

WHEN RECORDED, RETURN TO:

Donald E. Dyekman
DickinsonWright PLLC
1850 N. Central Avenue
Suite 1400
Phoenix, AZ 85004

OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL
20150545214 07/28/2015 03:34
95000013-65-1-1-
ELECTRONIC RECORDING

FILE # 95000136

FIDELITY NATIONAL TITLE

CONDOMINIUM DECLARATION

FOR

ARTHAUS CONDOMINIUM

**CONDOMINIUM DECLARATION
FOR
ARTHAUS CONDOMINIUM**

TABLE OF CONTENTS

ARTICLE 1 DEFINITIONS	1
ARTICLE 2 SUBMISSION OF PROPERTY; UNIT BOUNDARIES; ALLOCATION	7
2.1 SUBMISSION OF PROPERTY	7
2.2 NAME OF CONDOMINIUM	7
2.3 NAME OF ASSOCIATION	7
2.4 IDENTIFYING NUMBERS OF UNITS	7
2.5 UNIT BOUNDARIES	7
2.6 ALLOCATION OF COMMON ELEMENT INTEREST AND COMMON EXPENSE LIABILITIES	8
2.7 ALLOCATION OF VOTES IN THE ASSOCIATION.....	9
2.8 ALLOCATION OF LIMITED COMMON ELEMENTS.....	9
2.9 ACCESS GATES	11
ARTICLE 3 EASEMENTS AND DEVELOPMENT RIGHTS	11
3.1 UTILITY EASEMENT	11
3.2 EASEMENTS FOR INGRESS AND EGRESS.....	12
3.3 UNIT OWNERS' EASEMENTS OF ENJOYMENT	12
3.4 DECLARANT'S RIGHTS AND EASEMENTS	13
3.5 EASEMENT FOR SUPPORT	14
3.6 EASEMENTS AND RIGHTS OF THE ASSOCIATION.....	15
3.7 COMMON ELEMENTS EASEMENT IN FAVOR OF UNIT OWNERS	15
3.8 UNITS AND LIMITED COMMON ELEMENTS EASEMENT IN FAVOR OF ASSOCIATION	16
3.9 EASEMENT FOR UNINTENDED ENCROACHMENTS.....	17
3.10 EASEMENTS FOR UTILITIES AND MAINTENANCE	17
ARTICLE 4 USE AND OCCUPANCY RESTRICTIONS.....	17
4.1 RESIDENTIAL USE	17
4.2 ANTENNAS.....	18
4.3 IMPROVEMENTS AND ALTERATIONS.....	18
4.4 TRASH CONTAINERS AND COLLECTION	20
4.5 MACHINERY AND EQUIPMENT	21
4.6 ANIMALS	21
4.7 DISEASES AND INSECTS.....	22
4.8 MOTOR VEHICLES	22
4.9 SIGNS.....	23
4.10 LAWFUL USE	23

4.11	NUISANCES AND OFFENSIVE ACTIVITY.....	23
4.12	WINDOW COVERINGS.....	23
4.13	PATIOS AND BALCONIES	23
4.14	LEASING RESTRICTIONS.....	24
4.16	TIME SHARING.....	24
4.17	HAZARDOUS MATERIALS	24
ARTICLE 5 MAINTENANCE AND REPAIR OF COMMON ELEMENTS AND UNITS		24
5.1	DUTIES OF THE ASSOCIATION	24
5.2	DUTIES OF UNIT OWNERS.....	25
5.3	REPAIR OR RESTORATION NECESSITATED BY OWNER.....	26
5.4	OWNER'S FAILURE TO MAINTAIN.....	26
ARTICLE 6 THE ASSOCIATION		26
6.1	RIGHTS, POWERS AND DUTIES OF THE ASSOCIATION	26
6.2	DIRECTORS AND OFFICERS	27
6.3	RULES	27
6.4	IDENTITY OF MEMBERS	27
6.5	PERSONAL LIABILITY	28
ARTICLE 7 ASSESSMENTS		28
7.1	PREPARATION OF BUDGET.	28
7.2	REGULAR ASSESSMENT	29
7.3	SPECIAL ASSESSMENTS	30
7.4	ENFORCEMENT ASSESSMENT.....	30
7.5	PURPOSES FOR WHICH ASSOCIATION'S FUNDS MAY BE USED	30
7.6	EFFECT OF NONPAYMENT OF ASSESSMENTS; REMEDIES OF THE ASSOCIATION	31
7.7	CERTIFICATE OF PAYMENT	32
7.8	NO EXEMPTION OR OFFSETS	32
7.9	INITIAL WORKING CAPITAL FUND.....	33
7.10	RESERVE CONTRIBUTION	33
7.11	TRANSFER FEE	33
7.12	RESERVES	34
ARTICLE 8 INSURANCE.....		34
8.1	SCOPE OF COVERAGE.	34
8.2	GENERAL REQUIREMENTS.....	38
8.3	PAYMENT OF PREMIUMS	38
8.4	INSURANCE OBTAINED BY UNIT OWNERS	38
8.5	PAYMENT OF INSURANCE PROCEEDS.....	38
8.6	CERTIFICATE OF INSURANCE	39
8.7	FIDELITY BONDS OR INSURANCE.....	39
ARTICLE 9 DESTRUCTION OF IMPROVEMENTS		40
9.1	AUTOMATIC RECONSTRUCTION	40

