advance by Declarant.

5.31 Model Units. The provisions of this Declaration which prohibit nonresidential use of Units and regulate parking of vehicles shall not prohibit the construction and maintenance of model homes and sales offices and parking areas incidental thereto by Declarant.

5.32 Declarant and Record Owner Exemption. Notwithstanding anything to the contrary, the provisions of Sections 5.1 through 5.30 of this Declaration do not apply to Declarant or Record Owner. Nothing in this Declaration shall be deemed to prohibit Declarant or Record Owner from developing and marketing the Property.

5.33 Variances. The Board may, at its option and in extenuating circumstances, grant waivers or variances from the restrictions set forth in this Article V if it determines in its discretion that (a) a restriction would create an unreasonable hardship or burden on an Owner or Resident or a change of circumstances since the recording of this Declaration has rendered such restriction obsolete or otherwise inappropriate, and (b) the activity permitted under the variance (i) will not have any substantial adverse affect on the Owners and Residents of the Property, (ii) is consistent with the high quality of life intended for Residents of the Property, (iii) does not result in an unsafe, unsanitary or aesthetically displeasing condition, and (iv) does not result in a substantial departure from the common plan of development contemplated by this Declaration. The request for a variance must be made in writing and be accompanied by adequate supporting documentation. In addition, all portions of the Property shall continue at all times to be subject to any and all applicable zoning laws and ordinances, provided, however, that where the provisions of this Declaration are more restrictive than such laws or ordinances, the provisions of this Declaration shall control. A variance granted to an Owner by the Board shall not set a precedent for such variance being granted to that Owner in the future or to any other Owner.

5.34 Right of Entry. During reasonable hours and upon reasonable notice to the Owner or other occupant of a Unit, any member of the Board, a committee appointed by the Board or any authorized representative of either of them, shall have the right to enter upon and inspect any Unit or other area, and the improvements constructed or being constructed thereon (except for the interior portions of any completed and occupied Unit), to determine compliance with the Constituent Documents or to perform repairs and maintenance as provided in Paragraph 11.2, and such persons shall not be deemed guilty of trespass by reason of such entry. In addition, the Association shall have an easement and right of entry upon any Unit or other area at any time or times without notice in order to perform emergency repairs.

ARTICLE VI

ORGANIZATION OF ASSOCIATION

6.1 Formation of Association. The Association shall be a nonprofit Arizona corporation. Upon incorporation, the Association shall be charged with the duties and invested with the powers prescribed by law and set forth in the Articles, Bylaws and this Declaration. Neither the Articles nor Bylaws shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

6.2 Board of Directors and Officers; Committees. The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws, as the same may be amended from time to time. The Board may also appoint various committees and appoint a manager who shall, subject to the direction of the Board, be responsible for the day-to-day operation of the Association. The Board may appoint members to a Design Review Committee; provided, however, in the event no such committee is appointed, then the Board shall carry out and perform all duties of the Design Review Committee. The Board shall determine the compensation to be paid to the manager and any employees of the Association. The Board's responsibilities shall include, but not be limited to, the following:

- (a) administration, including administrative support as required for the Design Review Committee;
- (b) preparing and administering an operational budget;
- (c) subject to Paragraph 8.13, establishing and administering an adequate reserve fund;
- (d) scheduling and conducting the annual meeting and other meetings of the Members;
- (e) adoption of and adherence to a schedule for maintenance of all Common Elements;
- (f) collecting and enforcing the assessments;
- (g) accounting functions and maintaining records;
- (h) promulgation and enforcement of the Rules (and, if no Design Review Committee is formed, the Design Guidelines);
- (i) maintenance of the Common Elements (except any Limited Common Elements to be maintained by the Owners); and
- (j) all the other duties imposed upon the Board pursuant to the Constituent Documents.

6.3 The Rules and Design Guidelines. By a majority vote of the Board, the Association shall have the right but not the obligation, from time to time and subject to the provisions of this Declaration, to adopt, amend and repeal rules and regulations (the "Rules"). The Rules may restrict and govern the use of the Common Elements by any Member or Resident, by the family of such Member or Resident, or by any invitee, licensee or tenant of such Member or Resident; provided, however, that the Rules shall not discriminate among Members and shall not be inconsistent with this Declaration, the Articles or the Bylaws. In addition, from time to time and subject to the provisions of this Declaration, the Design Review Committee (or the Board if there is no Design Review Committee) shall have the right, but not the obligation, to adopt, amend and repeal Design Guidelines; provided, however, that the Design Guidelines shall be fair and reasonable and shall be consistent with the provisions of this Declaration, the Articles and Bylaws. The authority granted herein to develop rules and guidelines by the Board and/or the Design Review Committee and the enforcement powers of same, are given for the purpose of insuring that the Property is developed and used according to the general descriptions and intent as evidenced by the Plat, as it may from time to time be amended, and this Declaration. Upon adoption, the Rules and/or Design Guidelines shall be enforceable in the same manner as this Declaration and shall have the same force and effect as if set forth in and a part of this Declaration. The Design Review Committee (or the Board if there is no Design Review Committee) is specifically responsible for the administration and enforcement of the provisions of Article XII of this Declaration; the administration and enforcement of the Design Guidelines; and all other duties and obligations designated to the Design Review Committee by the Declaration, Articles, Bylaws and Rules. Administrative support as required by the Design Review Committee shall be provided by the Board. Copies of any and all Rules and Design Guidelines as adopted or amended shall be available for inspection at the office of the Association during reasonable business hours.

6.4 Intentionally Omitted.

Conflicts. In the event of any inconsistency between the Rules, the Design Guidelines and/or the Master Design Guidelines, the more restrictive shall control.

6.5 Personal Liability. No Board member, committee member (including, but not limited to, the Design Review Committee), officer or employee of the Association shall be personally liable to any Member or to any other person or entity, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence; provided, however, the limitations set forth in this Paragraph 6.6 shall not apply to any person who has failed to act in good faith or has engaged in willful or intentional misconduct. The Association shall indemnify its committee members, directors and officers when acting on behalf of the Association, to the full extent permitted by law, except for willful misconduct and bad faith acts or omissions.

ARTICLE VII

MEMBERSHIPS AND VOTING

7.1 Owners of Units. Every Owner of a Unit which is subject to assessment shall be a Member of the Association. Each Member shall have one (1) Membership for each Unit owned.

7.2 Declarant. Declarant or Record Owner shall each be a Member of the Association for so long as Declarant or Record Owner, as applicable, owns any portion of the Property.

7.3 Voting. The Association shall have two (2) classes of voting Memberships:

Class A. Class A Memberships shall be all Memberships attributable to the Owner of a Unit, with the exception of Declarant until the termination of the Class B Membership. An Owner (with the exception of Declarant until the termination of the Class B Membership) of a Unit shall be entitled to one vote for each Class A Membership held by the Owner, subject to the authority of the Board to suspend the Owner's voting rights for violations of this Declaration as provided herein.

Class B. All of the Class B Memberships shall be held by Declarant and Record Owner. For its Class B Memberships, Declarant or Record Owner, as applicable, shall each have three (3) votes for every Unit owned by Declarant or Record Owner, as applicable. The Class B Memberships shall cease upon the expiration of the Period of Declarant Control.

7.4 Right to Vote. No change in the ownership of a Membership shall be effective for voting purposes unless and until the Board is given actual written notice of such change and is provided satisfactory proof thereof. The vote of each such Membership must be cast as a unit; fractional votes shall not be allowed. In the event that a Membership is owned by more than one person or entity and such Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Member casts a vote representing a certain Membership, it will thereafter be conclusively presumed that he was acting with the authority and consent of all other Owners of the same Membership unless objection thereto is made to the Board, in writing at or prior to the time the vote is cast. In the event more than one vote is cast for a particular Membership, all said votes shall be deemed void.

7.5 Membership Rights. Each Member shall have the rights, duties and obligations set forth in this Declaration and such other rights, duties and obligations as are set forth in the Constituent Documents.

7.6 Transfer of Membership. The rights and obligations of the Owner of a Class A Membership in the Association shall not be assigned, transferred, pledged, designated, conveyed or alienated in any way except upon transfer of ownership to an Owner's Unit and then only to the transferee thereof. A transfer of ownership of a Unit may be effected by deed, intestate succession, testamentary disposition, foreclosure of a mortgage of record or such other legal process as permitted by Arizona law. Any attempt to make a prohibited transfer shall be void. Any transfer or ownership of a Unit shall automatically transfer the Membership(s) appurtenant to said Unit to the new Owner. Upon the transfer of ownership of any Unit (excluding the initial sale by Declarant), the Board, in its discretion, may assess a reasonable transfer fee to cover administrative costs associated with said transfer of ownership.

7.7 Period of Declarant Control. During the Period of Declarant Control, Declarant shall have the right to appoint and remove the members of the Board and the officers of the

Association, none of whom have to be Unit Owners. Declarant may voluntarily surrender the right to appoint and remove members of the Board and officers before the expiration of the Period of Declarant Control, provided that Record Owner consents in writing to such surrender, but, in that event, may require, for the duration of the Period of Declarant Control, that specified actions of the Association or Board, as described in a recorded instrument executed by Declarant and Record Owner, be approved by Declarant and Record Owner before they become effective.

