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**DECLARATION OF CONDOMINIUM AND OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
TIERRA CATALINA CONDOMINIUM**

DATED

February 1, 2005

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TABLE OF CONTENTS

	Page
ARTICLE I	
DEFINITIONS.....	2
1.1 "Articles".....	2
1.2 "Assessments".....	2
1.3 "Assessment Lien".....	2
1.4 "Association".....	2
1.5 "Board of Directors".....	2
1.6 "Building".....	2
1.7 "Bylaws".....	2
1.8 "Common Elements".....	2
1.9 "Common Expenses".....	2
1.10 "Common Expense Assessment".....	2
1.11 "Common Expense Liability".....	2
1.12 "Condominium".....	2
1.13 "Condominium Documents".....	3
1.14 "Declarant".....	3
1.15 "Declaration".....	3
1.16 "Development Rights".....	3
1.17 "Eligible Insurer or Guarantor".....	3
1.18 "Eligible Mortgage Holder".....	3
1.19 "First Mortgage".....	3
1.20 "First Mortgagee".....	3
1.21 "Governmental Agency".....	3
1.22 "Improvements".....	3
1.23 "Limited Common Elements".....	3
1.24 "Member".....	4
1.25 "Period of Declarant Control".....	4
1.26 "Person".....	4
1.27 "Plat".....	4
1.28 "Purchaser".....	4
1.29 "Rules".....	4
1.30 "Single Family".....	4
1.31 "Special Declarant Rights".....	4
1.32 "Unit".....	4
1.33 "Unit Owner".....	4
ARTICLE II	
CREATION AND DECLARATION OF CONDOMINIUM.....	5
2.1 Creation.....	5
2.2 Applicable Law.....	5
2.3 Name and Description of Condominium; Association.....	5
ARTICLE III	
DESCRIPTION OF UNITS AND UNIT BOUNDARIES.....	5
ARTICLE IV	
ALLOCATION OF INTERESTS AND VOTING RIGHTS; ALLOCATION OF PARKING SPACES.....	6
4.1 Allocation of Common Element Interest.....	6
4.2 Allocation of Common Expense Liabilities.....	7

TABLE OF CONTENTS
(continued)

	Page
4.3 Allocation of Limited Common Elements	7
4.4 Reallocation of Limited Common Elements.....	7
4.5 Allocation of Parking Spaces.....	8
4.6 Membership and Voting Rights	8
4.7 Change in Number of Units	8
ARTICLE V DEVELOPMENT RIGHTS AND SPECIAL DECLARANT RIGHTS	8
5.1 Development Rights of Declarant.....	8
5.2 Special Declarant Rights.....	9
5.3 Transfer of Special Declarant Rights.....	9
5.4 Legal Description.....	9
5.5 Time Limits.....	10
ARTICLE VI EASEMENTS	10
6.1 Existing Easements	10
6.2 Utility Easements	10
6.3 Easements for Ingress and Egress.....	10
6.4 Unit Owners' Easements of Enjoyment	10
6.5 Declarant's Use for Sales and Leasing Purposes	11
6.6 Declarant's Easements.....	12
6.7 Easement for Support.....	13
6.8 Common Elements Easement in Favor of the Association.....	13
6.9 Common Elements Easement in Favor of Unit Owners.....	13
6.10 Units and Limited Common Elements Easement in Favor of Association	14
6.11 Easement for Unintended Encroachments	14
ARTICLE VII USE AND OCCUPANCY RESTRICTIONS	15
7.1 Plat Notes	15
7.2 Single Family Residential Use.....	15
7.3 Improvements and Alterations.....	15
7.4 No Partition and Subdivision.....	16
7.5 Machinery and Equipment.....	16
7.6 Environmental Restrictions.....	16
7.7 General Restrictions Regarding Parking of Vehicles	16
7.8 Parking Spaces	17
7.9 Motor Vehicle Repair and Towing of Vehicles.....	17
7.10 Signs.....	17
7.11 Lawful Use.....	17
7.12 Nuisances and Offensive Activity	17
7.13 Window Coverings	18
7.14 Limitation on Leasing of Units.....	18
7.15 Community Privacy Measures.....	18
7.16 Savings Clause.....	18
7.17 Variances.....	19
ARTICLE VIII MAINTENANCE AND REPAIR OF COMMON ELEMENTS AND UNITS.....	19

TABLE OF CONTENTS
(continued)

	Page
8.1 Duties of the Association.....	19
8.2 Duties of Unit Owners	19
8.3 Repair or Restoration Necessitated by Unit Owner	20
8.4 Unit Owner's Failure to Maintain	20
8.5 Right to Reasonable Access.....	20
ARTICLE IX THE ASSOCIATION; RIGHTS AND DUTIES; MEMBERSHIP.....	20
9.1 Rights, Powers and Duties of the Association	20
9.2 Directors and Officers.....	21
9.3 Rules	21
9.4 Composition of Members	21
9.5 Non-Liability of Officials and Indemnification.....	21
ARTICLE X ASSESSMENTS.....	22
10.1 Creation of the Lien and Personal Obligation to Pay Assessments.....	22
10.2 Purpose of Assessments.....	23
10.3 Preparation of Budget	23
10.4 Common Expense Assessment	23
10.5 Special Assessments	25
10.6 Notice and Quorum for Any Action Authorized Under Section 10.5	25
10.7 Fines and Penalties.....	25
10.8 Billing and Collection Procedures	25
10.9 Collection Costs and Interest on Delinquent Amounts.....	26
10.10 Subordination of Assessment Lien to Mortgages	26
10.11 Exemption of Unit Owner.....	26
10.12 Certificate of Payment	26
10.13 No Offsets.....	26
10.14 Surplus Funds.....	27
10.15 Reserves Fund.....	27
ARTICLE XI INSURANCE.....	27
11.1 Scope of Coverage	27
11.2 Payment of Premiums	29
11.3 Insurance Obtained by Unit Owners/Non-Liability of Association	29
11.4 Payment of Insurance Proceeds	29
11.5 Certificate of Insurance.....	29
ARTICLE XII EMINENT DOMAIN	30
ARTICLE XIII RIGHTS OF FIRST MORTGAGEES.....	31
13.1 Notification to First Mortgagees	31
13.2 Approval Required for Amendment to Condominium Documents.....	31
13.3 Prohibition Against Right of First Refusal	33
13.4 Right of Inspection of Records	33
13.5 Liens Prior to First Mortgagee.....	33
13.6 Condemnation or Insurance Proceeds.....	33
13.7 Conflicting Provisions	33
ARTICLE XIV DISPUTE RESOLUTION.....	34

TABLE OF CONTENTS
(continued)

	Page
14.1 Approval of Association Action	34
14.2 Alternative Method for Resolving Disputes	34
14.3 Claims	34
14.4 Mandatory Procedures	35
14.5 Amendment of Article	36
ARTICLE XV GENERAL PROVISIONS	36
15.1 Enforcement	36
15.2 Severability	37
15.3 Termination of Condominium	37
15.4 Amendment.....	37
15.5 Remedies Cumulative.....	37
15.6 Notices	37
15.7 Binding Effect.....	38
15.8 Gender.....	38
15.9 Topic Headings	38
15.10 Survival of Liability.....	38
15.11 Construction.....	39
15.12 Joint and Several Liability	39
15.13 Guests and Tenants	39
15.14 Attorneys' Fees.....	39
15.15 Number of Days.....	39
15.16 Declarant's Disclaimer of Representations	39
15.17 No Absolute Liability	39
15.18 Original Construction; Ownership	39
15.19 Additional Information	40
15.20 Tennis Court Covenants.....	40

F. ANN RODRIGUEZ, RECORDER
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DECLARATION OF SCRIVENER'S ERROR

WHEREAS, Tierra Tucson Condos, Inc., a Colorado corporation, as "Declarant," caused that certain Declaration of Condominium and of Covenants, Conditions and Restrictions for Tierra Catalina Condominium to be recorded on February 22, 2005, at Docket 12494, Page 731, Pima County Records (the "Declaration"); and

WHEREAS, the Declaration contained an error in that certain text was inadvertently omitted from page 27 thereof;

NOW, THEREFORE, page 27 of the Declaration is hereby corrected as follows:

See Attached Exhibit A

The purpose and intent of this document is solely to correct the erroneous omission of text from the Declaration so as to provide the full and complete page 27 as if contained therein.

Dated this 29th day of August, 2007

Peter Wells

Peter Wells, President
Tierra Tucson Condos, Inc.

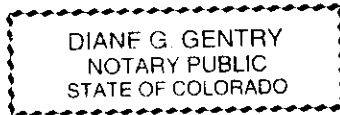
STATE OF Colorado
County of Broomfield ss.

The foregoing instrument was acknowledged before me this 29th day of August, 2007, by Peter Wells, the President of Tierra Tucson Condos, Inc., a Colorado corporation, on behalf of the corporation.

Diane G. Gentry
Notary Public

My commission expires:

8-2-2011



My Commission Expires 08/02/2011

61

Accepted:

Tierra Catalina Condominium Association

By: [Signature]
Its: _____

STATE OF Arizona)
County of Pima) ss.

The foregoing instrument was acknowledged before me this 27th day of September, 2007, by Scott Peterson, the President of Tierra Catalina Condominium Association, on behalf of the association.

[Signature]
Notary Public

My commission expires:

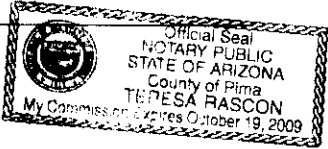


EXHIBIT A

(see attached)

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Assessments, monetary penalties and other fees and charges shall be permitted for any reason, including, without limitation, a claim that the Association is not properly exercising its duties and powers as provided in the Condominium Documents or the Condominium Act.

10.14 Surplus Funds. Surplus funds of the Association remaining after payment of or provisions for Common Expenses and any prepayment of reserves may in the discretion of the Board of Directors either be returned to the Unit Owners pro rata in accordance with each Unit Owner's Common Expense Liability or be credited on a pro rata basis to the Unit Owners to reduce each Unit Owner's future Common Expense Liability.

10.15 Reserves Fund. Upon the closing of the sale of each Unit, each Purchaser shall pay to the Association an amount equal to one-fourth (1/4) of the Common Expense Assessment for the Unit for the twelve months following such closing (the "Reserves Fund Contribution") to establish a reserves fund to meet unforeseen expenditures, to purchase any additional equipment or services by or for the Association, or, on a temporary basis, to pay Association expenses such as insurance as they come due in the ordinary course in the event there are not sufficient funds in the Association's general accounts at the time of the due date to pay such expenses; provided, however, that the Board in its discretion shall reimburse the reserves fund for such expenses incurred from Annual Assessments as they are paid by Members. A Reserves Fund Contribution shall continue to be payable upon each subsequent sale of a Unit. Funds paid to the Association pursuant to this Section may be used by the Association for payment of operating expenses or any other purpose permitted under this the Condominium documents. The amounts paid to the Association pursuant to this Section shall be nonrefundable and shall not be considered an advance payment of any Assessments levied by the Association pursuant to this Declaration.

ARTICLE XI

INSURANCE

11.1 Scope of Coverage.

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

(i) Property insurance on the Common Elements insuring against all risks of direct physical loss commonly insured against, in an amount determined by the Board of Directors; provided, however, that the total amount of insurance shall not be less than one hundred percent (100%) of the current replacement cost of the insured property, exclusive of land, excavations, foundations and other items normally excluded from a master or blanket hazard and multi-peril property insurance policy;

(ii) To the extent available, property insurance on Units or portions thereof, as determined by the Board to be included in the insurance maintained under subsection (A), paragraph (i), however, such insurance need not include improvements installed by Unit Owners or the personal property of Unit Owners;

**DECLARATION OF CONDOMINIUM AND OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
TIERRA CATALINA CONDOMINIUM**

THIS DECLARATION OF CONDOMINIUM AND OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR TIERRA CATALINA CONDOMINIUM ("Declaration") is made this 1 day of February, 2005, by Tierra Tucson Condos, Inc., a Colorado corporation ("Declarant").