9.2	DETERMINATION NOT TO RECONSTRUCT WITHOUT TERMINATION	40
9.3	DISTRIBUTION OF INSURANCE PROCEEDS IN THE EVENT OF TERMINATION OF THE CONDOMINIUM ..	40
9.4	NEGOTIATIONS WITH INSURER.....	40
9.5	REPAIR OF UNITS	41
9.6	PRIORITY	41
ARTICLE 10 EMINENT DOMAIN.....		41
10.1	TOTAL TAKING OF A UNIT	41
10.2	PARTIAL TAKING OF A UNIT	41
10.3	TAKING OF COMMON ELEMENTS	41
10.4	TAKING OF ENTIRE CONDOMINIUM	42
10.5	PRIORITY AND POWER OF ATTORNEY.....	42
ARTICLE 11 DISPUTE RESOLUTION.....		42
11.1	DEFINED TERMS.....	42
11.2	AGREEMENT TO RESOLVE CERTAIN DISPUTES WITHOUT LITIGATION	42
11.3	NOTICE OF CLAIM.....	43
11.4	RIGHT TO ENTER, INSPECT, REPAIR AND/OR REPLACE.....	43
11.5	BINDING ARBITRATION	44
11.6	APPROVAL OF ARBITRATION OR LITIGATION.....	45
11.7	USE OF FUNDS	45
11.8	STATUTE OF LIMITATIONS	46
11.9	CONFLICTS	46
ARTICLE 12 RIGHTS OF FIRST MORTGAGEES		47
12.1	NOTIFICATION TO FIRST MORTGAGEES	47
12.2	APPROVAL REQUIRED FOR AMENDMENT TO DECLARATION, ARTICLES OR BYLAWS.....	47
12.3	PRIOR WRITTEN APPROVAL OF FIRST MORTGAGEES	48
12.4	PROHIBITION AGAINST RIGHT OF FIRST REFUSAL	48
12.6	CONDEMNATION OR INSURANCE PROCEEDS.....	48
ARTICLE 13 GENERAL PROVISIONS		49
13.1	ENFORCEMENT	49
13.2	SEVERABILITY	51
13.3	DURATION	51
13.4	TERMINATION OF CONDOMINIUM.....	51
13.5	AMENDMENT	51
13.6	NOTICES	52
13.7	GENDER	52
13.8	TOPIC HEADINGS.....	52
13.9	SURVIVAL OF LIABILITY	53
13.10	CONSTRUCTION	53
13.11	JOINT AND SEVERAL LIABILITY.....	53
13.12	GUESTS AND TENANTS	53

13.13	ATTORNEYS' FEES.....	53
13.14	NUMBER OF DAYS.....	53

**CONDOMINIUM DECLARATION
FOR
ARTHAUS CONDOMINIUM**

This Condominium Declaration for artHAUS Condominium, is made as of this 26 day of July, 2015 by artHAUS, LLC, an Arizona limited liability company ("Declarant").