ARTICLE VIII

COVENANT FOR ASSESSMENTS AND CREATION OF LIEN

8.1 Creation of Lien and Personal Obligation for Assessments and Maintenance Charges. Declarant hereby covenants and agrees, and each Owner, by acceptance of a deed for any portion of the Property (whether or not it shall be so expressed in such deed), is deemed to covenant and agree, to accept and be subject to mandatory Membership in the Association, and to pay to the Association the following: (1) Annual Assessments, (2) Special Assessments, (3) Maintenance Charges, (4) Special Use Fees and (5) Remedial Assessments (as defined below), incurred by the Owner or any Resident occupying the Owner's Unit or any portion thereof. The Annual Assessments, Special Assessments, Maintenance Charges, Special Use Fees and other fees, fines and charges which are the obligation of an Owner hereunder, together with interest, costs, collection agency fees, and reasonable attorneys' fees of the Association incurred in connection with the enforcement and collection thereof or in otherwise enforcing this Declaration, shall be a charge and continuing servitude and lien upon the Unit against which each such Annual Assessment, Special Assessment, Maintenance Charge or other charge is made and against the Unit of an Owner liable for a Special Use Fee or other charge, and, in addition, shall be the personal obligation of the Owner of such Unit at the time such payment becomes due and payable. The personal obligation for delinquent Assessments and other charges shall not pass to the successors in title of the Owner unless expressly assumed by them; however, the Unit shall remain subject to the lien of the delinquent Assessment except as provided in Paragraph 9.3 below. No Owner may waive or otherwise exempt himself from liability for the Assessments provided for herein, including, but not limited to, by nonuse of the Common Elements or abandonment of his Unit. The obligation to pay Assessments is a separate and independent covenant on the part of each Owner. No diminution, abatement or set-off shall be allowed by reason of any action or failure to act of the Board or Association.

8.2 Annual Assessments. In order to provide for the uses and purposes specified in Article X hereof, including the establishment of replacement and maintenance reserves, in each year, commencing with the first Assessment Period, the Board shall prepare and adopt a budget and shall assess against all units an Annual Assessment. The Board is expressly authorized to adopt and amend budgets from time to time without ratification by the Unit Owners and is not required to provide a summary thereof to any Unit Owners. Subject to the provisions of Paragraph 8.4 hereof, the amount of the Annual Assessment shall be in the sole discretion of the Board, but shall be determined with the objective of fulfilling the Association's obligations under this Declaration and providing for the uses and purposes specified in Article X.

8.3 Uniform Rate of Annual Assessment. The amount of any Annual Assessment or Special Assessment against each Unit shall be fixed at an equal amount.

8.4 Maximum Annual Assessment. The Annual Assessment to be established by the Board may not exceed a certain amount, hereinafter referred to as the "Maximum Annual Assessment," which Maximum Annual Assessment shall be determined and shall vary in accordance with the following provisions:

(a) Until January 1, 2007, the Maximum Annual Assessment against each Owner shall be Two Thousand Four Hundred Dollars (\$2,400.00) for each Class A Membership, which Assessment may be collected in monthly installments.

(b) From and after January 1, 2007, the Maximum Annual Assessment may be increased effective January 1 of each year without a vote of the Membership by a maximum of twenty percent (20%) of the Maximum Annual Assessment for the previous year.

(c) From and after January 1, 2007, the Maximum Annual Assessment may be increased above the Maximum Annual Assessment otherwise determined under Subsection Co) above by a vote of two-thirds (2/3) of each class of Members who are voting in person or by proxy at a meeting duly called for such purpose.

(d) Notwithstanding the foregoing limitations described in (a), (b) and (c) above, in the Board's discretion, the Maximum Annual Assessment may be increased as required by increased utility and water costs charged to the Association.

(e) Anything herein to the contrary notwithstanding, any increase in the Maximum Annual Assessment shall be limited as provided by law.

8.5 Special Assessments for Capital Improvements and Extraordinary Expenses. In addition to the Annual Assessments authorized above, 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 upon the Common Elements, including fixtures and personal property related thereto, or for the purpose of defraying other extraordinary expenses, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for such purpose. The provisions of this Paragraph are not intended to preclude or limit the assessment, collection or use of Annual Assessments for the aforesaid purposes.

8.6 Rate of Assessment. Subject to Section 8.4 hereof and this Section 8.6, the amount of the Annual Assessments and Special Assessments shall be fixed by the Board, in its sole discretion.

(a) Except as set forth herein below, both Annual Assessments and Special Assessments must be fixed at a uniform rate for all Units within the Property and may be collected on a monthly basis.

(b) Notwithstanding anything contained herein to the contrary, Declarant and Record Owner shall each pay twenty-five percent (25%) of the Annual Assessment for each Unit owned by Declarant or Record Owner, as applicable, until construction of a dwelling unit thereon is substantially completed.

(c) Notwithstanding anything contained herein to the contrary, during any period when Declarant or Record Owner is paying reduced Annual Assessments pursuant to Paragraph 8.6(b), Declarant shall pay to the Association any deficiency in monies due to Declarant or Record Owner having paid such reduced Annual Assessments pursuant to Paragraph 8.6(b) and necessary for the Association to be able to timely pay all Common Expenses. Notwithstanding anything in this Declaration to the contrary, as long as the Option Agreement is in effect, all Annual Assessments levied against Units owned by Record Owner which remain subject to the Option Agreement shall be the responsibility of and payable by Declarant.

8.7 Notice and Quorum for any Action Authorized Under Paragraphs 8.4 and 8.5. Written notice of any meeting called for the purpose of taking any action authorized under Paragraphs 8.4 and 8.5 shall be sent to all Members no less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes (exclusive of suspended voting rights) of each class of Membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

8.8 Establishment of Assessment Period. The period for which the Annual Assessment is to be levied (the "Assessment Period") shall be the calendar year, except that the first Assessment Period shall commence as to all Units when the first certificate of occupancy for a Unit is issued and the completed Unit is sold to an Owner other than Declarant and shall terminate on December 31 of such year. The Board in its sole discretion from time to time may change the Assessment Period by recording with the County Recorder of Maricopa County, Arizona, an instrument specifying the new Assessment Period.

8.9 Billing and Collection Procedures. The Board shall have the right to adopt procedures for the purpose of making, billing and collecting the Assessments, provided that said procedures are not inconsistent with the provisions hereof. Annual Assessments and Special Use Fees may be collected on a monthly, quarterly or annual basis as determined by the Board and Special Assessments may be collected as specified by the Board unless otherwise determined by the resolution of the Members of the Association approving the Special Assessment. The failure of the Association to send a bill to a Member shall not relieve any Member of his liability for any Assessment or charge under this Declaration, but the Assessment Lien therefor shall not be foreclosed or otherwise enforced until the Member has been given not less than fifteen (15) days' written notice prior to such foreclosure or enforcement, at the address of the Member on the records of the Association, that the Assessment or any installment thereof is or will be due and of the amount owing. Such notice may be given at any time prior to or after the delinquency of such payment. Each Member shall be obligated to inform the Association in writing of any change of address. The Association shall be under no duty to refund any payments received by it even though the ownership of a Membership changes during an Assessment Period; successor Owners of Units shall be given credit for prepayments, on a prorated basis, made by prior Owners. In case the Owner of a Membership becomes liable for payment of an increased sum during the Assessment Period, he shall notify the Association, but his failure to notify the Association shall

not relieve him of the liability for such amounts. No mortgagee or beneficiary under a deed of trust shall be required to collect any Assessment or fee on behalf of the Association.

8.10 Collection Costs and Interest on Delinquent Assessments. Any Assessment or installment thereof not paid within thirty (30) days from the date due shall be deemed delinquent and shall bear interest from the delinquent date until paid at a rate equal to the greater of (a) twelve percent (12%) per annum, or (b) the rate set by the Board, and the Member shall be liable for all costs, including attorneys' fees, which may be incurred by the Association in collecting the same. In addition, the Board may charge a late fee for all delinquent payments. The Board may also record a Notice of Delinquent Assessment against any Unit as to which an Assessment is delinquent and constitutes a lien and may establish a fixed fee to reimburse the Association for the Association's cost in recording such Notice, processing the delinquency and recording a notice of payment, which fixed fee shall be treated as a collection cost of the Association secured by the Assessment Lien. The Association shall not be obligated to release any notice recorded pursuant to this Paragraph until all delinquent Assessments, interest and collection costs have been paid in full, whether or not all of such amounts are set forth in the Notice of delinquent Assessment. Failure of any Owner to pay the Assessments shall not constitute a default under any insured mortgage or deed of trust.

8.11 Evidence of Payment of Assessments. Upon receipt of a written request, and within a reasonable period of time thereafter, the Association shall issue to the requesting party a written certificate stating (a) that all Annual Assessments and Special Assessments, Special Use Fees and Maintenance Charges (including interest, costs and attorneys' fees, if any, as provided in Paragraph 8.10 above) have been paid with respect to any specified Unit as of the date set forth in such certificate, or (b) if such have not been paid, the amounts due and payable as of such date. The Association may make a reasonable charge for the issuance of such certificate. Any such certificate shall be conclusive and binding with respect to any matter therein stated as against any bona fide purchaser of, or lender on, the Unit in question.

8.12 Remedial Assessments. Pursuant to this Declaration, the Board may levy an assessment against any Unit to reimburse the Association for costs incurred in bringing such Unit and its Owners into compliance with the provisions of the Constituent Documents. Remedial Assessments shall be due ten (10) days after the Board gives written notice thereof to the Owner subject thereto. The provisions of Paragraph 8.5 with respect to approval of Special Assessments shall not apply in the case of Remedial Assessments.