RECITALS

A. Declarant is the owner of land located in Pima County, Arizona, described as follows:

Units 1 through 120 and Common Elements "A" and "B" of Tierra Catalina Condominium, a condominium of Pima County, Arizona, recorded in Book 59 of Maps and Plats at Page 36, Pima County Records, being a replat of the Foothills Professional Plaza Lot 1 recorded in Book 31 at Page 53 of Maps and Plats, Pima County records.

which real property shall hereinafter be referred to as the "Property".

B. Declarant desires and intends that the Property shall be held, sold and conveyed subject to the covenants, conditions, restrictions and easements in this Declaration, which: (i) are for the purpose of creating a condominium under the Arizona Condominium Act, A.R.S. §§33-1201 et seq. (as may be amended from time to time, the "Condominium Act"); (ii) are for the purpose of protecting the value, desirability, attractiveness and character of the Property (iii) shall run with all of the real property comprising the Property; (iv) shall be binding on all parties having any right, title, or interest in the Property, or any part thereof; and (v) shall inure to the benefit of the aforementioned parties and their successors and assigns.

C. Declarant has formed an Arizona nonprofit corporation to be known as "Tierra Catalina Condominium Association," for the purposes of, among other things, (i) the efficient preservation of the values and amenities of the Property, in regard to which the Association will be delegated certain powers of administering and maintaining the Common Elements and enforcing this Declaration and Rules adopted pursuant hereto; and (ii) establishing, collecting, disbursing and enforcing the Assessments created herein.

NOW, THEREFORE, Declarant hereby declares, covenants and agrees as follows:

ARTICLE I

DEFINITIONS

Capitalized terms not otherwise defined in this Declaration shall have the meanings specified for such terms in the Condominium Act. As used in this Declaration, the following terms shall have the following meanings:

1.1 "Articles" means the Articles of Incorporation of the Association, as they may be amended from time to time.

1.2 "Assessments" means the Common Expense Assessment and Special Assessments levied and assessed against each Unit pursuant to ARTICLE X of this Declaration.

1.3 "Assessment Lien" means the charge and continuing servitude and lien against a Unit for payment of Assessments, monetary penalties and other charges pursuant to this Declaration as more particularly described in Section 10.1 of this Declaration.

1.4 "Association" means "Tierra Catalina Condominium Association," organized by the Declarant to administer and enforce the Condominium Documents and to exercise the rights, powers and duties set forth therein, and its successors and assigns.

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

1.6 "Building" means any structure designated as a building on the Plat.

1.7 "Bylaws" means the Bylaws of the Association, as they may be amended from time to time.

1.8 "Common Elements" means all portions of the Condominium other than the Units, including, without limitation, Limited Common Elements and any recreational amenities, walkway areas, and private drives.

1.9 "Common Expenses" means expenditures made by, or financial liabilities incurred or to be incurred by the Association, together with required allocations to reserves, including but not limited to expenditures incurred in the enforcement of provisions of the Condominium Documents.

1.10 "Common Expense Assessment" means any assessment levied against the Units pursuant to Section 10.4 of this Declaration.

1.11 "Common Expense Liability" means the liability for Common Expenses allocated to each Unit by this Declaration.

1.12 "Condominium" means the real property located in Pima County, Arizona, submitted to the Declaration together with all Buildings and other Improvements located thereon and all easements, rights, and appurtenances belonging thereto. The name of the Condominium created by this Declaration is "Tierra Catalina Condominium."

1.24 **"Member"** means a Unit Owner who, by reason of ownership of a Unit, is entitled to automatic membership in the Association as set forth in the Bylaws.

1.25 **"Period of Declarant Control"** means the time period commencing on the date this Declaration is recorded in the Pima County Recorder's Office, and ending on the earlier of:

(A) Ninety (90) days after the conveyance of seventy-five percent (75%) of the Units which may be created in the Condominium to Unit Owners other than the Declarant; or

(B) Four (4) years after Declarant has ceased to offer Units for sale in the ordinary course of business.

1.26 **"Person"** means a natural person, corporation, business trust, estate, trust, partnership, association, limited liability company, joint venture, government, government subdivision or agency, or other legal or commercial entity, and in the case of a subdivision trust, means the beneficiary of the trust who holds the right to subdivide, develop or sell the real estate rather than the trust or trustee.

1.27 **"Plat"** means the condominium plat for Tierra Catalina Condominium, recorded in the Official Records of the Pima County Recorder's Office, and any amendments, supplements, or corrections thereto.

1.28 **"Purchaser"** means any Person, other than the Declarant, who by means of a voluntary transfer becomes a Unit Owner except for: (i) a Person who purchases a Unit and then leases it to the Declarant for use as a model, sales or leasing office, fitness facility or business support center in connection with the sale of other Units, or (ii) a Person who, in addition to purchasing a Unit, is assigned any Special Declarant Right.

1.29 **"Rules"** means the rules and regulations adopted by the Association, as they may be amended from time to time.

1.30 **"Single Family"** means a group of one or more persons, whether or not related by blood, marriage or legal adoption, living together and maintaining a common single nonprofit housekeeping unit, together with their domestic servants which does not exceed a maximum of two adults per bedroom in the Unit.

1.31 **"Special Declarant Rights"** means any right or combination of rights reserved by or granted to the Declarant in this Declaration or by the Condominium Act.

1.32 **"Unit"** means a portion of the Condominium designated for separate ownership and occupancy, as shown on the plat and more particularly described in Article III of this Declaration, and which has not been withdrawn from the Property.

1.33 **"Unit Owner"** means the record owner, whether one or more Persons, of beneficial or equitable title (and legal title if the same has merged with the beneficial or equitable title) to the fee simple interest of a Unit. Unit Owner shall not include (i) Persons having an interest in a Unit merely as security for the performance of an obligation or (ii) a lessee or tenant of a Unit. Unit Owner shall include a Purchaser under a contract for the conveyance of real

property, a contract for deed, a contract to convey, an agreement for sale or any similar contract through which a seller has conveyed to a Purchaser equitable title to a Unit under which the seller is obligated to convey to the Purchaser the remainder of seller's title in the Unit, whether legal or equitable, upon payment in full of all monies due under the contract. The term "Unit Owner" shall not include a Purchaser under a purchase contract and receipt, escrow instructions or similar executory contract which is intended to control the rights and obligations of the parties to the executory contract pending the closing of a sale or purchase transaction. In the case of Units the fee simple title to which is vested in a trustee pursuant to A.R.S., §§33-501 et seq., the Trustor shall be deemed to be the Unit Owner.

ARTICLE II

CREATION AND DECLARATION OF CONDOMINIUM

2.1 Creation. This condominium is created by Declarant pursuant to Arizona Condominium Act, A.R.S. §§33-1201 et seq., as the same may be amended from time to time. This instrument is executed by the Owners of all Units.

2.2 Applicable Law. All the provision of the Condominium Act shall apply to this Condominium, its organization, rights of Declarant, management, etc., unless a contrary provision is specified in the Declaration.

2.3 Name and Description of Condominium; Association. The name of the Condominium is Tierra Catalina Condominium, an Arizona condominium. The legal description of the Condominium is Units 1 through 120 and Common Elements "A" and "B" of Tierra Catalina Condominium, a condominium of Pima, Arizona, recorded in Book 59 of Maps and Plats at Page 36, Pima County Records. The Identifying Numbers of the Units submitted to the Condominium are those Units consecutively numbered 1 through 120, inclusive, as shown on the Plat.

The name of the Unit Owners Association shall be Tierra Catalina Condominium Association.

ARTICLE III

DESCRIPTION OF UNITS AND UNIT BOUNDARIES

The Units initially created by and subject to this Declaration are located in several residential Buildings. The Buildings have one or two floors, and the Units are shown by boundary and wall separations. The Buildings are shown and depicted on the Plat, and the location and identifying numbers of Units are shown and described on the Plat.

(A) Each Unit is generally described as a column of vertical space existing between the horizontal planes of the floor and ceiling of the story within the Building in which it is located. The physical boundaries of each Unit are the interior unfinished surfaces of the perimeter walls, floors, ceilings, doors and windows of the Unit with: (i) the underside of the finished but undecorated ceiling as the top horizontal boundary; (ii) the top of the finished but undecorated flooring shall be the bottom horizontal boundary; and (iii) the interior of the finished

but undecorated walls shall be the vertical boundaries. All lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the finished surfaces are a part of the Unit, and all other portions of the walls, floors or ceilings are a part of the Common Elements. The structural elements of exterior windows and doors shall be Limited Common Elements allocated to that Unit as provided in subsection (D) below.

(B) If any chute, flue, duct, wire, conduit, bearing wall, bearing column, heating or air conditioning unit or apparatus or other fixture lies partially within and partially outside the boundaries of a Unit, any portion serving only that Unit is a Limited Common Element allocated solely to that Unit and any portion serving more than one Unit or any portion of the Common Elements is a part of the Common Elements.

(C) Subject to the provisions of subsection (B) of this section, all spaces, interior partitions and other fixtures and improvements within the boundaries of a Unit are part of the Unit.

(D) Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, entryways, or patios, and all exterior doors and glass windows or other fixtures designed to serve a single Unit, but located outside of the Unit's physical boundaries, are Limited Common Elements allocated exclusively to that Unit.

(E) In the event of an inconsistency or conflict between the provisions of this section and the Plat, this section shall control.

(F) The physical boundaries of a Unit shall be considered to be the proper boundaries regardless of the settling, rising or lateral movement of the Buildings and regardless of any variances between the boundaries shown on the Plat and the actual physical boundaries.

(G) Owners shall have the right to relocate the boundaries between adjoining Units owned by the participating Owners and to reallocate each such Unit's Common Element interest, votes in the Association and Common Expense liabilities subject to and in accordance with A.R.S. §33-1222.

ARTICLE IV

ALLOCATION OF INTERESTS AND VOTING RIGHTS; ALLOCATION OF PARKING SPACES

4.1 Allocation of Common Element Interest. The undivided interests in the Common Elements of the Association shall be allocated equally among the Units based upon a ratio, the numerator of which is the average square footage of the type of Unit (as set forth below) and the denominator of which is the combined square footage of all Units in the Condominium. In no event shall the cumulative interests of all Units exceed or be less than a total of 100%. Initially, the Common Element Interests are as follows:

Unit	Number of Units	Average Square Footage per Unit Type Including Patio	Total Square Footage for Unit Type	Common Element Interest of Each Unit	Total Common Element Interest for Unit Type
A	17	1,339.00	22,763	.982	16.7%
B	18	1,435.50	25,839	1.053	18.9%
C	18	873.90	15,730.2	0.641	11.5%
D	23	898.20	20,658.6	0.659	15.2%
E	19	1,167.60	22,184.4	0.856	16.3%
F	25	1,168.25	29,206.25	0.857	21.4%
Total:	120		136,381.45		100%

4.2 Allocation of Common Expense Liabilities. The Common Expense Liability of the Association shall be allocated equally among the Units in the same ratio as the Common Element Interest assigned to each Unit set forth in Section 4.1.

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

(A) Each first floor Unit is allocated the covered patio adjoining or attached to the Unit, if any, as shown on the Plat and each second floor Unit is allocated the covered balcony area, if any, adjoining or attached to the Unit as shown on the Plat.

(B) Any gas, electric or water meter which serves only one Unit is allocated to the Unit it serves.

(C) Each Unit is allocated those portions of the Common Elements designated as Limited Common Elements in Sections 3(B) and 3(D) of this Declaration that serve the Unit.