INTRODUCTION

A. Declarant is the owner of fee title to that certain real property situated in the City of Phoenix, Maricopa County, Arizona, and legally described on Exhibit A attached to this Declaration (the "**Property**"). Declarant desires to submit the Property to a condominium form of ownership in accordance with the Condominium Act and this Declaration.

B. Declarant intends that all Owners, Occupants, First Mortgagees and other Persons acquiring an interest in the Condominium shall at all times enjoy the benefits of, and shall hold their interest subject to this Declaration, which is Recorded in furtherance of establishing a general plan of condominium ownership for the Condominium, and for establishing rules for the use, occupancy, management, and enjoyment thereof, all for the purpose of enhancing and protecting the value, desirability and attractiveness of the Condominium and the quality of life for the Owners, Occupants and Lessees.

**ARTICLE 1
DEFINITIONS**

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

"Affiliate of Declarant" means any Person who controls, is controlled by or is under common control with a Declarant.

"Allocated Interests" means the undivided interests in the Common Elements, the Common Expenses Liability and the votes in the Association allocated to each Unit by this Declaration.

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

"Assessments" means the Regular Assessments, Special Assessments, and Enforcement Assessments levied pursuant to Article 7.

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

"Association" means arthAUS Condominium Association, an Arizona nonprofit corporation, its successors and assigns.

"Balcony" means a portion of the Common Elements designated as a Balcony on the Plat.

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

"Building" means a building in which Units are located as shown on the Plat.

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

"City" means the City of Phoenix, Arizona.

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

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

"Common Expenses" means the actual or estimated costs or expenses incurred or to be incurred by the Association or financial liabilities of the Association including, but not limited to, the following:

(1) the cost of maintenance, management, operation, repair and replacement of the Common Elements and all other areas within the Condominium which are maintained by the Association;

(2) the cost of management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys, architects and employees;

(3) the cost of any utilities, trash pickup and disposal, landscaping, basic cable television and other services benefiting the Unit Owners and their Units to the extent such services are paid for by the Association;

(4) the cost of fire, casualty, liability, worker's compensation and other insurance maintained by the Association as provided in this Declaration;

(5) reasonable reserves as deemed appropriate by the Board or required by the Condominium Documents;

(6) the cost of bonding of the directors, officers and employees of the Association, any professional managing agent or any other person handling the funds of the Association;

(7) all real property taxes or assessments levied against the Condominium as a whole or separately against the Common Elements;

(8) amounts paid by the Association for the discharge of any lien or encumbrance levied against the Common Elements or portions thereof; and

(9) any cost incurred by the Association in furtherance of the purposes of the Association, the discharge of the obligations imposed on the Association by the Condominium Documents or the Condominium Act or the exercise by the Association of any of the powers or rights granted to the Association by the Condominium Documents or the Condominium Act.

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

"Condominium" means the condominium created by the Recording of the Plat and this Declaration.

"Condominium Act" means the Arizona Condominium Act, A.R.S. §33-1201, *et seq.*, as amended from time to time, or any successor statute which governs the creation and management of condominiums.

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

"Condominium Property" means the Parcel, together with the Buildings and all other Improvements located thereon.

"Declarant" means Arthaus, LLC, an Arizona limited liability company, and its successors and any Person to whom it may transfer any Special Declarant Right by a Recorded instrument.

"Declaration" means this Condominium Declaration for artHAUS Condominium, as amended from time to time.

"Development Rights" means any right or combination of rights to do any of the following:

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

"Enforcement Assessment" means an assessment levied pursuant to Section 7.4.

"First Mortgage" means any Mortgage on a Unit with first priority over any other mortgage or deed of trust on the same Unit.

"First Mortgagee" means the holder of any First Mortgage.

"Identifying Number" means the number or symbol shown on the Plat that identifies a particular Unit.

"Improvement" means any physical structure, fixture or facility existing or constructed, placed, erected or installed on the land included in the Condominium, including, but not limited to, buildings, private drives, paving, fences, walls, sculptures, signs, landscaping, hedges, plants, trees and shrubs of every type and kind, lighting fixtures, sprinkler and irrigation systems, parking areas and sidewalks.