8.13 Capital Reserve Fund. To ensure that the Association shall have adequate funds to meet its expenses for the repair, reconstruction or replacement of capital assets owned by the Association or for which the Association is responsible ("Capital Assets"), each purchaser of a Unit from Declarant shall pay to the Association immediately upon becoming the Owner of the Unit a sum equal to one-quarter (1/4) of the then current Annual Assessment attributable to the Unit; provided, that in no event shall the foregoing apply to any conveyance of a Unit by Record Owner. Funds paid to the Association pursuant to this Paragraph may be used by the Association for the establishment of a replacement and repair reserve account or to apply towards repair, reconstruction or replacement of Capital Assets. Payments made pursuant to this Paragraph shall be nonrefundable and shall not be considered as an advance payment of any Assessments levied by the Association pursuant to this Declaration.

8.13.1 Reserve Studies During Period of Declarant Control. During the Period of Declarant Control, the Board shall cause a reserve study to be conducted by an independent third party to assist the Board in determining the portion of Annual Assessments to be set aside for reserves. If such study is conducted as provided herein, neither the Board nor any member thereof nor Declarant shall have any liability with respect to the sufficiency or adequacy of such reserves.

8.13.2 Reserve Studies After Period of Declarant Control. Following the termination of the Period of Declarant Control, the Board shall cause a reserve study to be conducted by a third party at least once every five (5) years. The results of any such reserve study shall be advisory only, and the Board shall have the right to accept, reject or accept in part the results of such studies in determining the portion of Annual Assessments to be set aside for reserves.

8.13.3 Reserve Fund; Cash Flow Reserve. From the Annual Assessments or Special Use Fees received by the Association, the Board shall establish a reserve fund for the maintenance, repair and replacement of the Limited Common Elements or the General Common Elements.

8.14 Working Capital Fund. To insure that the Association shall have adequate funds to meet its expenses or to purchase or replace necessary equipment or services, each Purchaser of a Unit from Declarant shall pay to the Association immediately upon becoming the Owner of the Unit a sum equal to one-quarter (1/4) of the current Annual Assessment for the Lot. Funds paid to the Association pursuant to this Section may be used by the Association for payment of operating expenses, establishment of appropriate maintenance and/or replacement reserves, or any other purpose permitted under this Declaration. Payments made pursuant to this Section shall be nonrefundable and shall not be considered as an advance payment of Assessments levied by the Association pursuant to this Declaration.

8.15 Fines and Penalties for Violations of the Declaration. The Board may impose reasonable monetary penalties on Members for violations of the Constituent Documents, provided notice of the violation and an opportunity to be heard is provided to the offending individual. Any monies paid by a Member for an unpaid penalty shall be applied first to the principal amount unpaid and then to the interest accrued. Amounts charged to Owners pursuant to this Paragraph 8.14 shall be included in the Assessment Lien and shall be subject to collection. and enforcement in the same manner as the Annual Assessments in accordance with the provisions of Article IX of this Declaration.

8.16 Special Assessment for Cable Service. In addition to the Assessments authorized above, the Association may levy in any assessment year an assessment applicable to that year (and the same shall be charged and collected on a monthly, quarterly or yearly basis as determined by the Board) for the exclusive purpose of defraying, in whole or in part, the cost of providing cable communication service to the Property. The Cable Service Assessment, if any, shall commence with respect to a Unit when the Unit is first conveyed to a purchaser other than Declarant. The Cable Service Assessment may be increased at any time and from time to time if the cost for the cable service increases. Each Owner acknowledges that the Property may have cable communication availability and that a supplier of cable service may agree to provide access

to such service provided that each Unit is included in the service plan. In addition, such services may be delivered at a savings if each Unit is included in the service plan, Each Owner therefore acknowledges and agrees that each Unit may be subject to an assessment in addition to and apart from the Annual Assessment and other assessments for the purpose of paying each Unit's pro rata share of basic cable service provided to the Property, which Cable Service Assessment shall commence as provided above. The Cable Service Assessment shall apply only to such service as is considered "basic" and any additional services that constitute "upgrades" or "enhanced" services shall be subscribed for and paid by each Owner on an individual basis. The Cable Service Assessment shall be payable by each Owner of a Unit other than Declarant or Record Owner whether or not such Owner avails itself of cable communication service. The Owners acknowledge that notwithstanding the foregoing, cable service may or may not be available and may or may not be paid for by means of a Cable Service Assessment.

ARTICLE IX

ENFORCEMENT OF PAYMENT OF ASSESSMENTS AND ASSESSMENT LIEN

9.1 Association as Enforcing Body. As provided in Paragraph 13.2, Declarant, the Association, the Design Review Committee and the Members shall have the right to enforce the provisions of this Declaration.

9.2 Association Remedies to Enforce Payment of Assessments. If any Member fails to pay the Annual Assessments or Special Assessments, Remedial Assessments, Special Use Fees or Maintenance Charges when due, the Association may enforce the payment thereof by taking either or both of the following actions, concurrently or separately (and by exercising either of the remedies hereinafter set forth, the Association does not prejudice or waive its right to exercise the other remedy):

(a) Bring an action at law and recover judgment against the Member personally obligated to pay the Annual, Special or Remedial Assessments, Special Use Fees or Maintenance Charges;

(b) Foreclose the Assessment Lien against the Unit in accordance with the then prevailing Arizona law relating to the foreclosure of realty mortgages (including the right to recover any deficiency). The Association may bid on the subject property at such a foreclosure sale.

Notwithstanding subordination of an Assessment Lien as described in Paragraph 9.3, the delinquent Member shall remain personally liable for the Assessments and related costs after his Membership is terminated through foreclosure or deed in lieu of foreclosure or otherwise.

9.3 Subordination of Assessment Lien. The Assessment Lien provided for herein shall be subordinate to any first mortgage lien held by, or first deed of trust of which the beneficiary is, a lender who has lent funds with the Unit as security, or the lender's successors and assigns, and shall also be subject and subordinate to liens for taxes and other public charges which by applicable law are expressly made superior. Except as above provided, the Assessment

Lien shall be superior to any and all charges, liens or encumbrances which hereafter in any manner may arise or be imposed upon a Unit. Sale or transfer of any Unit shall not affect the Assessment Lien; provided, however, that if the sale or transfer is pursuant to foreclosure of a mortgage or a deed of trust to which the Assessment Lien is subordinate, or pursuant to any sale or proceeding in lieu thereof, the purchaser at the mortgage foreclosure or deed of trust sale, or any grantee taking by deed in lieu of foreclosure, shall take the Unit free of the Assessment Lien for all Annual, Special and Remedial Assessments and Maintenance Charges and Special Use Fees that have accrued up to the date of issuance of a sheriff's or trustee's deed or deed in lieu of foreclosure; provided, however, that such mortgage or deed of trust foreclosure sale 'purchaser or grantee shall take title subject to all Annual, Special and Remedial Assessments, Special Use Fees, Maintenance Charges and the Assessment Lien therefor accruing subsequent to the date of issuance of a sheriffs or trustee's deed or deed given in lieu of foreclosure, and further provided that the delinquent Member shall remain personally liable for all delinquent Annual, Special and Remedial Assessments and Maintenance Charges and Special Use Fees.

ARTICLE X

USE OF FUNDS; BORROWING POWER

10.1 Purposes for Which Association Funds May Be Used. The Association shall apply all funds and property collected and received by it (including the Annual and Special Assessments, fees, loan proceeds, surplus funds and all funds and property received by it from any other source) for the common good and benefit of the Condominium and the Members and Residents by devoting said funds and property, among other things, to the acquisition, construction, alteration, maintenance, provision and operation, by any manner or method whatsoever, of any and all land, properties, improvements, facilities, services, projects, programs, studies and systems, within or without the Condominium, which may be necessary, desirable or beneficial to the general common interests of the Condominium, the Members and the Residents. The following are some, but not all, of the areas in which the Association may seek to aid, promote and provide for such common benefit: social interaction among Members and Residents, maintenance of landscaping on Common Elements and public rights-of-way, maintenance of trails, washes and drainage areas within and adjoining the Property, recreation, liability insurance, communications, ownership and operation of recreational and other facilities, vehicle storage areas, transportation, health, utilities, public services, safety and indemnification of officers and directors of the Association. Subject to this Declaration and the Articles and Bylaws, the Association may expend its funds in any manner permitted under the laws of the State of Arizona.

10.2 Borrowing Power. The Association may borrow money in such amounts, at such rates, upon such terms and security, and for such periods of time as is necessary or appropriate.

10.3 Association Rights in Spending Funds From Year to Year. The Association shall not be obligated to spend in any year all the sums received by it in such year (whether by way of Annual or Special Assessments, fees or otherwise), and may carry forward as surplus any remaining balances. The Association shall not be obligated to reduce the amount of an Annual Assessment or Special Use Fee in the succeeding year if a surplus exists from a prior year and the Association may carry forward from year to year such surplus as the Board in its discretion

may determine to be desirable for the greater financial security of the Association and the accomplishment of its purposes.