(D) The parking spaces designated as Limited Common Elements on the Plat are allocated to Units as set forth on the Plat. Parking spaces may be reallocated as provided in Section 4.4 below.

4.4 Reallocation of Limited Common Elements.

(A) A Limited Common Element may be reallocated by an amendment to this Declaration made in accordance with the provisions of §33-1218(B) of the Condominium Act. During the Period of Declarant Control, all such proposed reallocations must be submitted to the

Declarant, and the Declarant shall have authority to approve or reject any and all reallocations of a Limited Common Element sought to be accomplished by amendment to the Declaration.

(B) The Board of Directors shall have the right, without a vote of the Members, to allocate as a Limited Common Element any portion of the Common Elements not previously allocated as a Limited Common Element. Any such allocation by the Board of Directors shall be made by an amendment to this Declaration and an amendment to the Plat if required by the Condominium Act.

4.5 Allocation of Parking Spaces. The vehicle parking areas not allocated as Limited Common Elements are Common Elements and shall be maintained by the Association. The Association shall have the ability but not the obligation to assign such parking spaces to designated Unit Owners, the use of which shall be a personal right of such Unit Owner. The Association may reallocate the use of such uncovered vehicle and golf cart parking spaces and may impose and receive payments, fees or charges for the use of parking spaces. Parking spaces not assigned to a specific Unit shall be used and shared by all Unit Owners in a fair and equitable manner. The Association may adopt regulations governing such parking spaces and, in the event of conflicts, the Declarant may convert some or all of the parking spaces to Limited Common Elements. The Declarant shall have the authority during the Period of Declarant Control to assign and reallocate parking spaces.

4.6 Membership and Voting Rights. Each Unit Owner within the Condominium shall automatically be a Member of the Association and shall be entitled to one (1) vote in all matters concerning the administration of the Association and management of the Condominium. In the event that a Unit is owned of record by more than one person, the vote attributed to that Unit shall be cast as a single vote as the Owners of that Unit shall among themselves determine, and said vote shall not be apportioned.

4.7 Change in Number of Units. To add or withdraw Units from the Condominium, Declarant shall, if required by law, prepare, execute, and record an amendment to the Declaration which shall comply with the Condominium Act and which reallocates the Common Element Interest among all Units. Reallocation of the percentage interest of each Unit in the Common Elements is based on upon a ratio, the numerator of which is the average square footage of the type of Unit (as set forth in Section 4.1) and the denominator of which is the combined square footage of all Units in the Condominium.

ARTICLE V

DEVELOPMENT RIGHTS AND SPECIAL DECLARANT RIGHTS

5.1 Development Rights of Declarant. The Declarant reserves to itself, its successors and assigns, the following Development rights:

(A) To annex real estate into the Condominium, including any property previously withdrawn.

(B) To create easements, Units, Common Elements or Limited Common Elements within the Condominium;

(C) To subdivide Units, convert Units into Common Elements or convert Common Elements into Units;

(D) To amend the Condominium Documents 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 in any material respect. An amendment will be deemed not to affect adversely any Unit Owner who purchases with actual or constructive notice of the amendment or who fails to object to the amendment within thirty (30) days after recording thereof;

(E) To amend the Condominium Documents during the Period of Declarant Control to comply with the rules or guidelines, in effect from time to time, of any Governmental Agency.

5.2 Special Declarant Rights. The right or rights or combination thereof known as "Special Declarant Rights" reserved to the Declarant are the following:

(A) To construct Improvements provided for in this Declaration or shown on the Plat;

(B) To exercise any Development Right;

(C) To maintain sales offices, management offices, model Units and signs advertising the Condominium;

(D) To use easements through the Common Elements for the purpose of making Improvements within the Condominium;

(E) To appoint or remove any officer of the Association or any member of the Board of Directors during the Period of Declarant Control.

If a Unit or Units subject to this Declaration are withdrawn from this Declaration in accordance with a Development Right of Declarant, then Declarant shall reallocate the Common Element interests among all Units on a ratable basis as provided in ARTICLE IV above. Declarant shall, in such event, reserve appropriate parking spaces and Common Elements necessary for the construction and use of the buildings not so withdrawn, and easements for ingress, egress and utilities and any other matter required to be done to serve the purpose of the retained building or buildings, in Declarant's sole discretion, so long as zoning and other pertinent laws are observed.

5.3 Transfer of Special Declarant Rights. A Special Declarant Right created or reserved by this Declaration may be transferred pursuant to the provisions set forth in Section 33-1244 of the Arizona Condominium Act.

5.4 Legal Description. The legal description of the real estate subject to each of the Development Rights and other Special Declarant Rights reserved in this Declaration to Declarant is shown and depicted on the Plat and consists of all Units and Common Elements subject to the Declaration.

5.5 Time Limits. Exercise of Development Rights and Special Declarant Rights by Declarant are not limited in any manner as to time and extend beyond the Period of Declarant Control unless otherwise limited by provision of the Condominium Act.

ARTICLE VI

EASEMENTS

6.1 Existing Easements. If any Unit or Common Element is encumbered by an access or utility easement as shown on the Plat, then by accepting a deed to such Unit and Common Element, the Owner acknowledges and consents to such easement.

6.2 Utility Easements. In addition to those special easements shown on the Plat, there is hereby created an easement upon, across, over and under the Common Elements for reasonable ingress, egress, installation, replacing, repairing or maintaining of all utilities, including, but not limited to, gas, water, sewer, telephone, cable television and electricity. By virtue of this easement, it shall be expressly permissible for the utility company providing such service to erect and maintain the necessary equipment on the Common Elements, but no sewers, electrical lines, water lines, or other utility or service lines may be installed or located on the Common Elements except as initially designed and/or as thereafter approved and constructed by the Board of Directors. This easement shall in no way affect any other recorded easements on the Common Elements. In no event shall any portion of the above mentioned easements for utilities be construed to authorize the placing or installing of sewers, electrical lines, water lines or other utilities under any permanent building structure constructed on the Property.

6.3 Easements for Ingress and Egress. There are hereby created easements for ingress and egress for pedestrian traffic over, through and across sidewalks, paths, walks, and lanes that from time to time may exist upon the Common Elements. There is also created an easement for ingress and egress for pedestrian and vehicular traffic, including, without limitation, emergency access and utility repair vehicles, over, through and across such driveways and parking areas as from time to time may be paved and intended for such purposes except that such easements shall not extend to any Limited Common Elements or assigned parking spaces, if any. Such easements shall run in favor of and be for the benefit of the Unit Owners and occupants of the Units and their guests, families, tenants and invitees.

6.4 Unit Owners' Easements of Enjoyment.

(A) Every Unit Owner shall have a right and easement of enjoyment in and to the Common Elements, except for the Limited Common Elements, which right and easement shall be appurtenant to and shall pass with the title to every Unit, subject to the following provisions:

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

(ii) The right of the Association to suspend the voting rights of a Unit Owner for any period during which any Assessment against his Unit remains unpaid more than

thirty (30) days after its due date and for a period not to exceed sixty (60) days for any other infraction or violation of the Condominium Documents;

(iii) The right of the Association to convey the Common Elements or subject the Common Elements to a mortgage, deed of trust, or other security interest, in the manner and subject to the limitations set forth in the Condominium Act, subject to the vote or written assent of those Unit Owners representing at eighty percent (80%) of the votes in the Association, and with the consent of Declarant during the Period of Declarant Control; and, in all events, subject to a Unit Owner's easement for ingress and egress if access to such Owner's Unit is through the Common Elements to be conveyed or mortgaged

(iv) The right of the Association, in the event of withdrawal of any units from the Condominium, to convey easements over the Common Elements for ingress, egress, utilities and parking reasonably necessary for use by the owners of the units withdrawn.

(v) All rights and easements set forth in this Declaration, including, but not limited to, the rights and easements granted to the Declarant by Sections 6.5 and 6.6 of this Declaration.

(B) If a Unit is leased or rented, the lessee and the members of his family residing with the lessee shall have the right to use the Common Elements during the term of the lease, and the Unit Owner shall have no right to use the Common Elements until the termination or expiration of the lease.

(C) The guests and invitees of any Member or other person entitled to use the Common Elements pursuant to subsection (A) above or of any lessee who is entitled to use the Common Elements pursuant to subsection (B) above may use the Common Elements provided they are accompanied by a Member, lessee or other person entitled to use the Common Elements pursuant to subsection (A) or (B) above. The Board of Directors shall have the right to limit the number of guests and invitees who may use the Common Elements at any one time and may restrict the use of the Common Elements by guests and invitees to specific times.

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

(E) The provisions of this section shall not apply to any of the Limited Common Elements that are allocated to one or more, but less than all, of the Units.

6.5 Declarant's Use for Sales and Leasing Purposes.

(A) Declarant shall have the right and an easement to maintain sales or leasing offices, management offices and model Units throughout the Condominium (including in any Building designated as a clubhouse or recreational amenity) and to maintain one or more advertising, model and directional signs on the Common Elements while the Declarant is selling

or preparing to sell Units in the Condominium. Declarant reserves the right to place models, management offices and sales and leasing offices in any Units owned by Declarant and on any portion of the Common Elements in such number, of such size and in such locations as Declarant deems appropriate.

(B) Declarant may from time to time relocate model Units, management offices and sales and leasing offices to different locations within the Condominium. Without limiting the foregoing, during Declarant's pre-sale and sales period, Declarant may relocate any recreational and business facilities including the fitness center, sales center, business office and the like on any portion of the Condominium, including on the Common Elements or within any Unit owned by Declarant. Upon the relocation of a model Unit, management, business, sales or leasing office constituting a Common Element, Declarant may remove all personal property and fixtures therefrom.

(C) So long as Declarant is marketing Units in the Condominium, Declarant shall have the right to reserve parking spaces in the Condominium not allocated as Limited Common Elements or otherwise assigned to particular Units for use by prospective Unit Purchasers, Declarant's employees and others engaged in sales, leasing, maintenance, construction or management activities.

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

6.6 Declarant's Easements.

(A) Declarant shall have the right, and an easement on and over the Common Elements, to alter or improve the Common Elements and the Units shown on the Plat and all other Buildings and Improvements as the Declarant may deem necessary and to use the Common Elements and any Units owned by Declarant for construction or renovation-related purposes, including for the storage of tools, machinery, equipment, building materials, appliances, supplies and fixtures and for the performance of work respecting the Condominium.

(B) Declarant shall have the right and an easement on, over and under those portions of the Common Elements not located within the Buildings for the purpose of maintaining and collecting drainage of surface, roof or storm water. The easement created by this subsection expressly includes the right to cut any trees, bushes, or shrubbery, to grade the soil or to take any other action reasonably necessary.

(C) The Declarant shall have an easement through the Units, including Units owned by Purchasers, at reasonable times and upon reasonable notice for any access necessary to complete any renovations, warranty work or modifications or improvements to be performed or constructed by the Declarant.

(D) The Declarant shall have the right and an easement on, over, and through the Common Elements as may be reasonably necessary for the purpose of discharging its

obligations and exercising Special Declarant Rights whether arising under the Condominium Act or reserved in this Declaration.

6.7 Easement for Support. To the extent necessary, each Unit shall have an 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 an easement for structural support in favor of every other Unit in the Building, the Common Elements and the Limited Common Elements.

6.8 Common Elements Easement in Favor of the Association. The Common Elements shall be subject to an easement in favor of the Association, its Board and officers and the agents, employees and independent contractors of the Association for the purpose of the inspection, upkeep, maintenance, repair and replacement of the Common Elements.

6.9 Common Elements Easement in Favor of Unit Owners. The Common Elements shall be subject to the following easements in favor of the Units benefited:

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

(B) For the installation, repair, maintenance, use, removal or replacement of lighting fixtures, electrical receptacles, panel boards and other electrical installations which are a part of or serve any Unit but which encroach into a part of a Common Element 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, adversely affect either the thermal or acoustical character of the Building or impair or structurally weaken the Building.