"Invitee" means any person whose presence within the Condominium is approved by or is at the request of a particular Owner, Lessee or Occupant, including, without limitation, family members, guests, employees and contractors.

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

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

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

"Mortgage" means a Recorded mortgage or deed of trust encumbering a Unit.

"Mortgagee" means the holder of a Mortgage.

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

"Owner" or "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 Persons having an interest in a Unit merely as security for the performance of an obligation, or 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 subject to A.R.S. § 33-741, et seq. Unit Owner shall not include a purchaser under a purchase contract and receipt, escrow instructions or similar executory contracts which are intended to control the rights and obligations of the parties to executory contracts 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. § 33-801, et seq., the Trustor shall be deemed to be the Unit Owner.

"Parcel" means the land described on Exhibit A attached hereto, together with all Improvements situated thereon and all easements and rights appurtenant thereto.

"Parking Space" means a portion of the Common Elements intended for the parking of a single motor vehicle and identified on the Plat as a parking space.

"Patio" means a portion of the Common Elements labeled as a "Patio" on the Plat.

"Period of Declarant Control" means the time period commencing on the date this Declaration is Recorded and ending on the earlier of: (1) ~~one hundred twenty (120)~~ninety (90) days after the date by which seventy-five percent (75%) of the Units have been conveyed to Purchasers; or (2) four (4) years after all Declarants have ceased to offer Units for sale in the ordinary course of business.

"Person" means a natural person, corporation, limited liability company, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.

"Plat" means the condominium plat for arthAUS condominium, recorded in Book 1236, Map 13, in the records of the County Recorder of Maricopa County, Arizona, and any amendments, supplements or corrections thereto.

"Purchaser" means any Person (other than the Declarant) who becomes a Unit Owner, except for (1) a Person who purchases a Unit and then leases it to the Declarant for use in connection with the sale of other Units, (2) a Person who, in addition to purchasing a Unit, is assigned any Special Declarant Right, or (3) an Affiliate of Declarant.

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

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

"Rules" means the rules and regulations adopted by the Board of Directors, as amended from time to time.

"Special Declarant Rights" means any right or combination of rights to do any of the following:

- (1) Construct Improvements provided for in this Declaration or shown on the Plat;
- (2) Exercise any Development Right;
- (3) Maintain sales offices, management offices, models, and signs advertising the Condominium;
- (4) Use easements through the Common Elements for the purpose of making Improvements within the Condominium;
- (5) Appoint or remove any officer of the Association or any member of the Board of Directors during the Period of Declarant Control; or
- (6) Exercise the rights described in Section 3.4.

"Unit" means a portion of the Condominium designated for independent ownership or occupancy. The boundaries of each Unit are described in Section 2.5 and are shown on the Plat.

ARTICLE 2
SUBMISSION OF PROPERTY; UNIT BOUNDARIES; ALLOCATION
OF PERCENTAGE INTERESTS, VOTES AND
COMMON EXPENSE LIABILITIES

2.1 Submission of Property. The Declarant hereby submits the Condominium Property to the provisions of the Condominium Act for the purpose of creating a condominium in accordance with the provisions of the Condominium Act and hereby declares that the Condominium Property shall be held and conveyed subject to the terms, covenants, conditions and restrictions set forth in this Declaration. The Declarant designates each Unit for separate ownership or occupancy. Declarant further declares that all of the easements, restrictions, conditions and covenants in this Declaration shall run with the Condominium Property and shall be binding upon and inure to the benefit of the Declarant and all Unit Owners, Lessees and Occupants and all other Persons having or acquiring any right, title or interest in the Condominium Property or any part thereof, their heirs, successors, successors in title and assigns. Each Person who acquires any right, title or interest in the Condominium Property, or any part thereof, agrees to abide by all of the provisions of the Condominium Documents. This Declaration shall be binding upon and shall be for the benefit of and enforceable by the Association. Declarant makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of the Condominium Documents, or as to the compliance of any of the provisions of the Condominium Documents with public laws, ordinances and regulations applicable thereto.