10.4 Eminent Domain. The term "taking" as used in this Paragraph shall mean condemnation by eminent domain or sale under threat of condemnation. In the event of a threatened taking of all or any portion of the Limited Common Elements or the General Common Elements, the Owners hereby irrevocably appoint and authorize the Board and such persons as the Board may delegate to represent all of the Members in connection with the taking, and to execute and deliver settlements, releases upon the payment of compensation, and to do all other acts reasonably necessary to accomplish any of the foregoing. The Board has full and complete power to act for the Association in this regard and may, at its discretion, appoint an authorized representative or committee, or enter into a trust agreement wherein the trustee shall have authority to negotiate claims under any taking of the Common Elements. The Board shall act in its sole discretion with respect to any awards made or to be made in connection with the taking and shall be entitled to make a voluntary sale to the condemner in lieu of engaging in a condemnation action. Any awards received on account of the taking shall be paid to the Association. In the event of a total or partial taking, the Board may, in its sole discretion, retain any award in the general funds of the Association or distribute pro rata all or a portion thereof to the Owners and all holders of liens and encumbrances, as their interests may appear of record, at a uniform rate per Membership.

10.5 Insurance.

10.5.1 The provisions of this Paragraph 10.5 reflect applicable law as of the date hereof. These provisions shall be deemed modified if and to the extent applicable statutes are amended.

10.5.2 Commencing not later than the time of the first conveyance of a Unit to a person other than Declarant, the Association shall maintain, to the extent reasonably available, both:

(a) Property insurance on the Common Elements insuring against all risks of direct physical loss commonly insured against or, as determined by the Board against fire and extended coverage perils. The total amount of insurance after application of any deductibles shall be not less than eighty per cent of the actual cash value of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations and other items normally excluded from property policies.

(b) Liability insurance in an amount determined by the Board but not less than \$1,000,000.00 covering all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Common Elements.

10.5.3 To the extent available, the insurance maintained under Paragraph 10.5.2(a), if determined by the Board, includes the Units or any portion of those Units but need not include improvements and betterments installed by Unit Owners or the personal property of Unit Owners.

10.5.4 If the insurance described in Paragraph 10.5.2 is not reasonably available, the Association promptly shall cause notice of that fact to be hand-delivered or sent prepaid by United States mail to all Unit Owners. The Association may carry any other insurance it deems appropriate to protect the Association or the Unit Owners.

10.5.5 Insurance policies carried by the Association shall provide the following:

(a) Each Unit Owner is an insured person under the policy with respect to liability arising out of his interest in the Common Elements or membership in the Association.

(b) The insurer waives its right to subrogation under the policy against any Unit Owner or members of his household.

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

(d) If, at the time of a loss under the policy, there is other insurance in the name of a Unit Owner covering the same property covered by the policy, the Association policy provides primary insurance.

10.5.6 Any loss covered by the property policy under Paragraph 10.5.2(a) and Paragraph 10.5.3 shall be adjusted with the Association, but the insurance proceeds for that loss are payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not to any mortgagee or beneficiary under a mortgage or deed of trust. The insurance trustee or the Association shall hold any insurance proceeds in trust for Unit Owners and lien holders as their interest may appear. Subject to the provisions of Paragraph 10.5.9, the proceeds shall be disbursed first for the repair or restoration of the damaged property, and Unit Owners and lien holders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored, or the Condominium is terminated.

10.5.7 An insurance policy issued to the Association does not prevent a Unit Owner from obtaining insurance for his own benefit.

10.5.8 An insurer that has issued an insurance policy under this Paragraph 10.5 shall issue certificates or memoranda of insurance to the Association and, on written request, to any Unit Owner, mortgagee or beneficiary under a mortgage or 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 mortgage or deed of trust to whom a certificate or memorandum of insurance has been issued at their respective last known addresses.

10.5.9 Any portion of the Condominium for which insurance is required under this Paragraph 10.5 which is damaged or destroyed shall be repaired or replaced promptly by the Association unless any of the following apply:

(a) The Condominium is terminated.

(b) Repair or replacement would be illegal under any state or local health or safety statute or ordinance.

(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.

10.5.10 The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense. If the entire Condominium is not repaired or replaced:

(a) The insurance proceeds attributable to the damaged Common Elements in proportion to their Common Element interests or as otherwise provided in this Declaration shall be used to restore the damaged area to a condition compatible with the remainder of the Condominium.

(b) The insurance proceeds attributable to Units and allocated Limited Common Elements which are not rebuilt shall be distributed in proportion to their Common Element interests or as otherwise provided in this Declaration to the Owners of those Units and the Owners of the Units to which those Limited Common Elements were allocated, or to lien holders as their interests may appear.

(c) The remainder of the proceeds shall be distributed to all the Unit Owners or lien holders as their interests may appear in proportion to the Common Element interests of all the units.

10.5.11 If the Unit Owners vote not to rebuild any Unit, that Unit's allocated interests are automatically reallocated on the vote as if the Unit had been condemned under A.R.S. § 33-1206(A), and the Association promptly shall prepare, execute and record an amendment to this Declaration reflecting the reallocations.

10.5.12 Notwithstanding the foregoing, A.R.S. § 33-1228 governs the distribution of insurance proceeds if the Condominium is terminated.

10.5.13 Premiums for all insurance obtained by the Association pursuant to this Paragraph 10.5 shall be Common Expenses and shall be paid for by the Association.

10.5.14 Each Unit Owner shall be responsible for: (a) physical damage insurance on his personal property and furnishings in his Unit and elsewhere on the Condominium, and any additions, alterations and improvements to his Unit (whether installed by such Unit Owner or any prior Unit Owner or whether originally in his Unit); and (b) his personal liability to the extent not covered by the policies of liability insurance obtained by the Board for the benefit of all of the Unit Owners. All policies of casualty insurance carried by each Unit Owner shall be without contribution with respect to the policies of casualty insurance obtained by the Board for the benefit of all of the Unit Owners. For the purposes of this Paragraph 10.5.14 "additions, alterations and improvements" shall mean any property (excluding personal property readily removable without damage to the Unit) attached to the Unit, including without limitation, carpeting, flooring, wall covering, paint, paneling, appliances, countertops and cabinets. No

person shall maintain any insurance which would limit or reduce in any manner the insurance proceeds payable under the casualty insurance maintained by the Association in the event of damage to the improvements or fixtures on the Common Elements or Limited Common Elements.

10.5.15 The Board may obtain or require additional or greater amounts of insurance coverage as it reasonably deems appropriate.

10.5.16 Neither the Association nor any Board member nor Declarant shall be liable to any person or Mortgagee if any risks or hazards are not covered by the insurance obtained by the Association or if the amount of insurance is not adequate.

10.6 Fidelity Bonds. The Board, acting on behalf of the Association, shall obtain and maintain at all times adequate fidelity bond coverage to protect against dishonest acts on the part of officers, directors and employees of the Association and all others who handle, or are responsible for handling, funds held or administered by the Association, whether or not such officers, directors, employees or others receive compensation for services they render to or on behalf of the Association. Any independent management agent which handles funds for the Association shall also obtain (and pay for) such fidelity bond coverage with respect to its own activities (and those of its directors, officers and employees receiving compensation for services rendered.) Such fidelity bond: (a) shall name the Association as obligee; (b) shall be issued by one or more companies authorized to issue such bonds in the State of Arizona; and (c) shall be in an amount sufficient to cover the maximum total of funds reasonably expected by the Board to be in the custody of the Association or such agent at any time while such bond is in force, but in no event shall the amount of such fidelity bond coverage be less than the sum of three (3) months' Annual Assessments on all Units, plus the total of dues held in the Association's reserves. Each such fidelity bond shall provide that the issuer thereof shall provide not less than ten (10) days' written notice to the Association and to each first Mortgagee before such bond may be canceled or substantially modified for any reason.

ARTICLE XI

MAINTENANCE AND REPAIR

11.1 By the Owner. Each Owner of a Unit shall maintain, repair, replace and restore at his own expense all portions of the Unit, including, without limitation, all appliances contained within the Unit, water heaters and appurtenant facilities, automatic or manual garage door operating mechanisms, elevators, alarm systems and all balconies constituting a part of the Unit. In addition, each Owner of a Unit shall be responsible for the sweeping and cleaning of any patio and/or entryway constituting a Limited Common Element allocated to that Unit and for the maintenance, repair and replacement of the air conditioning/heating unit(s) and appurtenant facilities serving its Unit. All such sweeping, cleaning, maintenance, repair, replacement or restoration shall be subject to review and approval of the Association. No Owner shall remove, alter, injure, or interfere with any shrubs, trees, grass or plantings placed or preserved upon any Property by Declarant or the Association without first obtaining the written consent of the Board.

11.2 By the Association. The Association shall have full power to control, and it shall be its duty to maintain, repair and make necessary improvements to, all Common Elements and the improvements thereon, with the exception of outlets of all utility installations of the Building when located in the Units (which shall be the responsibility of the Unit Owner) and all Limited Common Elements which this Declaration provides are to be maintained by Unit Owners. The Association shall further be empowered with the right and duty to periodically inspect all Common Elements in order that minimum standards of repair, design, color and landscaping shall be maintained for beauty, harmony and conservation of values within the entire project. The Association shall not be required to maintain (but may elect to maintain) areas which Maricopa County, an improvement district or other government entity is maintaining. Notwithstanding anything to the contrary herein, the Board shall have the discretion to enter into an agreement with Maricopa County to permit the Association to upgrade and/or maintain landscaping on property owned by Maricopa County or which is owned by the Association, but is maintained by Maricopa County, whether or not such property is within the Condominium, if the Board determines such agreement benefits the Association.