(C) For driving and removing nails, screws, bolts and other attachment devices into the Unit side surface of the stone, block, brick or other masonry walls bounding the Unit and the Unit side surface of the studs which support the dry wall or plaster perimeter walls bounding the Unit, the bottom surface of floor joists above the Unit and the top surface of the floor joists below the Unit to the extent such nails, screws, bolts and other attachment devices may encroach into a part of a Common Element adjacent to such Unit; provided that any such action will not unreasonably interfere with the common use of any part of the Common Elements, adversely affect either the thermal or acoustical character of the Building or impair or structurally weaken the Building.

(D) For the maintenance of any lighting devices, outlets, medicine cabinets, exhaust fans, ventilation ducts, registers, grilles and similar fixtures which serve only one Unit but which encroach into any part of the Common Elements.

(E) For the performance of the Unit Owner's obligation to maintain, repair, replace and restore those portions of the Limited Common Elements that the Unit Owner is obligated to maintain under Section 8.2 of this Declaration.

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

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

(B) For inspection, maintenance, repair and replacement of the Common Elements or the Limited Common Elements situated in or accessible from the exterior of Units or Limited Common Elements.

(C) For correction of emergency conditions in one or more Units 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 of Directors or any committees appointed by the Board of Directors to exercise and discharge their respective rights, powers and duties under the Condominium Documents.

(E) For inspection, at reasonable times and upon reasonable notice to the Unit Owner, of the Units and the Limited Common Elements to verify that the provisions of the Condominium Documents are being complied with by the Unit Owners, their guests, tenants, invitees and the other occupants of the Unit.

6.11 Easement for Unintended Encroachments. To the extent that any Unit or Common Element encroaches on any other Unit or Common Element as a result of original construction, alteration or restoration authorized by this Declaration, settling or shifting, or any reason other

than the intentional encroachment on the Common Elements or any Unit by a Unit Owner, a valid easement for the encroachment, and for the maintenance thereof, exists.

ARTICLE VII

USE AND OCCUPANCY RESTRICTIONS

7.1 Plat Notes. In addition to the use restrictions contained herein, the Property is subject to any restrictions and limitations set forth in the Plat.

7.2 Single Family Residential Use. All Units and Limited Common Elements shall be used, improved and devoted exclusively to residential use by a Single Family. In cases of joint ownership, such as in timeshare arrangements, resulting in the ownership and use of a Unit by more than one Single Family, only one Single Family shall reside in the Unit at a time.

No gainful occupation, profession, trade or other nonresidential use shall be conducted on or in any Unit or Limited Common Element, but a Unit Owner or other resident may conduct a business activity within a Unit so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Unit; (ii) the business activity conforms to all applicable zoning ordinances or requirements for the Condominium; (iii) the business activity does not involve persons coming to the Unit or the door-to-door solicitation of Unit Owners or other residents in the Condominium; (iv) the trade or business conducted by the Unit Owner or resident shall not require more than one (1) employee working in or from such Unit who is not a lawful resident thereof; (v) the volume of vehicular or pedestrian traffic or parking generated by such trade or business does not result in congestion or parking violations; (vi) the trade or business does not use flammable liquids or hazardous materials in quantities not customary for residential use; and (vii) the business activity is consistent with the residential character of the Condominium and does not constitute a nuisance or a hazardous or offensive use or threaten security or safety of Unit Owners or other residents in the Condominium, as may be determined from time to time in the sole discretion of the Board of Directors. The terms "business" and "trade" as used in this section shall be construed to have their 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: (i) such activity is engaged in full or part time; (ii) such activity is intended or does generate a profit; or (iii) a license is required for such activity. The leasing of a Unit by the Unit Owner thereof shall not be considered a trade or business within the meaning of this section.

Notwithstanding the above, Declarant may maintain sales offices, management offices and models in Units or on Common Elements for the purpose of promotion and sales of Units in the Condominium.

7.3 Improvements and Alterations. Any Unit Owner may make nonstructural additions, alterations and improvements within his Unit without the prior written approval of the Board, but such Unit Owner shall, to the extent permitted under Arizona law, be responsible for any damage to other Units and to the Common Elements which results from any such alterations,

additions or improvements. No Person shall make any structural additions, alterations or improvements within a Unit, unless prior to the commencement of each addition, alteration or improvement, the Unit Owner receives the prior written approval of the Board and the Owner retains an architect or engineer licensed in Arizona who certifies that such addition, alteration or improvement will not impair the structural integrity of the Building within which such addition, alteration or improvement is to be made. The Unit Owner shall, to the extent permitted by Arizona law, be responsible for any damage to other Units and to the Common Elements which results from any such additions, alterations or improvements. Notwithstanding the foregoing, no addition, alteration or improvement within a Unit, whether structural or not, which would be visible from the exterior of the Building in which the Unit is located, shall be made without the prior written consent of the Board, which approval shall only be granted if the Board affirmatively finds that the proposed addition, alteration or improvement is aesthetically pleasing and in harmony with the surrounding Improvements.

7.4 No Partition and Subdivision. No Unit shall be partitioned or subdivided.

7.5 Machinery and Equipment. No Unit Owner may place, operate or maintain machinery or equipment of any kind upon the Condominium other than usual and customary machinery and equipment used in connection with the Owner's permitted uses of his Unit and Limited Common Elements. This section shall not apply to any such machinery or equipment which Declarant or the Association may require for the construction, improvement, operation and maintenance of the Common Elements.

7.6 Environmental Restrictions. All residents of the Condominium shall be responsible for complying with all federal and state environmental and health laws. Without limiting the foregoing, no Unit Owner or other resident may dispose of, transport, or store "hazardous materials" in his Unit or elsewhere in the Condominium other than small amounts of ordinary household non-combustible cleaning agents maintained in the Unit or Limited Common Element storage areas and in no event may any Unit Owner or resident dispose of any hazardous materials, including without limitation, motor oil, hydrocarbons, or other petroleum products, in or down a dry well on or adjacent to the Condominium, or in trash receptacles located within the Condominium.

7.7 General Restrictions Regarding Parking of Vehicles. No truck (other than a Family Vehicle truck described below), mobile home, mini or standard size motor home, travel trailer, tent trailer, trailer, all-terrain vehicle, bus, camper shell, detached camper, recreational vehicle, boat, boat trailer, business vehicle with signs or logos or any kind, or other similar equipment or vehicle (hereinafter in this Article referred to as "Commercial Vehicles") may be parked, kept, or maintained on any part of the Condominium other than in an assigned space for which the Association has determined to allow the parking of such a vehicle. A "Family Vehicle" means any domestic or foreign car, station wagon, sport wagon, pick-up truck of less than 3/4 ton capacity with camper shells not exceeding eight (8) feet in height measured from ground level, mini-van, jeep, sport utility vehicle, motorcycle and similar non-commercial and non-recreational vehicles that are used by the Owner of the Unit or his family members, tenants, guests or invitees for family and domestic purposes and which are used on a regular and recurring basis for basic transportation. The Board may, acting in good faith, designate a Commercial Vehicle as a Family Vehicle, if prior to use, the Unit Owner petitions the Board to

classify the same as a Family Vehicle if the Commercial Vehicle is similar in size and appearance to a Family Vehicle and the parking of such Vehicle on the Condominium will not adversely affect the Condominium or the Owners of Units therein. Family Vehicles and Commercial Vehicles are collectively referred to in this Article as "Vehicles."

7.8 Parking Spaces. No parking space in the Condominium may be used for storage or for any purpose other than the parking of Vehicles. Unit Owners or other lawful residents of a Unit must park their Vehicles in an available assigned parking space before parking any excess or extra Vehicles in any unassigned parking space and in no event may any Unit Owner or other lawful resident or their guests and invitees park in a parking space other than the one specifically assigned to their Unit.

7.9 Motor Vehicle Repair and Towing of Vehicles. Other than temporary emergency repairs, no Vehicle shall be constructed, reconstructed, serviced or repaired, and no inoperable Vehicle may be stored on any portion of the Condominium. The Board of Directors shall have the right to have any Vehicle parked, kept, maintained, constructed, reconstructed or repaired in violation of the Condominium Documents towed away at the sole cost and expense of the owner of the vehicle or equipment. Any expense incurred by the Association in connection with the towing of any vehicle or equipment shall be paid to the Association upon demand by the owner of the vehicle or equipment. If the vehicle or equipment is owned by an Owner, any amounts payable to the Association shall be secured by the Assessment Lien, and the Association may enforce collection of suit amounts in the same manner provided for in this Declaration for the collection of Assessments.

7.10 Signs. Other than a Unit Owner name and address identification sign not exceeding 6 x 12 inches in size on the door of a Unit, no emblem, logo, sign or billboard of any kind, including, but not limited to, "For Sale" or "For Rent" signs, shall be displayed so that it is visible from the exterior of any Unit or Building or any other portion of the Condominium without the prior written approval of the Board; except for: (i) signs used by the Declarant to advertise the Units for sale or lease; (ii) signs on the Common Elements as may be placed or approved by the Declarant during the Period of Declarant Control, or by the Board, thereafter; (iii) any signs as may be required by legal proceedings; and (iv) such signs as are approved by the Board.

The foregoing restrictions shall be subject to such limitations and privileges as are established at law, including for the placement of political signs and signs pertaining to candidates for political office or to other such protected matters.

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

7.12 Nuisances and Offensive Activity. No nuisance shall be permitted to exist or operate upon the Condominium, and no activity shall be conducted upon the Condominium which is offensive or detrimental to any portion of the Condominium or any Unit Owner or other occupant of the Condominium. No exterior speakers, horns, whistles, bells or other sound

devices, except security or other emergency devices used exclusively for security or emergency purposes, shall be located, used or placed on the Condominium.

7.13 Window Coverings. No reflective materials, including, without limitation, aluminum foil, reflective screens or glass, mirrors or similar items, shall be installed or placed upon the outside or inside of any windows of a Unit without the prior written approval of the Board. No enclosures, drapes, blinds, shades, screens or other items affecting the exterior appearance of a Unit or any Limited Common Elements allocated to a Unit shall be constructed or installed in any Unit or Limited Common Element without the prior written approval of the Board, unless the items so installed are substantially identical in color, texture and size as previously approved and installed window coverings being so replaced.

7.14 Limitation on Leasing of Units. No Unit Owner may lease less than his entire Unit. All leases shall be in writing and shall provide that the terms of the lease shall be subject in all respects to the provisions of the Condominium Documents, and any failure by the lessee to comply with the terms of the Condominium Documents shall be a default under the lease. Upon leasing his Unit, a Unit Owner shall promptly notify the Association of the commencement date and termination date of the lease and the names of each lessee or other person who will be occupying the Unit during the term of the lease. Nothing contained in this Section 7.14 shall be construed as limiting or in any way affecting any leasing program operated by Declarant in the Condominium with regard to its Units.

7.15 Community Privacy Measures. Each Unit Owner understands and agrees that neither the Association (nor its officers, directors, employees, and agents) nor the Declarant (nor its officers, directors, employees and agents) is responsible for the acts and omissions of any third parties or of any other Owner or Owner's family members, guests, tenants and invitees resulting in damages or injury to person or property. Any entry/privacy gate features or common privacy measures that may be used in the Condominium (as installed by the Declarant, at its option, or by the Board on behalf of the Association) will be maintained by the Association, and each Unit Owner understands that any entry/privacy gate features that are in effect at the time he becomes a Unit Owner may be abandoned, terminated and/or modified by a majority vote of the Board. The commencement of any such devices or controls shall not be deemed to be an assumption of any duty on the part of the Association or the Declarant with respect to the Condominium and neither the Declarant, the Board (nor any committee thereof) make any representation or warranty concerning the efficacy of such devices relating to security or the ease of entry of fire, police or other emergency personnel.