2.2 Name of Condominium. The name of the Condominium created by this Declaration is arTHAUS Condominium.

2.3 Name of Association. The name of the Association is arTHAUS Condominium Association.

2.4 Identifying Numbers of Units. The Identifying Numbers of the Units are shown on the Plat.

2.5 Unit Boundaries.

(a) The boundaries of each Unit shall be as follows:

(1) The vertical (perimetric or lateral) boundaries are the interior unfinished surfaces of the perimeter walls, doors and windows of the Unit;

(2) The lower horizontal boundary is the unfinished floor of the Unit; and

- (3) The upper horizontal boundary is the unfinished ceiling of the Unit.

The upper and lower horizontal boundaries of the Units extend to their intersection with the Unit's vertical boundaries, and the vertical boundaries of the Unit extend to their intersections with each other and to their intersection with the upper and lower horizontal boundaries of the Unit. In the case of Units which are on two or more levels directly connected by an interior stairway, the upper and lower boundaries refer to the upper and lower boundaries of each level of the Unit. The concrete slab or wood or metal joists dividing the two levels are part of the Common Elements.

(b) Each Unit shall include openings and outlets of all utility installations in the Unit. All lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the finished surfaces of the walls, floor or ceiling are part of the Unit, and all other portions of the walls, floor and ceiling are part of the Common Elements. All spaces, interior partitions and other fixtures and improvements (including, but not limited to, chutes, flues, wires, conduits, heating and air conditioning unit, hot water heaters and gas, cable television, water and electric pipes, lines or meters) within the boundaries of a Unit and which serve only the Unit are part of the Unit, and any such fixtures or improvements located within the boundaries of a Unit but which serve more than one Unit are part of the Common Elements.

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

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

(e) In the event of any inconsistency or conflict between the provisions of Section 2.5(a) and the Plat in regard to the description of the boundaries of the Unit, this Section shall control.

2.6 Allocation of Common Element Interest and Common Expense Liabilities. Each Unit is allocated a percentage of undivided interests in the Common Elements and in the Common Expenses calculated by dividing the square footage of each Unit by the total square footage of all Units in the Condominium. For purposes of calculating the percentage of undivided interest, the square footage of each Unit shall be the square footage of the Unit as

shown on the Plat regardless of any variation between that square footage and the square footage of the Unit as actually constructed. The square footage of each Unit and the percentage of undivided interests of each Unit are set forth on Exhibit B attached to this Declaration. The percentage of interest of each Unit in the Common Elements shall be an undivided interest, and the Common Elements shall be owned by the Unit Owners as tenants in common in accordance with their respective percentages of interest. The ownership of each Unit shall not be conveyed separate from the percentage of interest in the Common Elements allocated to the Unit. The undivided percentage of interest in the Common Elements allocated to any Unit shall always be deemed conveyed or encumbered with any conveyance or encumbrance of that Unit, even though the legal description in the instrument conveying or encumbering the Unit may refer only to the fee title to the Unit. Except as permitted by the Condominium Act, the Common Elements are not subject to partition, and any purported conveyance, encumbrance, judicial sale or other voluntary or involuntary transfer of an undivided interest in the Common Elements made without the Unit to which that interest is allocated is void.

2.7 Allocation of Votes in the Association. The total votes in the Association shall be equal to the number of Units subject to this Declaration. The votes in the Association shall be allocated equally among all Units with each Unit having one (1) vote.

2.8 Allocation of Limited Common Elements.

(a) The following portions of the Common Elements are Limited Common Elements allocated to the exclusive use of one or more, but less than all, of the Units as follows:

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

(2) If a chute, flue, pipe, duct, wire, conduit or other fixture (including, but not limited to, heating and air conditioning units and related equipment, solar energy systems or devices and natural gas, cable television, water and electric pipes, lines or meters) lies partially within and partially outside the designated boundaries of a Unit, the portion outside the boundaries of the Unit which serve only the Unit is a Limited Common Element allocated solely to the Unit, the use of which is limited to the Unit served;

(3) All doors and windows in the boundary walls of a Unit are Limited Common Elements allocated to the Unit. The glazing, sashes, frames, sills, thresholds, hardware, flashing and other components of the doors and windows are part of the doors and windows allocated as Limited Common Elements;