11.3 Property Outside of the Condominium. Notwithstanding anything to the contrary herein, the Association may assume responsibility for maintenance and management of certain retention or other common areas within the vicinity of the Condominium. Such maintenance and management responsibility shall not be effective unless (i) the Board assumes in writing the responsibility as set forth in a recorded instrument; and (ii) the additional maintenance area is dedicated to the Association and such dedication is accepted in writing by the Association. The costs and expenses for such maintenance and management shall be assessed against the Owners of Units within the Property.

11.4 Standard of Care. The Board shall use a reasonably high standard of care in providing for the repair, management and maintenance of the Common Elements and other properties maintained by the Association; however, Declarant, so long as Declarant has an interest in the Property, and subsequently the Board, shall be the sole judge as to the appropriate maintenance of all such areas. The Common Elements, including, but not limited to, the swimming pools, recreational buildings, cabanas, trails, bike paths and any playground or other play areas or equipment furnished or maintained by the Association shall be used at the risk of the user; and Declarant and the Association shall not be liable to any person or entity for any claim, damage, or injury occurring thereon or related to the use thereof.

11.5 Periodic Inspections. Declarant shall have the right, but not the obligation, to conduct inspections and tests from time to time of all or any part of the Common Elements in order to ascertain the physical condition of the improvements thereon and to determine whether maintenance, repair or replacement of any such Improvements are indicated. Declarant shall have such rights of entry on, over, under, across and through the Property and the Common Elements as may be reasonably necessary to exercise the rights described in this Paragraph I 1.5.

11.6 Delegation of Responsibilities. In the event any subdivision plat, deed restriction or this Declaration permits the Board to determine whether or not Owners of certain Units will be responsible for maintenance of certain Limited Common Elements, General Common Elements or public right-of-way areas, the Board shall have the sole discretion to determine whether or not it would be in the best interest of the Owners and Residents of the Condominium

for the Association or for an individual Owner to be responsible for such maintenance, considering cost, uniformity of appearance, location and other factors deemed relevant by the Board. The Board may cause the Association to contract with others for the performance of the maintenance and other obligations of the Association under this Article XI and, in order to promote uniformity and harmony of appearance, the Board may also cause the Association to contract to provide maintenance services to Owners of Units in exchange for the payment of such fees as the Association and Owner may agree.

11.7 Assessment of Certain Maintenance Costs. In the event that the need for maintenance or repair of Common Elements, structures and other property maintained by the Association is caused through the willful or negligent act of any Owner, Resident, or that Owner's or Resident's family, guests or tenants, the cost of such maintenance or repairs shall be added to and become a part of the Assessment to which the Owner of such Unit and the Owner's Unit are subject and shall be secured by the Assessment Lien. Any charges or fees to be paid by the Owner of a Unit pursuant to Paragraph 11.6 in connection with a contract entered into by the Association with an Owner for the performance of an Owner's maintenance responsibilities shall also become a part of the Assessment for that Unit and shall be secured by the Assessment Lien.

11.8 Improper Maintenance and Use of Units. In the event any portion of any Unit or any Limited Common Area is improperly maintained or maintained so as to present a nuisance, or substantially detract from the appearance or quality of surrounding property, or in the event any portion of a Unit or Limited Common Element is being used in a manner which violates this Declaration, or in the event the Owner of any Unit is failing to perform any of its obligations under the Constituent Documents, the Board may make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto, give written notice thereof to the offending Owner that unless corrective action is taken within fifteen (15) days, the Board may cause such action to be taken at said Owner's cost. If at the expiration of said 15-day period of time the requisite corrective action has not been taken, the Board shall be authorized and empowered to cause such action to be taken and the cost thereof shall be added to and become a Remedial Assessment to which the offending Owner and the Owner's Unit are subject and shall be secured by the Assessment Lien.

ARTICLE XII

DESIGN REVIEW COMMITTEE

12.1 Establishment. A Design Review Committee may, but need not be established and, if established, shall perform the functions set forth in this Declaration. The Design Review Committee may adopt rules, regulations and guidelines for the performance of its duties, including procedures for the preparation, submission and determination of the application for any approvals required by this Declaration. The Design Review Committee shall have sole and exclusive authority with respect to all approvals and use decisions regarding Units. The Design Review Committee, if established, shall consist of three regular members and not less than one alternate member. All members and alternates of the Design Review Committee shall be appointed by Declarant until the expiration of the Period of Declarant Control. Thereafter, the members of the Design Review Committee shall be appointed by a vote of a majority of the Board. Commencing with the first annual meeting of the members, Design Review Committee

members shall be appointed to one (1) year terms (or until replaced). After termination of the Period of Declarant Control, the terms of all Design Review Committee members shall be increased to a maximum of three (3) years and shall be staggered so that one-third (1/3) of the Design Review Committee member positions are eligible for election in each calendar year. Design Review Committee appointments shall occur at the same time as the annual elections of the Board. In the event of a temporary or permanent vacancy on the Design Review Committee, an alternate member selected by Declarant, if during the Period of Declarant Control, or by a majority vote of the Board shall serve as a replacement until the next appointment or until the regular member is again available. Members of the Design Review Committee need not be architects, Owners or Residents and need not possess any special qualifications of any type. Declarant may voluntarily relinquish (either temporarily or permanently) its right to appoint all or some of the members of the Design Review Committee by recording an amendment to this Declaration executed by Declarant alone. In the event no Design Review Committee is established as provided for herein, then the Board shall perform all functions of the Design Review Committee.

12.2 Meetings; Guidelines. The Design Review Committee shall keep a record of the minutes of all meetings. A quorum for any meeting shall consist of a majority of the regular members of the Design Review Committee and the concurrence of a majority of the regular Design Review Committee members shall be necessary for any decision of the Design Review Committee. Alternate member(s) may participate at any meeting in lieu of any absent regular member(s), may constitute a quorum by his (their) presence and shall have all of the authority of a regular member while so participating. The Design Review Committee may promulgate Design Guidelines to be used in rendering decisions, including procedures for the preparation, submission and determination of applications for approval. The decision of the Design Review Committee shall be final on all matters submitted to it pursuant to this Declaration. Members of the Committee shall not be entitled to compensation for their services, unless otherwise approved by the Board.

12.3 Discretion of Committee. All actions of the Design Review Committee authorized under this Declaration, including, without limitation, the approval or disapproval of plans, specifications and drawings, as well as other matters in which the Design Review Committee is authorized hereunder to act, shall be in the sole and complete discretion of the Design Review Committee. Neither the Design Review Committee nor any member thereof shall be liable to any Owner, or to any other party, for any damage, loss or prejudice suffered or claimed on account of

(a) the approval or disapproval of any plans, drawings or specifications, whether or not defective;

(b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications;

(c) the development of any property within the Condominium;

(d) the execution of any estoppel certificate, whether or not the facts therein are correct; or

- (e) the enforcement of this Declaration and the Design Guidelines;

provided, however, that with respect to the liability of a Committee member, such member has acted in good faith on the basis of such information as may be possessed by him. The approval by the Design Review Committee of any plans, specifications or other matter shall not be deemed to constitute a waiver of any right to withhold approval of any similar plans, specifications or other matter subsequently submitted for approval. Any approval by the Design Review Committee or the Board shall not insure that the approved matter is in compliance with applicable laws or governmental regulations, requirements or permits. Subject to Paragraph 12.2, the vote or written consent of a majority of its regular members, at a meeting or otherwise, shall constitute the act of the Design Review Committee.

12.4 Response Within Forty-five (45) Days. Failure by the Design Review Committee to approve or disapprove a request within forty-five (45) days at, or such request is filed with the Design Review Committee shall waive the approval requirement. Notice of disapproval shall be written. Notwithstanding Paragraph 15.10, no request shall be deemed filed with the Design Review Committee until it is actually received by the Design Review Committee, and all submissions to the Design Review Committee shall be made by certified mail or personal delivery.

12.5 No Liability for Action/Inaction of Design Review Committee. In no event shall the Association, the Design Review Committee or any member of the Design Review Committee have any liability for any action or inaction by the Design Review Committee or its members, including without limitation any approval or disapproval of plans by the Design Review Committee. The sole remedy for an Owner asserting that the Design Review Committee has improperly withheld approval or has improperly granted approval shall be an action to compel the Design Review Committee to take appropriate action. In no event shall any damages of any nature be awarded against the Association, the Design Review Committee or any member of the Design Review Committee of any nature arising from any action or inaction described in this Article 12.

12.6 Committee's Certificate. Any approval of any plans and specifications or other matter by the Design Review Committee given or made pursuant to the provisions of this Declaration which is evidenced by a certificate signed by at least a majority of the members of the Design Review Committee shall be irrevocable and not subject to change by the Design Review Committee. Any such certificate may be conclusively relied upon by all parties, including, but not limited to, any Owner, tenant or purchaser of any Unit or of any interest therein; by any lender taking any Unit as security; and by any title insurance company. Any such certificate may be recorded by the Design Review Committee in the office of the Maricopa County Recorder.

12.7 Fee. The Board may establish a reasonable processing fee to defer the costs of the Association and the Design Review Committee in considering any requests for approvals submitted to it, which fee shall be paid at the time the request for approval is submitted.