7.16 Savings Clause. The provisions of this Declaration shall be construed to be consistent with law, and should any provision violate law and be unenforceable as a result thereof, then applicable law shall govern. Without limitation, no provision hereof shall prohibit the placement of the American Flag or the parking of public service vehicles as permitted by law, subject to rules and regulations of the Association not in conflict with such laws.

7.17 Variances. The Board may, at its sole discretion, grant variances from the restrictions set forth in this Article VII if the Board determines:

(A) Either that (i) a particular restriction would create a substantial hardship or burden on an Owner or occupant and that such hardship is not attributable to the Owner's or occupant's acts; (ii) a change of circumstances has rendered the particular restriction obsolete; or (iii) other circumstances warrant a variance in the Board's sole and absolute discretion; and

(B) The activity permitted under the requested variance will not have a substantially adverse effect on other Owners and occupants.

ARTICLE VIII

MAINTENANCE AND REPAIR OF COMMON ELEMENTS AND UNITS

8.1 Duties of the Association. The Association shall maintain, repair and make necessary improvements to all Common Elements (including without limitation all structural elements of Limited Common Elements) whether located inside or outside the Buildings, except for the specific portions of the Limited Common Elements which the Unit Owners are obligated to maintain pursuant to Section 8.2 of this Declaration. Without limitation, the Association shall be responsible for maintaining residential Building exteriors (including doors and porch and balcony exteriors), all portions of the parking areas, parking carports, mail room Building, maintenance Building, fountains, planters, the private streets and drives, sidewalks, landscaping, irrigation systems, lighting and light fixtures in the Common Elements, and recreational areas (including the tennis court, pool areas and equipment and clubhouse). The Board shall be the sole and absolute judge as to the appropriate maintenance of the Common Elements and the Condominium. For purposes of maintaining the carports, the Unit Owners to whose Unit a carport is assigned hereby grant an easement to the Association to enter the carports upon reasonable notice (except in the case of an emergency) for maintenance and for access to any attic access panel in a particular carport parking space for purpose of access to other portions of the carport structure.

8.2 Duties of Unit Owners.

(A) Each Unit Owner shall maintain, repair, replace and restore, at his own expense, all portions of his Unit, subject to the Condominium Documents.

(B) Except for carports, which shall be maintained by the Association pursuant to Section 8.1, each Unit Owner shall be responsible for the maintenance and repair of the Limited Common Elements allocated to his Unit pursuant to this Declaration as Limited Common Elements, including, without limitation: periodic painting and maintenance of the concrete slabs or finished flooring of, the patio, and/or balcony (except for repair to the structural portions thereof); and maintenance, repair and replacement of all doors and windows of the Unit; the air conditioning unit (including compressors and condensers), and heater and hot water heater servicing the Unit. No Unit Owner may paint or change the exterior color scheme or surfacing materials of his carport, patio or balcony or any portion of the Limited Common Elements

allocated to his Unit visible from the Common Elements or any other Unit without the prior written consent of the Board.

(C) Each Unit Owner shall take all necessary action to keep the Limited Common Elements which he is obligated to maintain under this Section 8.2 clean and free from unsightly accumulations of trash, furniture in weathered or poor condition, and litter. No Unit Owner shall allow a parking space to be used for storage or for the accumulation of trash or junk.

8.3 Repair or Restoration Necessitated by Unit Owner. Each Unit Owner shall be liable to the Association, to the extent permitted by Arizona law, for any damage to the Common Elements or the Improvements, or equipment thereon, which results from the negligence or willful misconduct, by act or omission, of the Unit Owner or that Owner's family members, tenants, guests, invitees and pets. The cost to the Association of any such repair, maintenance or replacement required by such act or omission of a Unit Owner shall be paid by the Unit Owner, upon demand, to the Association. The Association may enforce collection of any such amounts in the same manner and to the same extent as provided for in this Declaration for the collection of Assessments.

8.4 Unit Owner's Failure to Maintain. If a Unit Owner fails to maintain in good condition and repair his Unit or any Limited Common Element which he is obligated to maintain under this Declaration and the required maintenance, repair or replacement is not performed within thirty (30) days after written notice has been given to the Unit Owner by the Association, the Association shall have the right, but not the obligation, to perform the required maintenance, repair or replacement. The cost of any such maintenance, repair or replacement shall be assessed against the nonperforming Unit Owner pursuant to Section 10.4(D) of this Declaration.

8.5 Right to Reasonable Access. On reasonable notice, each Unit Owner shall afford the Association and other Unit Owners, and to their agents or employees, access through his Unit reasonably necessary for purposes required under this Article.

ARTICLE IX

THE ASSOCIATION; RIGHTS AND DUTIES; MEMBERSHIP

9.1 Rights, Powers and Duties of the Association. No later than the date on which the first Unit is conveyed to a Purchaser, the Association shall be organized as a nonprofit Arizona corporation. The Association shall be the entity through which the Unit Owners shall act. The Association shall have such rights, powers and duties as are prescribed by law and as are set forth in the Condominium Documents together with such rights, powers and duties as may be reasonably necessary to effectuate the objectives and purposes of the Association as set forth in this Declaration and the Condominium Act. The Association shall have the right to finance capital Improvements in the Condominium by encumbering future Assessments if such action is approved by the written consent or affirmative vote of Unit Owners representing more than fifty percent (50%) of the votes in the Association and by Declarant during the Period of Declarant Control. Unless the Condominium Documents or the Condominium Act specifically require a vote of the Members, approvals or actions to be given or taken by the Association shall be valid if given or taken by the Board. The Association has the specific duty to make available to the

Declarant, Eligible Mortgage Holders, Unit Owners, and Eligible Insurers or Guarantors during normal business hours, current copies of the Condominium Documents and other books, records and financial statements of the Association as may be requested from time to time by such parties. Such requests shall be in writing, and the Association shall have the right to charge for copying expenses and the reasonable cost of postage, shipping or transmission of the information requested.

9.2 Directors and Officers.

(A) During the Period of Declarant Control, the Declarant shall have the right to appoint and remove the members of the Board of Directors and the officers of the Association, and such appointed members and officers do not have to be Unit Owners.

(B) Upon the termination of the Period of Declarant Control, the Unit Owners shall elect the Board of Directors which must consist of at least three (3) members, all of whom must be Unit Owners. The Board of Directors elected by the Unit Owners shall then elect the officers of the Association.

(C) The Declarant may voluntarily surrender his right to appoint and remove the members of the Board of Directors and the officers of the Association before termination of the Period of Declarant Control, and in that event, the Declarant may require, for the duration of the Period of Declarant Control, that specified actions of the Association or the Board of Directors, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

9.3 Rules. The Board of Directors, from time to time and subject to the provisions of this Declaration and the Condominium Act, may adopt, amend, and repeal rules and regulations. The Rules may, among other things, restrict and govern the use by any Unit Owner, by the family of such Unit Owner, or by any invitee, licensee or lessee of such Unit Owner, of any area within the Condominium subject to the Association's jurisdiction and control; provided, however, that the Rules may not unreasonably discriminate among Unit Owners and shall not be inconsistent with the Condominium Act, the applicable federal and state Fair Housing Acts, this Declaration, the Articles or Bylaws. A copy of the Rules, as they may from time to time be adopted, amended or repealed, shall be mailed or otherwise delivered to each Unit Owner and may be recorded.

9.4 Composition of Members. Each Unit Owner shall be a Member of the Association. The membership of the Association at all times shall consist exclusively of all the Unit Owners. Membership in the Association is mandatory and such Membership and the Common Element Interests thereof are appurtenant thereto, and may not be separated from, ownership of the Unit; provided, however, the Common Element Interests of Units from time to time may be modified or changed as expressly permitted in this Declaration and authorized under the Condominium Act. No Owner during his ownership of a Unit shall have the right to relinquish or terminate his membership in the Association.

9.5 Non-Liability of Officials and Indemnification. To the fullest extent permitted by law, neither Declarant, Developer, the Board, nor any committees of the Association nor any

member thereof, nor any officers, directors or employees of the Declarant, Developer or of the Association, shall be liable to any Owner or to the Association or any other person for any damage, loss or prejudice suffered or claimed on account of any decision, course of action, act, inaction, omission, error, negligence or the like made in good faith and which Declarant, Developer, the Board or such committees or officers reasonably believed to be within the scope of their respective duties or rights.

To the fullest extent permitted by law, Declarant, Developer and every director, officer or committee member of the Association, Developer and or the Declarant (to the extent a claim may be brought by reason of Declarant's appointment, removal or control over members of the Board or its control over the Association or any committee thereof) shall be indemnified by the Association. Every other person serving as an employee or direct agent of the Association, or otherwise acting on behalf of, and at the request of, the Association, may, in the discretion of the Board, be indemnified by the Association.

Any such indemnification shall be limited to all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed upon such person in connection with any proceeding to which he may be a party or in which he may become involved, by reason of his being or having served in such capacity on behalf of the Association (or in the case of Declarant by reason of having appointed, removed, controlled or failed to control members of the Board, or controlled or failed to control the Association), or incurred in any settlement thereof, whether or not he is a director, officer or member of a committee or serving in such other specified capacity at the time such expenses are incurred.

ARTICLE X

ASSESSMENTS

10.1 Creation of the Lien and Personal Obligation to Pay Assessments. Each Owner, by acceptance of a deed to any Unit, whether or not it shall be so expressed in such deed, agrees and is deemed to covenant and agree to pay to the Association: (i) annual assessments or charges, (ii) special assessments for capital improvements, and (iii) individual repair and maintenance assessments, such assessments to be established and collected as herein provided. The annual and special Assessments and individual Assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the Unit and shall be a continuing lien upon the Unit against which each Assessment is made pursuant to A.R.S. §33-1256.

Delinquent assessments, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Unit at the time when the assessment was levied. The personal obligation for delinquent assessments shall not pass to successors in title unless expressly assumed by them. The sale or transfer of a Unit shall not relieve the prior Owner thereof from personal liability to pay delinquent assessments, plus interest, costs and attorney's fees. Such obligation shall remain the personal obligation of the defaulting Owner. The new Owner, except a First Mortgagee as set forth herein, shall take title to such Unit subject to the lien of the full amount of the delinquent assessment.

10.2 Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the Members and their guests, for the improvement and maintenance of the Common Elements and for all purposes set forth in the Articles, Bylaws and this Declaration. The Board of the Association may provide that assessments include a reserve fund for maintenance, repairs and replacement of those elements of the Common Elements and of property and equipment owned by the Association for the common use and enjoyment of the Members.

10.3 Preparation of Budget.

(A) At least sixty (60) days (or soon thereafter as feasible) before the beginning of the first full fiscal year of the Association after the first Unit is conveyed to a Purchaser and each fiscal year thereafter, the Board of Directors shall adopt a budget for the Association containing an estimate of the total amount of funds which the Board of Directors believes will be required during the ensuing fiscal year to pay all Common Expenses including, but not limited to: (i) the amount required to pay the cost of maintenance, management, operation, repair and replacement of the Common Elements and those parts of the Units, if any, which the Association has the responsibility of maintaining, repairing and replacing; (ii) the cost of wages, materials, insurance premiums, services, supplies and other expenses required for the administration, operation, maintenance and repair of the Condominium; (iii) the amount required to render to the Unit Owners all services required to be rendered by the Association under the Condominium Documents; and (iv) such amounts as are necessary to provide general operating reserves and reserves for contingencies and replacements. The budget shall separately reflect any Common Expenses to be assessed against less than all of the Units pursuant to subsections (D) and (E) of Section 10.4 and must include an adequate allocation to reserves as part of the Common Expense Assessment.