(4) Each Unit is allocated the Patio and/or Balcony adjoining the Unit. The boundaries of each Patio shall be as follows: (1) the lower boundary shall be the unfinished concrete floor of the Patio; (2) the upper boundary shall be a horizontal plane having an elevation equal to the elevation of the finished ceiling of the Unit to which the Patio is allocated; and (3) the vertical boundaries shall be the vertical planes corresponding to the exterior wall of the Building in which the Unit is located and interior unfinished surfaces of the fence or wall enclosing the Patio. Each Balcony is allocated to the Unit adjoining the Balcony as shown on the Plat. The boundaries of each Balcony shall be as follows: (1) the lower boundary shall be the unfinished floor of the Balcony; (2) the upper boundary shall be a horizontal plane having an elevation equal to the elevation of the finished ceiling of the Unit to which the Balcony is allocated; and (3) the vertical boundaries shall be vertical planes corresponding to the exterior wall of the Building and the inside surface of the wall or railing of the Balcony extended to the upper and lower boundaries; and

(5) Each Unit is allocated the Parking Space identified listed opposite the Identifying Number of the Unit on Exhibit C attached to this Declaration.

(b) Each Owner shall have the right to the exclusive use and possession of the Limited Common Elements allocated to his Unit, subject to the rights granted to the Declarant or the Association by the Condominium Documents. All Limited Common Elements must be used in accordance with the Declaration and the Rules.

(c) A Limited Common Element may be reallocated by an amendment to this Declaration. The amendment shall be executed by the Owners between or among whose Units the allocation is made, shall state the manner in which the Limited Common Elements are to be reallocated and, before recording the amendment, shall be submitted to the Board of Directors. Unless the Board of Directors determines within thirty (30) days that the proposed amendment is unreasonable, which determination shall be in writing and specifically state the reasons for disapproval, the Association shall execute its approval and record the amendment.

(d) The Declarant shall have the right to allocate as a Limited Common Element any part of the Common Elements (including, but not limited to, a Parking Space)

which has not previously been allocated as a Limited Common Element. Any such allocation shall be made by an amendment to this Declaration executed by the Declarant. The Association and all Owners acknowledge and agree the Declarant shall have the right to charge a fee for making an allocation of a Limited Common Element and that all such fees shall be the sole property of the Declarant and neither the Association nor any Owner shall have any right or claim to such fees. The rights granted to the Declarant by this Section 2.8(d) shall expire on the date that is one (1) year after the date on which the Declarant conveys the last Unit to a Purchaser.

2.9 Access Gates. One or more electronically activated access gates will be installed to limit access and provide more privacy for the Unit Owners and the other Occupants and Lessees of the Units. The access gate shall be part of the Common Elements and shall be maintained, repaired and replaced by the Association. Each Owner, Lessee and Occupant acknowledges and agrees that the access gate does not guarantee the safety or security of the Owners, Lessees or Occupants or their guests or guarantee that no unauthorized person will gain access to the Condominium. Each Owner, Lessee and Occupant, and their families, guests and invitees, acknowledge that the access gate may restrict or delay entry into, or access within, certain areas by police, fire department, ambulances and other emergency vehicles or personnel and agree to assume the risk that the access gate will restrict or delay entry into, or access within such areas by police, fire department, ambulances or other emergency vehicles or personnel. Neither the Declarant, the Association nor any director, officer, agent or employee of the Declarant or the Association shall be liable to Owner, Lessee or Occupant or their families, guests or invitees for any claims or damages resulting, directly or indirectly, from the existence, operation or maintenance of the access gate.