ARTICLE XIII

RIGHTS AND POWERS OF ASSOCIATION

13.1 Association Rights and Powers As Set Forth in Articles and Bylaws. In addition to the rights and powers of the Association set forth in this Declaration, the Association shall have such rights and powers as are provided by law and such rights and powers as are set forth in its Articles and Bylaws, which shall include all rights and powers as may be reasonably necessary in order to effect the purposes of the Association as set forth herein. After incorporation of the Association, a copy of the Articles and Bylaws of the Association shall be available for inspection by Members, prospective purchasers, mortgagees and other persons or entities with an interest in the Property at the office of the Association during reasonable business hours.

13.2 Enforcement. The Association, in the first instance, and the Design Review Committee, each as the agent and representative of the Owners or any Owner (including Declarant, so long as Declarant is an Owner), shall have the right (without obligation) to enforce, by any proceeding at law or in equity, this Declaration, the Articles, Bylaws, Rules and Design Guidelines and any and all covenants, restrictions, reservations, charges, servitudes, assessments, conditions, liens or easements provided for in any contract, deed, declaration or other instrument which (a) shall have been executed pursuant to, or subject to, the provisions of this Declaration, or (b) otherwise shall indicate that the provisions of such instrument were intended to be enforced by the Association or by Declarant. The Association is authorized to impose sanctions for violations without court approval. Such sanctions may include reasonable monetary fines and suspension of the right to vote or use any recreational facilities in the Common Elements as provided in Paragraph 4.1 (b). In the event suit is brought or arbitration is instituted or an attorney is retained by the Association or the Design Review Committee to enforce the terms of this Declaration or other document as described in this Paragraph 13.2 and the Association or the Design Review Committee prevails, the Association or Design Review Committee, as applicable, shall be entitled to recover, in addition to any other remedy, reimbursement for attorneys' fees, court costs, costs of investigation and other related expenses incurred in connection therewith, including, but not limited to, the Association administrative costs and fees. Said attorneys' fees, costs and expenses shall be the personal liability of the breaching Owner and shall also be secured by the Assessment Lien against said Owner's Unit. If the Association and the Design Review Committee shall fail or refuse to enforce this Declaration or any provisions hereof for an unreasonable period of time after written request by a Member to do so, then any Member may enforce the provisions of the Declaration at his own expense by any appropriate action, whether in law or in equity, but regardless of the outcome, no expenses of the action shall be paid for by the Association.

13.3 Legal Proceedings. Except for any legal proceedings initiated to (a) enforce any use restrictions, easement rights or nonmonetary obligations of Owners (other than legal proceedings against Declarant or Record Owner) expressly set out in this Declaration; (b) enforce any Rules (other than legal proceedings against Declarant or Record Owner); (c) enforce any Design Guidelines (other than legal proceedings against Declarant or Record Owner); (d) collect any unpaid assessments levied pursuant to this Declaration; or (e) pursue or resolve any "small claims" (i.e., matters in which the amount in controversy could not reasonably be

expected to exceed \$25,000.00), the Association (and Board) shall not initiate legal proceedings or join as a plaintiff in legal proceedings without the prior approval of Owners representing eighty percent (80%) or more of the votes in the Association. The costs of any legal proceedings initiated by the Association which are not included in the above exceptions shall be funded by the Association with monies that are specifically collected for that purpose and the Association shall not borrow money, use reserve funds or use monies collected for other specific Association obligations for such purpose. With respect to matters involving property or improvements to property, the Association (and the Board) additionally shall not initiate legal proceedings or pay for legal proceedings or join as a plaintiff in legal proceedings unless (1) the Association has the maintenance responsibility for such property or improvements pursuant to this Declaration; or (2) the Owner who owns such property or improvements consents in writing to the Association initiating or joining such legal proceeding. Nothing in this section shall preclude the Board from incurring expenses for legal advice in complying with statutes or regulations related to the operation of the Association or otherwise in the normal course of operating the Association when legal proceedings are not involved. In any event, no action may be filed by any Owner to enforce the Constituent Documents and no action may be filed by the Association in any court against Declarant or Record Owner until the Association, following written notice of such meeting, meets as a Association, obtains the affirmative vote of Owners representing eighty percent (80%) or more of the votes in the Association to file such an action, and provides Declarant or Record Owner written notice of such vote and at least thirty (30) days following such written notice to cure any claimed failure, breach, or other default prior to the filing of any such action. Notwithstanding anything herein to the contrary, this Paragraph 13.3 may not be modified or amended without the prior approval of Owners representing eighty percent (80%) or more of the votes in the Association.

13.4 Contracts with Others for Performance of Association Duties. Subject to the restrictions and limitations contained herein, the Association may enter into contracts and transactions with others, including Declarant and its affiliated companies, and such contracts or transactions shall not be invalidated or in any way affected by the fact that one or more directors or officers of the Association or members of any committee are employed by or otherwise connected with Declarant or its affiliates, provided that the fact of such interest shall be disclosed or known to the other directors acting upon such contract or transaction, and provided further that the transaction or contract is fair and reasonable. Any such director, officer of committee member may be counted in determining the existence of a quorum at any meeting of the Board or committee of which he is a member which shall authorize any contract or transaction described above or grant or deny any approval sought by Declarant, its affiliated companies or any competitor thereof and may vote thereat to authorize any such contract, transaction or approval with like force and effect as if he were not so interested. Notwithstanding anything to the contrary contained herein, during the Period of Declarant Control, any professional management contract entered into by the Association must be terminable with or without cause, upon no more than ninety (90) days' written notice and without payment of any penalty.

13.5 Procedure for Change of Use of General Common Elements. Upon (a) adoption of a resolution by not less than three-fourths (3/4) of the Board stating that, in the Board's opinion, the then present use of a designated part of the General Common Elements is no longer in the best interests of the Owners and Residents, and (b) the approval of such resolution of not less than eighty percent (80%) of the votes in each class of Members at a meeting duly called for

such purpose, the Board shall have the power and right to change the use thereof (and in connection therewith, construct, reconstruct, alter or change the buildings, structures and improvements thereon in any manner deemed necessary or appropriate by the Board to accommodate the new use), provided such new use (i) shall be for the benefit of the Owners and Residents, and (ii) shall be consistent with any deed restrictions and zoning regulations restricting or limiting the use of the land.

13.6 Procedure for Alteration of Common Elements; Contracts Concerning the Common Elements. The Association shall have the right to dedicate or transfer all or any part of the Common Elements to any public agency, authority or utility as provided in Paragraph 4.1(c). In addition, the Association shall have the right to change the size, shape or location of the Common Elements, to exchange the Common Elements for other property or interests which become Common Elements, and to abandon or otherwise transfer Common Elements (to a non-public authority) upon (i) the adoption of a resolution by the Board stating that ownership and/or use of the relevant Common Elements is no longer in the best interests of the Owners and Residents and that the change desired shall be for their benefit and shall not substantially adversely affect them, and (ii) the approval of such resolution by a majority of the votes of each class of Members, voting in person or by proxy, at a meeting called for such purpose. Alternatively, the Board, upon satisfaction of Subsection (i) above, may, in lieu of calling a meeting pursuant to Subsection (ii) above, notify in writing all Owners of the proposed transaction and of their right to object thereto and, if no more than ten percent (10%) of the Class A Members eligible to vote object in writing within thirty (30) days after receipt of such notice, the proposed transaction shall be deemed approved by the Members and a meeting of the Members shall not be necessary.

ARTICLE XIV

TERM; AMENDMENTS; TERMINATIONS

14.1 Term; Method of Termination. This Declaration shall be effective upon the date of recordation hereof and, as amended from time to time, shall continue in full force and effect for a term of twenty (20) years from the date this Declaration is recorded. From and after said date, this Declaration, as amended, shall be automatically extended for successive periods of ten (10) years each. Except in the case of a taking of all the Units by eminent domain, this Declaration may be terminated only by agreement of Owners of Units to which at least eighty percent (80%) of the votes in the Association are allocated. If the necessary votes are obtained, the Board shall cause to be recorded with the County Recorder of Maricopa County, Arizona, a termination agreement as provided by law. Thereupon, this Declaration shall have no further force and effect, and the Association shall be dissolved pursuant to the terms set forth in its Articles and pursuant to applicable law. Any Association funds remaining following such termination and dissolution shall be distributed to the Members and their mortgagees as their interest may appear at a uniform rate of membership and in accordance with applicable law.

14.2 Amendments.

14.2.1 Except in cases of amendments that may be executed by Declarant under A.R.S. § 33-1220, by the Association under A.R.S. §§ 33-1206 or 33-1216(D), or by certain Unit

Owners under A.R.S. §§ 33-1218(B), 33-1222, 33-1223 or 33-1228(B), 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. The consent of Declarant and Record Owner, as applicable, to any amendment is required during the Period of Declarant Control or for so long as Record Owner owns any Unit, as applicable. Any purported amendment without such approval shall be deemed void and of no force and effect unless subsequently approved by a written consent signed by Declarant or Record Owner, as applicable.

14.2.2 Except to the extent expressly permitted or required by law, an amendment to this Declaration shall not create or increase Special Declarant Rights, increase the number of Units or change the boundaries of any Unit, the allocated interests of a Unit, or the uses to which any Unit is restricted, in the absence of unanimous consent of the Unit Owners.

14.2.3 An amendment to this Declaration shall not terminate or decrease any unexpired Development Right, Special Declarant Right or Period of Declarant Control unless Declarant approves the amendment in writing.