(B) Within thirty (30) days after the adoption of a budget, the Board of Directors shall send to each Unit Owner a summary of the budget and a statement of the amount of the Common Expense Assessment assessed against the Unit of the Unit Owner in accordance with Section 10.4 of this Declaration. The failure or delay of the Board of Directors to prepare or adopt a budget for any fiscal year shall not constitute a waiver or release in any manner of a Unit Owner's obligation to pay his allocable share of the Common Expenses as provided in Section 10.4 of this Declaration and each Unit Owner shall continue to pay the Common Expense Assessment against his Unit as established for the previous fiscal year until notice of the Common Expense Assessment for the new fiscal year has been established by the Board of Directors.

(C) The Board of Directors is expressly authorized to adopt and amend budgets for the Association, and no ratification of any budget by the Unit Owners shall be required.

10.4 Common Expense Assessment.

(A) For each fiscal year of the Association commencing with the fiscal year in which the first Unit is conveyed to a Purchaser, the total amount of the estimated Common Expenses set forth in the budget adopted by the Board of Directors (except for the Common

Expenses which are to be assessed against less than all of the Units pursuant to subsections (D) and (E) of this section) shall be assessed against each Unit in the proportion of such Unit to the Unit's Common Expense Liability, except that (i) any Common Expense associated with the maintenance, repair or replacement of a Limited Common Element shall be equally assessed against the Unit(s) to which the Limited Common Element is assigned; and (ii) any Common Expense or portion of a Common Expense benefiting fewer than all of the Units shall be assessed exclusively against the Unit(s) benefited. Furthermore, the assessments payable to the Master Association for each Unit (including without limitation Base Assessments, Neighborhood Assessments, Special Assessments and Benefitted Assessments, all as defined in the Master Declaration) shall be added to the Common Expense Assessment first determined by considering all other Common Expenses of the Association. If the Board of Directors determines during any fiscal year that its funds budgeted or available for that fiscal year are, or will, become inadequate to meet all Common Expenses for any reason, including, without limitation, nonpayment of Assessments by Members, it may increase the Common Expense Assessment for that fiscal year and the revised Common Expense Assessment shall commence on the date designated by the Board of Directors.

(B) The Common Expense Assessments shall commence as to all Units sold to Purchasers in the Condominium on the first day of the month following the conveyance of the first Unit to a Purchaser. The first Common Expense Assessment shall be adjusted according to the number of months remaining in the fiscal year of the Association. The Board of Directors may require that the Common Expense Assessments or Special Assessments be paid in installments. Unless otherwise directed by the Board, Common Expense Assessments shall be paid in monthly installments and shall be due and payable on the first day of each month.

(C) Except as otherwise expressly provided for in this Declaration, all Common Expenses, including, but not limited to, Common Expenses associated with the maintenance, repair and replacement of a Limited Common Element, and reserves for Common Expenses shall be assessed against all of the Units in accordance with subsection (A) of this section.

(D) If any Common Expense (including without limitation, any Benefitted Assessments or other charges assessed by the Master Association) is caused by the negligence or willful conduct, whether by act or omission, of any Unit Owner, the Association shall assess that Common Expense exclusively against his Unit.

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

10.5 Special Assessments. In addition to Common Expense Assessments, the Association may levy, in any fiscal year of the Association, a special assessment applicable to that fiscal year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of a capital improvement of the Common Elements, including fixtures and personal property related thereto, or for any other lawful Association purpose, provided that any Special Assessment shall have first been approved by Unit Owners representing two-thirds (2/3) of the votes in the Association and who are voting in person or by proxy at a meeting duly called for such purpose, and approved by Declarant during the Period of Declarant Control. Unless otherwise specified by the Board of Directors, Special Assessments shall be due thirty (30) days after they are levied by the Association and notice of the Special Assessment is given to the Unit Owners.

10.6 Notice and Quorum for Any Action Authorized Under Section 10.5. Written notice of any meeting called for the purpose of obtaining the consent of the Members for any action for which the consent of Members is required under Section 10.5 shall be sent to all Members not less than thirty (30) days nor more than fifty (50) 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 in the Association 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 (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than fifty (50) days following the preceding meeting.

10.7 Fines and Penalties.

(A) If any Unit Owner, his or her family, or any licensee, invitee, tenant or lessee violates the provisions hereof or other rules of the Association, the Board after providing the Unit Owner with notice of the violation and an opportunity for a hearing as required by law, may levy a fine upon the Unit Owner, may suspend the violator's right to use the Common Elements and may charge such Owner all costs incurred by the Association in connection with enforcement or other action taken by the Association, including attorneys fees and costs incurred. Such violation shall also be grounds for the Association, should it wish, to suspend the said rights of the Owner and its family members, guests and invitees.

(B) The Board may establish a procedure for conducting hearings and imposing penalties. Any fines imposed against the Unit Owner which are not paid within fifteen (15) days of notice of the due date, may be charged to the Unit Owner of the Unit in question, and may be collected as permitted by law.

(C) In no event shall any fine be imposed for a default or violation, other than a failure to pay Assessments, without first affording the Owner notice and an opportunity for hearing.

10.8 Billing and Collection Procedures.

(A) The Board shall have the right to adopt procedures for the purpose of making, billing and collecting the Assessments. The failure of the Association to send a bill to a

Unit Owner shall not relieve such Unit Owner of the Unit Owner's liability for an Assessment. It shall be the responsibility of the Unit Owner to inform the Association in writing of a change of address. The Association shall be under no duty to refund any payments received by the Association even if the ownership of a Unit changes during an Assessment Period. Any successor Unit Owner shall be given credit for any non-refunded prepayments made by a prior Unit Owner.

10.9 Collection Costs and Interest on Delinquent Amounts.

Any delinquent amount shall have added thereto a late charge of the greater of fifteen dollars (\$15.00) or ten percent (10%) of the delinquent amount if such delinquent amount is not paid within thirty (30) days after the due date. Any delinquent amount shall bear interest from its due date until paid at a rate equal to the greater of twelve percent (12%) per annum, the then prevailing interest rate on loans insured by FHA or VA, or such rate as is determined from time to time by the Board. The Unit Owner shall be liable for all costs, including but not limited to attorneys, fees and collection agency fees, which may be incurred by the Association in collecting any delinquent amount, and such amounts, to the extent permitted by law, shall be deemed a part of the Assessment Lien.

10.10 Subordination of Assessment Lien to Mortgages. The Assessment Lien shall be subordinate to the lien of any First Mortgage. Any First Mortgagee or any other party acquiring title or coming into possession of a Unit through foreclosure of a First Mortgage, purchase at a foreclosure sale or trustee sale, or through any equivalent proceedings, such as, but not limited to, the taking of a deed in lieu of foreclosure, shall acquire title free and clear of any claims for unpaid Assessments, monetary penalties and other charges and fees against the Unit which became payable prior to such sale or transfer. Any delinquent Assessments, monetary penalties and other fees and charges which are extinguished pursuant to this section may be reallocated and assessed to all Units as a Common Expense. Any Assessments, monetary penalties and other fees and charges against the Unit which accrue prior to such sale or transfer shall remain the personal obligation of the defaulting Unit Owner.

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

10.12 Certificate of Payment. The Association, on written request, shall furnish to a lienholder, Unit Owner or Person designated by a Unit Owner, a recordable statement setting forth the amount of unpaid Assessments against his Unit. The statement shall be furnished within twenty (20) business days after receipt of the request and is binding on the Association, the Board of Directors, and every Unit Owner. The Association may charge a reasonable fee in an amount established by the Board of Directors for each such statement. In addition, the Association shall furnish such statements as may be required under A.R.S. §33-1260 within the time frames set forth therein for compliance.

10.13 No Offsets. All Assessments, monetary penalties and other fees and charges shall be payable in accordance with the provisions of this Declaration, and no offsets against such

Assessments, monetary penalties and other fees and charges shall be permitted for any reason, including, without limitation, a claim that the Association is not properly exercising its duties and powers as provided in the Condominium Documents or the Condominium Act.

10.14 Surplus Funds. Surplus funds of the Association remaining after payment of or provisions for Common Expenses and any prepayment of reserves may in the discretion of the Board of Directors either be returned to the Unit Owners pro rata in accordance with each Unit Owner's Common Expense Liability or be credited on a pro rata basis to the Unit Owners to reduce each Unit Owner's future Common Expense Liability.

10.15 Reserves Fund. Upon the closing of the sale of each Unit, each Purchaser shall pay to the Association an amount equal to one-fourth (1/4) of the Common Expense Assessment for the Unit for the twelve months following such closing (the "Reserves Fund Contribution") to establish a reserves fund to meet unforeseen expenditures, to purchase any additional equipment or services by or for the Association, or, on a temporary basis, to pay Association expenses such as insurance as they come due in the ordinary course in the event there are not sufficient funds in the Association's general accounts at the time of the due date to pay such expenses; provided, however, that the Board in its discretion shall reimburse the reserves fund for such expenses incurred from Annual Assessments as they are paid by Members. A Reserves Fund Contribution shall continue to be payable upon each subsequent sale of a Unit. Funds paid to the Association pursuant to this Section may be used by the Association for payment of operating expenses or any other purpose permitted under this the Condominium documents. The amounts paid to the Association pursuant to this Section shall be nonrefundable and shall not be considered an advance payment of any Assessments levied by the Association pursuant to this Declaration.

ARTICLE XI

INSURANCE

11.1 Scope of Coverage.

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

(i) Property insurance on the Common Elements insuring against all risks of direct physical loss commonly insured against, in an amount determined by the Board of Directors; provided, however, that the total amount of insurance shall not be less than one hundred percent (100%) of the current replacement cost of the insured property, exclusive of

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(iii) Comprehensive General Liability insurance, for a limit to be determined by the Board, but not less than \$1,000,000.00 for any single occurrence and \$2,000,000.00 general aggregate. Such insurance shall cover all occurrences commonly insured against for personal injury, death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Common Elements;

(iv) Workmen's compensation insurance to the extent necessary to meet the requirements of the laws of Arizona,

(v) Directors' and officers' liability insurance covering all the directors and officers of the Association in such limits as the Board of Directors may determine from time to time;

(vi) Blanket fidelity bonds for all officers, directors and employees of the Association and all other persons handling, or responsible for, funds of or administered by the Association; and

(vii) Such other insurance as the Association shall determine from time to time to be appropriate to protect the Association, the members of the Board of Directors, and/or the Unit Owners.

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

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

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

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

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

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

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

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

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

(ix) Such coverage shall not be contingent upon action by the insurance carrier's board of directors, policyholders or members or permit claims for contribution or assessments to be made against Unit Owners or their Mortgagees, including Eligible Mortgage Holders, or Eligible Insurers or Guarantors.

(x) If the Condominium is located in an area identified by the Secretary of Housing and Urban Development as an area having special flood hazards, a "blanket policy" of flood insurance on the Condominium in the lesser of one hundred percent (100%) of the current replacement cost of the Buildings and any other property covered on the required form of policy or the maximum limit of coverage available under the National Insurance Act of 1968, as amended.

(xi) "Agreed Amount," and "Building Ordinance or Law" endorsements, except where expressly not applicable or not available.

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

11.3 Insurance Obtained by Unit Owners/Non-Liability of Association. The issuance of insurance policies to the Association pursuant to this Article shall not prevent a Unit Owner from obtaining insurance for his own benefit and at his own expense covering his Unit, his personal property and providing personal liability coverage. Notwithstanding the obligation of the Association to obtain insurance coverage as stated in this Declaration, neither the Declarant nor the Association, or their respective officers, directors, employees and agents, shall be liable to any Unit Owner or any other party if any risks or hazards are not covered by the insurance to be maintained by the Association or if the amount of the insurance is not adequate, and it shall be the responsibility of each Unit Owner to ascertain the coverage and protection afforded by the Association's insurance and to procure and pay for any additional insurance coverage and protection that the Unit Owner may desire.