ARTICLE 3

EASEMENTS AND DEVELOPMENT RIGHTS

3.1 Utility Easement. There is hereby granted and created an easement upon, across, over and under the Common Elements and the Units for the installation, replacement, repair or maintenance of utility lines and systems, including, but not limited to, natural gas, water, sewer, telephone and electric wires, pipes, lines, conduit and fixtures, heating and air conditioning equipment, lines and fixtures, chutes, and cable television or other communication lines and systems ("Utility Systems"). By virtue of this easement, it shall be expressly permissible for the providing utility or service company, the Association or the Declarant to install and maintain, repair and replace Utility Systems on the Common Elements and in the Units to serve the Common Elements or to serve one or more other Units, but no Utility Systems may be installed or located on the Common Elements or the Units except as initially designed and constructed by the Declarant or as approved by the Declarant so long as the Declarant owns any Unit or thereafter, by the Board of Directors. The maintenance, repair or replacement of Utility Systems located within a Unit that serve the Common Elements or one or more other Units by the Declarant, the Association or a Unit Owner shall be done so as to minimize any inconvenience to the Owner and Occupants of the Unit in which such Utility Systems are located, and except in the case of an emergency, neither the Association, the

Declarant nor any Unit Owner shall enter a Unit for the purpose of the maintenance, repair or replacement of Utility Systems without at least 48 hours prior written notice to the Unit Owner. The easements in this Section shall in no way affect any other Recorded easements on the Common Elements.

3.2 Easements for Ingress and Egress. There is hereby granted and created easements for ingress and egress for pedestrian traffic over, through and across sidewalks, paths, walks, and lanes that from time to time may exist upon the Common Elements. There is also granted and created an easement for ingress and egress for pedestrian and vehicular traffic over, through and across such driveways as from time to time may be paved and intended for such purposes, except that such easements shall not extend to any Limited Common Elements. Such easements shall run in favor of and be for the benefit of the Owners, Lessees, Occupants and Invitees.

3.3 Unit Owners' Easements of Enjoyment.

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

(1) The right of the Association to adopt reasonable rules and regulations governing the use of the Common Elements;

(2) The right of the Association to convey the Common Elements or subject the Common Elements to a mortgage, deed of trust, or other security interest, if such action is approved by Owners entitled to cast at least eighty percent (80%) of the votes in the Association. Any such action by the Association shall be done in the manner and subject to the limitations set forth in the Condominium Act;

(3) The right of the Association to grant non-exclusive easements over all or a portion of the Common Elements if the Board of Directors determines that the granting of the easement is necessary for the development or maintenance of the Common Elements or beneficial to the Owners, Lessees and Occupants;

(4) All rights and easements set forth in this Declaration including, but not limited to, the rights and easements granted to the Declarant by Section 3.4; and

(5) The right of the Association to suspend the right of an Owner, Lessee or Occupant to use the Common Elements for

any period during which the Owner, Lessee or Occupant is in violation of any provision of the Condominium Documents.

(b) The easement of enjoyment in and to the Common Elements shall not be conveyed, transferred, alienated or encumbered separately 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.

(c) Notwithstanding the provisions of this Section 3.3, no Owner, Lessee or Occupant of a Unit or their guests or invitees shall have the right to use any Limited Common Elements not allocated to the exclusive use of their Unit.

3.4 Declarants' Rights and Easements.

(a) So long as the Declarant is marketing Units for sale or lease in the Condominium Declarant and its employees and agents shall have the right and an exclusive easement to construct, locate, relocate and maintain sales and/or leasing offices, construction trailers and storage areas and related facilities on the Common Elements. This shall include the right to enclose and lock portions of the Common Elements upon which these rights are being exercised. Declarant reserves the right to maintain model Units, management offices, storage areas and sales and leasing offices in any Units owned or leased by Declarant and on any portion of the Common Elements in such number, of such size and in such locations as Declarant deems appropriate. Declarant and its employees and agents shall have the right and an easement to install or post advertising, marketing or directional signs, other signs, flags, awnings, lights and banners on the Common Elements in connection with its marketing of Units for sale or lease or to host events on the Common Elements designed to attract prospective tenants and/or purchasers to the Condominium.

(b) The Declarant and its employees and agents shall have the right and an easement to place or install signs or banners on the outside of the Buildings including, but not limited to, signs advertising events or products or services, and the Association and all Owners acknowledge and agree the Declarant shall have the right to charge a fee for the placement or installation of such signs and that all such fees shall be the sole property of the Declarant and neither the Association nor any Owner shall have any right or claim to such fees. The rights granted to the Declarant by this Section 3.4(b) shall expire on the date on which the Declarant conveys the last Unit to a Purchaser.