14.2.4 During the Period of Declarant Control, Declarant shall have the right to amend the Declaration, including the Plat, to: (a) comply with applicable law if the amendment does not adversely affect the rights of any Unit Owner; (b) correct any error or inconsistency in the Declaration if the amendment does not adversely affect the rights of any Unit Owner; (c) comply with the rules or guidelines in effect from time to time of any governmental or quasigovernmental entity or federal corporation guaranteeing or insuring mortgage loans or governing transactions involving mortgage instruments, including without limitation, the Veterans Administration, the Federal Housing Administration, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation; or (d) comply with the rules or requirements of any federal, state or local governmental entity or agency whose approval of the Condominium, the Plat or the Constituent Documents is required by law or requested by Declarant, provided that in any such event Declarant has obtained the written approval of Record Owner.

14.2.5 Any amendment adopted by the Unit Owners pursuant to Paragraph 14.2.1 shall be signed by the President or Vice President of the Association and shall be recorded in the records of the Maricopa County, Arizona Recorder. Any such amendment shall certify that the amendment has been approved as required by this Paragraph 14.2. Any amendment made by Declarant pursuant to Paragraph 14.2.4 or applicable law shall be executed by Declarant and Record Owner and shall be recorded in the records of the Maricopa County, Arizona Recorder.

ARTICLE XV

MISCELLANEOUS

15.1 Interpretation of the Covenants. Except for judicial construction, the Association, by its Board and Design Review Committee, shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the

provisions hereof shall be final, conclusive and binding as to all persons and property benefited or bound by this Declaration.

15.2 Severability. Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity or enforceability of any of the other provisions hereof.

15.3 Change of Circumstances. Except as otherwise expressly provided in this Declaration, no change of conditions or circumstances shall operate to extinguish, terminate or modify any of the provisions of this Declaration.

15.4 Rules and Regulations. In addition to the right to adopt rules and regulations on the matters expressly mentioned elsewhere in this Declaration, the Association (through its Board and any committees) shall have the right to adopt rules and regulations with respect to all other aspects of the Association's rights, activities and duties, provided said rules and regulations are not inconsistent with the provisions of this Declaration or any applicable Design Guidelines.

15.5 Declarant's Disclaimer of Representations. Anything to the contrary in this Declaration notwithstanding, Declarant makes no warranties or representations whatsoever that the plans presently envisioned or the complete development of the Condominium can or will be carried out, or that any land now owned or hereafter acquired by Declarant is or will be subjected to this Declaration or any other declaration, or that any such land (whether or not it has been subjected to this Declaration) is or will be committed to or developed for a particular (or any) use, or if that land is one used for a particular use, such use will continue in effect.

15.6 No Warranty of Enforceability. While Declarant has no reason to believe that any part of this Declaration is or may be invalid or unenforceable for any reason or to any extent, Declarant makes no warranty or representation as to the present or future validity or enforceability of this Declaration or any part hereof. Any Owner acquiring a Unit in reliance on one or more of the Covenants shall assume all risks of the validity and enforceability thereof and by acquiring any Unit agrees that Declarant shall have no liability therefor.

15.7 References to this Declaration in Deeds. Deeds or any instruments affecting any part of the Property may contain the Covenants herein set forth by reference to this Declaration; but regardless of whether any such reference to this Declaration is made in any deed or instrument, each and every part of this Declaration shall be binding upon the grantee Owner or other person claiming through any instrument and his heirs, executors, administrators, successors and assigns.

15.8 Gender and Number. Wherever the context of this Declaration so requires, words used in the masculine gender shall include the feminine and neuter genders; words used in the neuter gender shall include the masculine and feminine genders; words in the singular shall include the plural; and words in the plural shall include the singular.

15.9 Captions and Titles. All captions, titles or headings of the Articles and Paragraphs in this Declaration 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 or context thereof.

15.10 Notices. If notice of any action or proposed action by the Board or of any committee or of any meeting is required by applicable law, this Declaration or resolution of the Board to be given to any Owner or Resident then, unless otherwise specified herein or in the resolution of the Board, such notice requirement shall be deemed satisfied if notice of such action or meeting is published once in any newspaper in general circulation within Maricopa County or the Condominium. This Paragraph shall not be construed to require that any notice be given if not otherwise required, and shall not prohibit satisfaction of any notice requirement in any other manner. If notice is made by mail, it shall be deemed to have been received twenty four (24) hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to such person at the address given by that person to the Association for the purpose of service of such notice, or to the address if the Unit owned by such person if no address has been given. Notice to the Board or to the Design Review Committee shall be delivered or sent certified mail to the office of the Association.

15.11 Agency Approval. If this Declaration has been approved by FHLMC, FNMA, FHA or VA in connection with any loan programs made available by such agency, then as long as there is a Class B Membership, the dedication of Common Elements (except where such dedication is required by Maricopa County), any annexation of additional property, and the termination or amendment of this Declaration will require the prior approval of FHLMC, FNMA, FHA or VA, as applicable, unless the need for such approval has been waived by FHLMC, FNMA, FHA or VA.

15.12 Ad Valorem Taxation. Each Unit shall be assessed separately for all taxes, assessments and other charges of or imposed by the State of Arizona, any political subdivision, special improvement or assessment district, or of any other taxing or assessing authority. For the purpose of such assessment, the valuation of the Common Elements shall be apportioned among the Owners based upon the fractional interest assigned to each of them. The Board shall furnish to the County Assessor or other responsible official of any such taxing or assessing authority all necessary information with respect to the apportionment of such assessments and shall request that each Unit be carried on the tax records as a separate and distinct parcel of property. No forfeiture or sale of any Unit for delinquent taxes, assessments or other governmental charges shall divest or in any way affect the title to any other Unit.

15.13 Mortgagee Protection. The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Units in the Property. The provisions of this Paragraph 15.13 apply to both this Declaration and to the Bylaws, notwithstanding any other provisions contained herein.

15.13.1 Limitations on Amendment. Notwithstanding any other provisions of this Declaration, unless first Mortgagees holding first Mortgages on Units to which at least sixty-seven percent (67%) of the votes in the Association are allocated have given their prior written approval, the Association shall not be entitled to:

(a) By act or omission, seek to abandon or terminate the Condominium. Notwithstanding the foregoing, as long as Arizona statutes require a greater proportion of Owners' and first Mortgagees' approval, such greater proportion shall prevail.

(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, abandon, partition, sell, alienate, subdivide, release, transfer, hypothecate or otherwise encumber the Common Elements; provided, however, the granting of easements for public utilities or other public purposes consistent with the intended use of the Common Elements shall not require such approval.

15.13.2 Subordination of Assessments. No breach of any provision herein contained nor the enforcement of any Assessment Lien as provided herein shall defeat or render invalid the lien of any first Mortgage encumbering any Unit but all of the provisions hereof shall be binding upon and shall be effective against any Owner whose title is derived through judicial foreclosure or trustee's sale or otherwise; however, any first Mortgagee who obtains title to a Unit pursuant to the remedies provided in the Mortgage or foreclosure of the Mortgage will not be liable for such Unit's unpaid dues or charges which accrue prior to the acquisition of title to such Unit by the Mortgagee.

15.13.3 Notice to Mortgagees. Upon written request of a first Mortgagee, the Association shall give written notice of:

(a) Any proceeding in eminent domain;

(b) Any substantial damage or destruction to the Common Elements;

(c) The default of the corresponding Mortgagor in the performance of any obligation pursuant to this Declaration, the Articles or Bylaws which is not cured within sixty (60) days.

15.13.4 Other Rights of Mortgagees. Any first Mortgagee or its Mortgage servicing contractor, shall, upon written request to the Association be entitled to:

(a) Inspect the books and records of the Association during normal business hours;

(b) Receive the annual financial statement of the Association ninety (90) days following the end of the Association's fiscal year; and

(c) Receive written notice of all annual and special meetings of the Members or of the Board and to designate a representative to attend all such meetings in order to, among other things, draw attention to violations of this Declaration which have not been corrected or made the subject of remedial action by the Association; provided, however, nothing contained in this Paragraph shall give a Mortgagee the right to call a meeting of the Board or of the Members for any purpose or to vote at any such meeting.

15.14 Notification Upon Sale of a Condominium. At least ten (10) days prior to the consummation of any sale or other transaction which will result in a change in the record ownership of the fee interest in a Unit, the transferring Owner or Owners shall provide the following information to the Board of the Association in writing:

- (a) The name of each transferor and transferee;
- (b) The Unit number and street address of the Unit to be transferred;
- (c) The mailing address of each transferee;
- (d) The name and address of the escrow holder, if any, for such transfer and the escrow number; and
- (e) The date on which the transfer is scheduled to take place.

The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Unit, including assessment obligations, until the date on which such notice is received by the Board, notwithstanding the transfer of title. The foregoing provisions shall not apply to any transfer of a Unit from Record Owner to Declarant or any other homebuilder.

15.15 Limitation on Declarant's Rights. Notwithstanding any other provision contained in this Declaration, as long as Engle/Sunbelt is the Declarant, Declarant shall not, without the prior written consent of Record Owner, have the right to exercise any of the "Declarant" rights under this Declaration in any manner which will have a material or adverse impact on the Units owned by Record Owner.

15.16 Termination of the Option Agreement. Notwithstanding any other provision of this Declaration, Declarant and Record Owner acknowledge and agree that, upon recordation of a termination of the Option Agreement, the Option Agreement, for purposes of this Declaration, shall be deemed terminated and shall no longer be in force or have any effect hereunder.