11.4 Payment of Insurance Proceeds. Any loss covered by property insurance obtained by the Association in accordance with this Article shall be adjusted with the Association and the insurance proceeds shall be payable to the Association and not to any mortgagee or beneficiary under a deed of trust. The Association shall hold any insurance proceeds in trust for Unit Owners and lienholders as their interests may appear, and the proceeds shall be disbursed and applied as provided for in §33-1253 of the Condominium Act.

11.5 Certificate of Insurance. An insurer that has issued an insurance policy pursuant to this Article of the Declaration shall issue certificates or memoranda of insurance to the Association and, on written request, to any Unit Owner, mortgagee, or beneficiary under a deed

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of trust. The insurer issuing the policy shall not cancel nor refuse to renew it until thirty (30) days after notice of the proposed cancellation or nonrenewal has been mailed to the Association, each Unit Owner, and each mortgagee or beneficiary under a deed of trust to whom a certificate or memorandum of insurance has been issued at their respective last known address.

ARTICLE XII

EMINENT DOMAIN

In the event that a Unit, Units, the Common Elements, or any portion thereof is acquired by eminent domain, the provisions of the Condominium Act shall govern and control. To the extent not inconsistent therewith, in the event proceedings are initiated by any government or agency thereof, seeking to take by eminent domain the Common Elements, any part thereof or any interest therein, any improvement thereon, or any interest therein, with a value (including loss of value to the balance of the Common Elements and improvements thereof), as reasonably determined by the Association in excess of Ten Thousand Dollars (\$10,000), the Association shall give prompt notice thereof, including a description of the part of or interest in the Common Elements or improvement thereon sought to be so condemned, to all First Mortgagees of Units, all Members, and to the Declarant. The Association shall have full power and authority to defend in said proceedings, and to represent the Owners in any negotiations, settlements, and agreements with a condemning authority for acquisition of the Common Elements or part thereof, but the Association shall not enter into any such proceedings, settlement, or agreements, pursuant to which the Common Elements or any part thereof or any interest therein, or any improvement thereon or any part thereof or interest therein is relinquished, without giving all First Mortgagees of Units, all Members, and Declarant at least fifteen (15) days' prior written notice thereof.

In the event, following such proceedings, there is such a taking in condemnation or by eminent domain of a part or all of the Common Elements, the award made for such taking, shall be applied by the Association to such repair and restoration. If the full amount of such award is not expended to repair and restore the Common Elements, the Association shall disburse the net proceeds of such award to the Owners, the Owner of each Unit to receive one (1) equal share, except that any portion of the award attributable to the acquisition of a Limited Common Element shall be equally divided among the Owners to which the Limited Common Element was allocated at the time of the acquisition, and provided that the Association shall first pay out of the share of each Owner the amount of any unpaid liens or encumbrances on his Unit in the order of the priority of such liens or encumbrances. No provision of this Declaration or of any other document relating to the Properties shall be deemed to give an Owner or any other party priority over the rights of a First Mortgagee pursuant to a First Mortgage in the case of a distribution to an owner of insurance proceeds or condemnation award for losses to or taking of Units or Common Elements or any combination thereof.

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ARTICLE XIII

RIGHTS OF FIRST MORTGAGEES

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

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

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

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

(D) Any proposed action which requires the consent of a specified percentage of Eligible Mortgage Holders as set forth in this Declaration.

13.2 Approval Required for Amendment to Condominium Documents.

(A) The approval of Eligible Mortgage Holders holding First Mortgages on Units the Unit Owners of which have at least fifty-one percent (51%) of the votes in the Association allocated to Unit Owners of all Units subject to First Mortgages held by Eligible Mortgage Holders shall be required to add or amend any material provisions of the Condominium Documents which establish, provide for, govern or regulate any of the following, but only if the Federal National Mortgage Association has in writing approved the provisions hereof in connection with an application for project approval:

- (i) Voting rights;
- (ii) Assessments, Assessment Liens, or subordination of Assessment Liens;
- (iii) Reserves for maintenance, repair and replacement of Common Elements;
- (iv) Insurance or fidelity bonds;
- (v) Responsibility for maintenance and repairs;

- (vi) Expansion or contraction of the Condominium, or the addition of property to Condominium;
- (vii) Boundaries of any Unit;
- (viii) Reallocation of interests in the Common Elements or Limited Common Elements or rights to their use;
- (ix) Convertibility of Units into Common Elements or of Common Elements into Units;
- (x) Leasing of Units;
- (xi) Imposition of any restriction on a Unit Owner's right to sell or transfer his Unit;
- (xii) A decision by the Association to establish self-management when professional management had been required previously by an Eligible Mortgage Holder;
- (xiii) Restoration or repair of the Condominium (after hazard damage or partial condemnation) in a manner other than specified in the Condominium Documents;
- (xiv) Any action to terminate the legal status of the Condominium after substantial destruction or condemnation occurs;
- (xv) Any provisions which expressly benefit First Mortgagees, Eligible Mortgage Holders or Eligible Insurers or Guarantors.

(B) Any action to terminate the legal status of the Condominium for reasons other than substantial destruction or condemnation of the Condominium must be approved by Unit Owners representing at least sixty-seven percent (67%) of the total allocated votes in the Association and by Eligible Mortgage Holders holding First Mortgages on Units the Unit Owners of which have at least sixty-seven percent (67%) of the votes in the Association allocated to Unit Owners of all Units subject to First Mortgages held by Eligible Mortgage Holders.

(C) Any First Mortgagee who receives a written request to approve additions or amendments to any of the Condominium Documents, which additions or amendments are not material, and who does not deliver or mail to the requesting party a negative response within thirty (30) days shall be deemed to have approved such request. Any addition or amendment to the Condominium Documents shall not be considered material if it is for the purpose of correcting technical errors or for clarification only.

(D) The approvals required by this Section shall not apply to amendments that may be executed by the Declarant in the exercise of its Development Rights, nor to minor or technical amendments, nor to amendments to correct ambiguities or to conform to the regulations of a Governmental Agency.

13.3 Prohibition Against Right of First Refusal. The right of a Unit Owner to sell, transfer or otherwise convey his Unit shall not be subject to any right of first refusal or similar restriction. This Section may not be amended without the consent of all First Mortgagees then of record.

13.4 Right of Inspection of Records. Any Unit Owner, First Mortgagee or Eligible Insurer or Guarantor shall, upon written request, be entitled to (i) inspect the current copies of the Condominium Documents and the books, records and financial statements of the Association during normal business hours; (ii) receive, within ninety (90) days following the end of any fiscal year of the Association, an audited financial statement of the Association for the immediately preceding fiscal year of the Association, free of charge to the requesting party; and (iii) receive written notice of all meetings of the Members of the Association and be permitted to designate a representative to attend all such meetings. Notwithstanding the foregoing, the Board of Directors may withhold from disclosure such books, records and documents of the Association, or portions thereof, designated under A.R.S. §33-1258 of the Condominium Act.

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

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

13.7 Conflicting Provisions. In the event of any conflict or inconsistency between the provisions of this Article and any other provision of the Condominium Documents, the provisions of this Article shall prevail; provided, however, that in the event of any conflict or inconsistency between the different sections of this Article and any other provision of the Condominium Documents with respect to the number or percentage of Unit Owners, First Mortgagees, Eligible Mortgage Holders or Eligible Insurers or Guarantors that must consent to (i) an amendment to any of the Condominium Documents; (ii) a termination of the Condominium; or (iii) other actions of the Association specified in this Declaration, the provision requiring the consent of the greatest number or percentage of Unit Owners, First Mortgagees, Eligible Mortgage Holders or Eligible Insurers or Guarantors shall prevail; provided further, however, that the Declarant, without the consent of any Unit Owner or First Mortgagee being required, shall have the right to amend the Condominium Documents to comply with (i) the Condominium Act; (ii) the requirements or guidelines in effect from time to time of any governmental or quasi-governmental entity or federal corporation guaranteeing or insuring mortgage loans or governing transactions involving mortgage instruments, including, without limitation, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, or (iii) the rules or requirements of any federal, state or local governmental agency whose approval of the Condominium or the Condominium Documents is required by law or requested by the Declarant.

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ARTICLE XIV

DISPUTE RESOLUTION

14.1 Approval of Association Action.

(A) Except as provided in this Article, the Association may not commence a legal proceeding or an action without the approval of at least two-thirds of the votes of the Members eligible to vote. This Article shall not apply, however, to (i) actions brought by the Association to enforce Condominium Documents, including, without limitation, the foreclosure of liens; (ii) the imposition and collection of assessments; (iii) proceedings involving challenges to ad valorem taxation; or (iv) counterclaims brought by the Association in proceedings instituted against it.

(B) Prior to the Association or any Member commencing any proceeding to which Declarant is a party, including but not limited to an alleged defect of any improvement, Declarant shall have the right to be heard by the Members, or the particular Member, and to access, inspect, correct the condition of, or redesign any portion of any improvement as to which a defect is alleged or otherwise correct the alleged dispute.

14.2 Alternative Method for Resolving Disputes. Declarant and its officers, directors, employees and agents; the Association, its officers, directors and committee members; all Persons subject to this Declaration, including all Members of the Association; and any Person not otherwise subject to this Declaration but who agrees to submit to this Article (each such entity being referred to as a "Bound Party") agree to encourage the amicable resolution of disputes, without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees to submit those claims, grievances or disputes described in 14.3(A) (singularly, "Claim," and collectively, "Claims") to the procedures set forth herein.

14.3 Claims.

(A) Unless specifically exempted below, all claims between any of the Bound Parties regardless of how the same might have arisen or on what it might be based including but not limited to, claims (i) arising out of or relating to the interpretation, application or enforcement of the Condominium Documents or the rights, obligations and duties of any Bound Party under the Condominium Documents, (ii) relating to the design or construction of improvements; or (iii) based upon any statements, representations, promises, warranties, or other communications made by or on behalf of any Bound Party, shall be subject to the provisions of 14.4.

Notwithstanding the above, unless all parties thereto otherwise agree, the following shall not be Claims and shall not be subject to the provisions of 14.4:

(i) any suit by the Association against any Bound Party to enforce the provisions hereof pertaining to assessments, fines or charges;

(ii) any suit by the Association or Declarant to obtain a temporary restraining order or injunction (or equivalent emergency equitable relief) and such other ancillary

relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to act under and enforce the provisions hereof;

(iii) any suit between or among Owners, which does not include any of the Declarant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of Condominium Documents; and

(iv) any suit in which any indispensable party is not a Bound Party.

With the consent of all parties hereto, any of the above identified in this Section may be submitted to the alternative dispute resolution procedures set forth in 14.4.

14.4 Mandatory Procedures.

(A) Notice. Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent") (the Claimant and the Respondent referred to herein being individually, as a "Party" or, collectively, as the "Parties") shall notify each Respondent in writing (the "Notice"), stating plainly and concisely:

(i) the nature of the Claim, including the Persons involved and Respondent's role in the Claim;

(ii) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);

(iii) the proposed remedy; and

(iv) the fact that Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim.

(B) Negotiation.

(i) The Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in negotiation.

If the Parties do not resolve the Claim within thirty (30) days after the date of the Notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiations"), Claimant shall, if it wishes to pursue the Claim, pursue it solely by arbitration.

(C) Binding Arbitration.

(i) Claimant shall, if it elects to pursue its Claim, initiate arbitration of the Claim under the auspices of the American Arbitration Association ("AAA") in accordance with the AAA's applicable rules for arbitration, as appropriate. Such claims shall not be decided by or in a court of law. Any judgment upon the award rendered by the arbitrator may be entered in and enforced by any court having jurisdiction over such Claim. If the claimed amount

exceeds \$250,000, the dispute shall be heard and determined by three arbitrators. Otherwise, unless mutually agreed to by the parties, there shall be one arbitrator. Arbitrators shall have expertise in the area(s) of dispute, which may include legal expertise if legal issues are involved.

(ii) Arbitration fees for any claim in an amount of \$10,000 or less shall be apportioned as provided in the most applicable rules of AAA, as determined by AAA. Unless otherwise provided by the applicable rules of AAA, for claims that exceed \$10,000.00, the filing party shall pay up to the first \$750 of any initial filing fee to initiate arbitration. Under the following conditions, Declarant agrees to pay up to the next \$2,000 of any initial filing fee: (i) Declarant, one or more Declarant Affiliates, or the agents, employees or representatives of them, or Declarant's beneficiary, or the beneficiary of any Declarant Affiliate, or any combination of them, are the sole defendants or respondents against whom the Claim is brought and (ii) Claimant has voluntarily participated in mediation prior to initiating the arbitration, or in writing offered to do so. The portion of any filing fee not covered above, and any case service fee, management fee or fees of arbitrator(s), shall be shared equally by the parties, unless under the applicable rules of AAA the Claimant would pay less. Notwithstanding the foregoing, if a Party unsuccessfully contests the validity or scope of arbitration in a court of law, the non-contesting party shall be awarded reasonable attorneys' fees and expenses incurred in defending such contest. All decisions respecting the arbitrability of any Claim shall be decided by the arbitrator(s).

(iii) The award of the arbitrator(s) shall be accompanied by detailed written findings of fact and conclusions of law. Except as may be required by law or for confirmation of an award, neither a party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties.

14.5 Amendment of Article. Without the express prior written consent of Declarant and Developer, this Article may not be amended for a period of twenty years from the effective date of this Declaration.

ARTICLE XV

GENERAL PROVISIONS

15.1 Enforcement. The Association, or any Unit Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens or charges now or hereafter imposed by the provisions of the Condominium Documents. Failure by the Association or by any Unit Owner to enforce any covenant or restriction contained in the Condominium Documents shall in no event be deemed a waiver of the right to do so thereafter. To the extent this Declaration grants Declarant, the Association or any Unit Owner the right to use summary abatement or similar means to enforce the restrictions set forth in this Declaration, judicial proceedings must be instituted before any items of construction can be altered or demolished. Each Unit Owner shall be subject to all rights and duties assigned to Unit Owners under this Declaration.

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

15.3 Termination of Condominium. Subject to the further provisions of this Declaration regarding First Mortgagee notice and consent requirements, the Condominium may be terminated only in the manner provided for in the Condominium Act, subject to Section 13.2(B).

15.4 Amendment.

(A) The terms hereof may, at any time, be amended by the Association; provided, however, that except as provided elsewhere in this Declaration or in the Condominium Act, any amendments made by the Association shall be approved by at least sixty-seven percent (67%) of the total votes held by Owners and shall be made only by an instrument in writing signed by the President and Secretary of the Association and recorded with the County Recorder of Pima County, Arizona within thirty (30) days after adoption of the amendment. During the Period of Declarant Control, any amendment or attempted revocation hereof shall be approved in writing by the Declarant.

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

(C) Notwithstanding the above, during the Period of Declarant Control, Declarant shall have the right, without any vote or consent whatsoever, to amend this Declaration of its own volition and to make such changes as Declarant shall in its sole discretion deem proper, including changes to Common Elements.

(D) Declarant also reserves the absolute right to amend this Declaration of its own volition, and without the necessity of any vote or consent whatsoever, if such amendment shall, in Declarant's sole and absolute discretion, be deemed necessary to achieve compliance with the regulations of a Governmental Agency.

(E) Unless otherwise provided in the Condominium Act, an amendment to the Declaration shall not create or increase Special Declarant Rights, increase the number of Units or change the boundaries of any Unit, the allocated interest of a Unit, or the use as to which any Unit is restricted, in the absence of unanimous consent of the Unit Owners.

(F) An amendment shall also have the approval of at least fifty-one percent (51%) of the Eligible Mortgage Holders if required by Section 13.2(A).

15.5 Remedies Cumulative. Each remedy provided herein is cumulative and not exclusive.

15.6 Notices. All notices, demands, statements or other communications required to be given or served under this Declaration shall be in writing and shall be deemed to have been duly given and served if delivered personally or sent by United States mail, postage prepaid, return

receipt requested, addressed as follows: (i) if to a Unit Owner, at the address at which the Unit Owner shall designate in writing and file with the Association or, if no such address is designated, at the address of the Unit of such Unit Owner; or (ii) if to the Association or the Declarant, to 6420 North Tierra de las Catalinas, Tucson, Arizona 85718, or such other address as shall be designated by notice in writing to the Unit Owners pursuant to this section. A Unit Owner may change his address on file with the Association for receipt of notices by delivering a written notice of change of address to the Association pursuant to this section. A notice given by mail, whether regular, certified or registered, shall be deemed to have been received by the person to whom the notice was addressed on the earlier of the date the notice is actually received or three days after the notice is mailed. If a Unit is owned by more than one person, notice to one of the Unit Owners shall constitute notice to all Unit Owners of the same Unit. Each Unit Owner shall file his correct mailing address with the Association and shall promptly notify the Association in writing of any subsequent change of address.

15.7 Binding Effect. By acceptance of a deed or by acquiring any ownership interest in any portion of the Condominium, each Person, for himself his heirs, personal representatives, successors, transferees and assigns, binds himself, his heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, easements, rules, and regulations now or hereafter imposed by the Condominium Documents and any amendments thereof. In addition, each such Person by so doing thereby acknowledges that the Condominium Documents set forth a general scheme for the improvement and development of the real property covered thereby and hereby evidences his interest that all the restrictions, conditions, covenants, easements, rules, and regulations contained in the Condominium Documents shall run with the land and be binding on all subsequent and future Unit Owners, grantees, purchasers, assignees, and transferees thereof. Furthermore, each such Person fully understands and acknowledges that the Condominium Documents shall be mutually beneficial, prohibitive and enforceable by the various subsequent and future Unit Owners. Declarant, its successors, assigns and grantees, covenants and agrees that the Units and the membership in the Association and the other rights created by the Condominium Documents shall not be separated or separately conveyed and each shall be deemed to be conveyed or encumbered with its respective Unit even though the description in the instrument of conveyance or encumbrance may refer only to the Unit.

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

15.9 Topic Headings. The marginal or topical headings of the sections contained in this Declaration are for convenience only and do not define, limit or construe the contents of the sections or of this Declaration.

15.10 Survival of Liability. The termination of membership in the Association shall not relieve or release any such former Unit Owner or Member from any liability or obligation incurred under, or in any way connected with, the Association during the period of such ownership or membership, or impair any rights or remedies which the Association may have

against such former Owner or Member arising out of, or in any way connected with, such ownership or membership and the covenants and obligations incident thereto.

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

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

15.13 Guests and Tenants. Each Unit Owner shall, to the extent permitted by Arizona law, be responsible for compliance by his agents, tenants, guests, invitees, licensees and their respective servants, agents, and employees with the provisions of the Condominium Documents. A Unit Owner's failure to ensure compliance by such persons shall be grounds for the same action available to the Association or any other Unit Owner by reason of such Unit Owner's own noncompliance.

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

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

15.16 Declarant's Disclaimer of Representations. While Declarant has no reason to believe that any of the provisions contained in this Declaration are 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 any provisions of this Declaration. Any Unit Owner acquiring a Unit in reliance on one or more of the provisions in this Declaration shall assume all risks of the validity and enforceability thereof and by acquiring the Unit agrees to hold Declarant harmless therefrom.

15.17 No Absolute Liability. No provision of the Condominium Documents shall be interpreted or construed as imposing on Unit Owners absolute liability for damage to the Common Elements or the Units. Unit Owners shall only be responsible for damage to the Common Elements or Units caused by the Unit Owners' negligence or intentional acts, whether by act or omission.

15.18 Original Construction; Ownership. Pursuant to this Declaration, the Property is being converted from multifamily rental units to the Condominium. According to Pima County central permit no. 137532,, Lawrence Hickey & Sons, c/o Mr. Richard Hickey, 3830 E. Bellevue Tucson, AZ 85716 was the original owner, developer and contractor of the Property. Hickey &

Sons, Inc., 3830 E was the original contractor for the Property. The original construction was completed in 1984.

A search of the records of the Pima County Recorder indicates that since 1984, the following entities have had ownership interests in the Property: Lawrence Hickey & Sons, Inc., an Arizona corporation; Tierra Catalina Joint Venture, an Arizona general partnership; Hutton/ConAm Realty Investors 81, a California limited partnership; Tierra Catalina Limited Partnership, an Arizona limited partnership; and DOC Investors, LLC, a Delaware limited liability company, 1764 San Diego Ave., San Diego, CA 92110.

15.19 Additional Information. Upon written request to Developer in the manner provided in Section 15.6, Declarant will provide the name and address of any builder, developer, general contractor, subcontractors, architects and engineers who designed or made improvements to the property immediately before the first Unit was sold, and a specific description of all improvements made.

15.20 Tennis Court Covenants. The tennis court/recreational area improvements were constructed within floodway areas of Pima County. The Property is subject to that certain Declaration of Conditions, Restrictions and Covenants Running with the Land dated January 27, 1984 recorded in Docket 7208 at Page 1538, Pima County Records, and that certain Declaration of Conditions, Restrictions and Covenants Running with the Land dated June 13, 1984 recorded in Docket 7313 at Page 45, Pima County Records (collectively, the "Tennis Court Covenants"). Owners of property within Tierra Catalina Condominium and the Tierra Catalina Condominium Association are bound by and subject to the Tennis Court Covenants.

The Tennis Court Covenants contain an indemnity obligation of the owners of property within Tierra Catalina Condominium in favor of Pima County in the event of any claims, demands or damages by reason of flooding, flowage erosion, or other damage arising out of the location of the tennis court and recreation area within the floodway area as more specifically provided in the Tennis Court Covenants. In addition, the Tennis Court Covenants provide that should the tennis court and recreation area be damaged by flood flow or erosion, the tennis court shall not be rebuilt or repaired without prior approval of Pima County, and such repair or rebuilding will only be allowed if it is demonstrated that the repair and rebuilding includes a reorientation which minimizes future flood damages

IN WITNESS WHEREOF, the Declarant has executed this Declaration on the day and year first above written.

DECLARANT:

TIERRA TUCSON CONDOS, INC., a
Colorado corporation

By: 

Name: PETER A. WELLS

Title: President

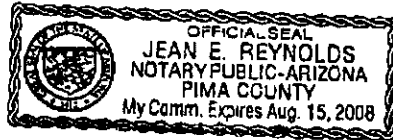
STATE OF Arizona)
) ss.
County of Pima)

The foregoing instrument was acknowledged before me this 6th day of January 2005, by Peter A. Wells, the President of Tierra Tucson Condos, Inc., a Colorado corporation, on behalf of the corporation.

Jean E. Reynolds
Notary Public

My commission expires:

Aug. 15, 2008



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LENDER CONSENT OF COMMERCIAL FEDERAL BANK,
A FEDERAL SAVINGS BANK

The undersigned lender hereby consents to the foregoing Declaration and agrees that such Declaration shall continue in effect following the foreclosure of its deed of trust or any other acquisition of the Property by the undersigned.

DATED: January 19, 2005.

COMMERCIAL FEDERAL BANK,
A FEDERAL SAVINGS BANK

By: *Kenneth I. Boggs*
Name: *Kenneth I Boggs*
Title: *Vice President*

LENDER CONSENT OF SUPERIOR INVESTMENTS XVII,
A COLORADO CORPORATION

The undersigned lender hereby consents to the foregoing Declaration and agrees that such Declaration shall continue in effect following the foreclosure of its deed of trust or any other acquisition of the Property by the undersigned.

DATED: 1-27, 2005.

SUPERIOR INVESTMENTS XVII, INC.
A COLORADO CORPORATION

By: Sharon K. Pshima
Name: Sharon K. Pshima
Title: VP

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