15.17 Record Owner Rights. So long as the Option Agreement remains in effect, Record Owner shall have the right to enforce any of the provisions of this Declaration, the Articles or the Bylaws that are intended to be for the benefit of Record Owner.

15.18 No Implied Obligations. None of the provisions of this Declaration shall obligate or be construed to obligate Declarant or Record Owner, or their respective agents, representatives or employees, to undertake any affirmative action to enforce any of the provisions of this Declaration, or to undertake any remedial or corrective action with respect to any actual or asserted violation of any of such provisions.

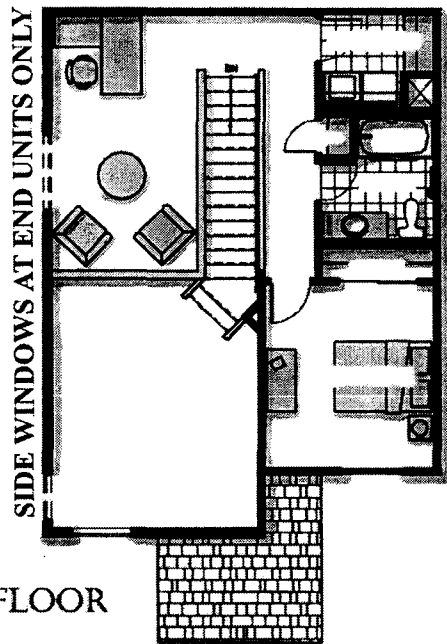
15.19 Declaration of Annexation. Notwithstanding anything on the Plat to the contrary, this Declaration is intended to serve as the Declaration of Annexation for the entire Property and all Phases of the Property identified in the Plat are hereby annexed into the Condominium.

EXHIBIT "A"

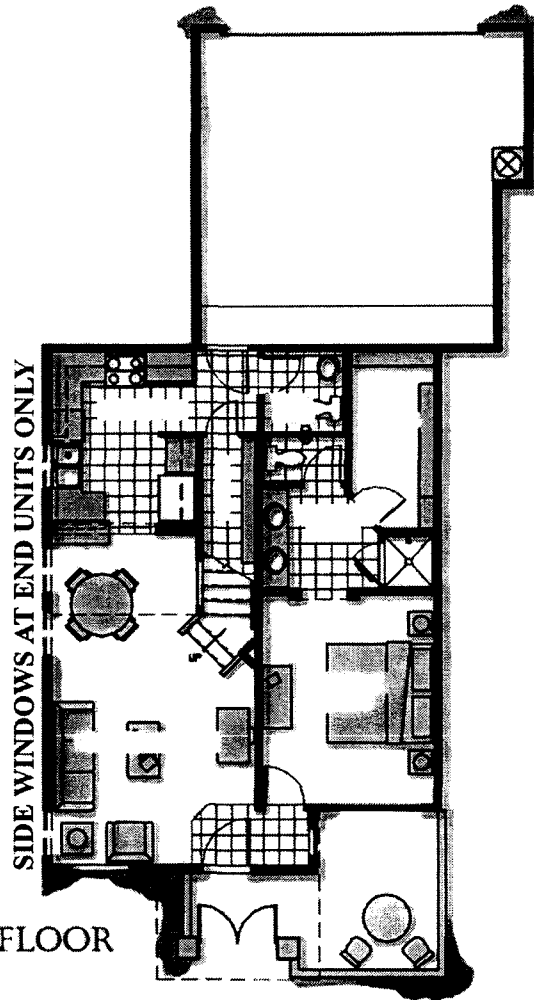
The real property commonly known as Parcel 7 of the Goodyear Planned Regional Center as legally described on The Condominium Plat of the Village at Rio Paseo Condominium, recorded at Book 761 of Maps, page 38 in the Official Records of the Maricopa County Recorder.

EXHIBIT "B-1"

Floor Plan A



SECOND FLOOR



FIRST FLOOR

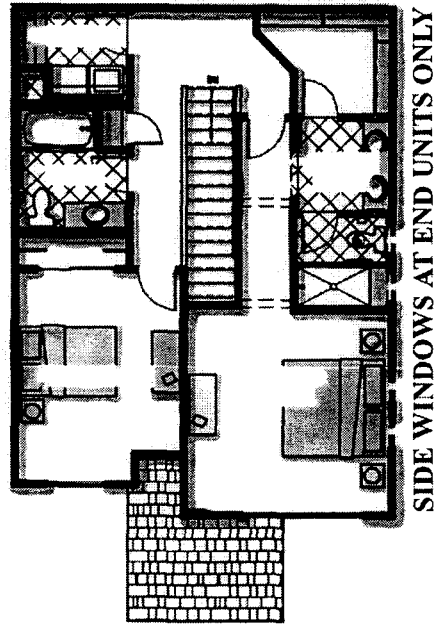
Jubilee

2 BEDROOM 2 1/2 BATH RESIDENCE
1,277 SQUARE FEET LIVABLE

ENGLE
HOMES

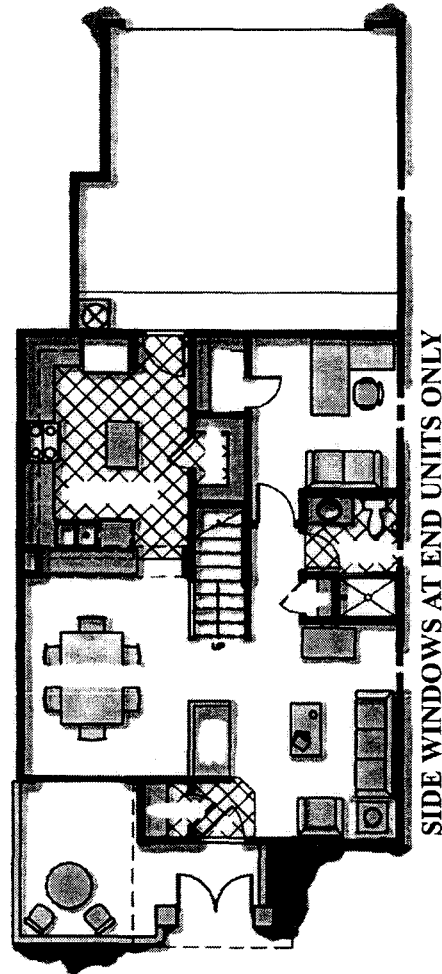
EXHIBIT "B-2"

Floor Plan B



SIDE WINDOWS AT END UNITS ONLY

SECOND FLOOR



SIDE WINDOWS AT END UNITS ONLY

FIRST FLOOR

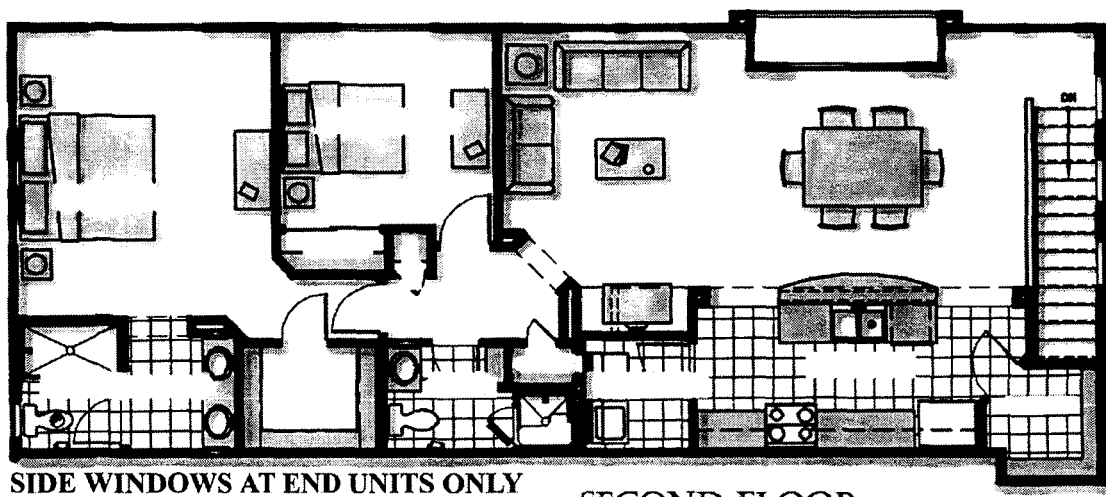
3 BEDROOM 3 BATH RESIDENCE
1,518 SQUARE FEET LIVABLE

Serenade

ENGLE
HOMES

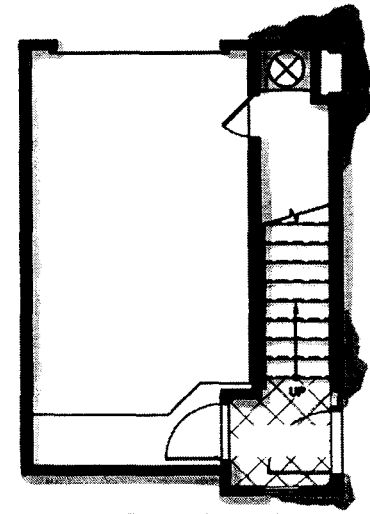
EXHIBIT "B-3"

Floor Plan C



SIDE WINDOWS AT END UNITS ONLY

SECOND FLOOR



FIRST FLOOR

Celebration

2 BEDROOM 2 BATH RESIDENCE

1,199 SQUARE FEET LIVABLE

ENGLE

H O M E S