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

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

(e) The Declarant and its employees, agents, contractors and subcontractors shall have an easement through the Common Elements and the Units for the purpose of assessing, testing (including invasive testing), inspecting and evaluating any potential construction defect or need for maintenance on the Condominium, and completing any renovations, warranty work or modifications to the Common Elements or Units which Declarant deems necessary or desirable.

(f) The Declarant and its employees, agents, contractors and subcontractors shall have the right and an easement on, over, and through the Common Elements as may be reasonably necessary for the purpose of performing the Declarant's obligations under the Condominium Act and the Condominium Documents and for the purpose of exercising Special Declarant Rights whether arising under the Condominium Act or reserved in this Declaration. The rights granted to or reserved by the Declarant in this Section 3.4 are in addition to any rights granted to or reserved by the Declarant elsewhere in the Condominium Documents.

(g) To the extent not expressly reserved by or granted to Declarant by other provisions of this Declaration, Declarant reserves all Development Rights and Special Declarant Rights. Except as expressly set forth in this Declaration, there is no time limit within which any Development Right or Special Declarant Right must be exercised or will lapse, and there are no conditions or limitations on the exercise of any Development Right or Special Declarant Right.

(h) In the event of any conflict or inconsistency between this Section 3.4 and any other provision of the Condominium Documents, this Section 3.4 shall control and prevail over such other provisions. The rights of the Declarant set forth in this Section 3.4 shall be enforceable by injunction, by any other remedy available at law or in equity (including, but not limited to, the right to sue for damages) and/or by any means provided in this Declaration.

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

3.6 Easements and Rights of the Association for Pest Control. Each Unit shall be subject to an easement in favor of the Association and the agents, employees and contractors of the Association for the purpose of performing such pest control activities as the Association may deem necessary to control or prevent the infestation of the Condominium by insects, rodents or other pests or to eradicate insects, rodents or other pests from the Condominium. The Association may cause the temporary removal of any Owner, Lessee or Occupant for such periods and at such times as necessary for prompt, effective treatment of wood-destroying pests or organisms. The cost of the temporary relocation is to be borne by the Owner of the Unit affected. Not less than seven (7) days nor more than thirty (30) days notice of the need to temporarily vacate shall be given to the Owners, Lessees and Occupants of the Units affected. The notice shall state: (1) the reason for the temporary relocation; (2) the date and time of the beginning of the treatment; (3) the anticipated date and time of termination of treatment; and (4) that the Owners, Lessees or Occupants will be responsible for their own accommodations during the temporary relocation.

3.7 Common Elements Easement in Favor of Unit Owners.

(a) The Common Elements shall be subject to the following easements in favor of the Units benefited:

(1) For the installation, repair, maintenance, use, removal or replacement of pipes, ducts, heating and air conditioning systems, electrical, telephone, cable television 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.

(2) For the installation, repair, maintenance, use, removal or replacement of lighting fixtures, electrical receptacles, panel boards and other electrical installations which are a part of or serve any Unit but which encroach into a part of a Common Element; provided that the installation, repair, maintenance, use, removal or replacement of any such item does not unreasonably interfere with the common use of any part of the Common Elements, adversely affect either the thermal or acoustical character of the Building or impair or structurally weaken the Building.

(3) 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 5.2.

(b) The exercise of the easements created by Section 3.7(a) shall be subject to the other provisions of this Declaration and the Rules. Notwithstanding any other provision of this Declaration to the contrary, no Owner, Lessee or Occupant or any other Person (except for the Association) shall penetrate, alter or damage any part of the Common Elements. Penetrating the perimeter building walls or any party wall between Units could damage the soundproofing of the Units, cause water intrusion into the Common Elements or the Units or damage the insulation in such walls.

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

(1) For inspection 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 and in order to verify that the provisions of the Condominium Documents are being complied with by the Unit Owners, Lessees and Occupants of the Unit;

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

(3) For correction of conditions (including, without limitation, broken or leaking water pipes, broken hot water heaters or obstructed sewer lines) in one or more Units or Limited Common Elements which have damaged or if left uncorrected could damage, the Common Elements, the Limited Common Elements or other Units; and

(4) For the purpose of enabling the Association, the Board of Directors or any other committees appointed by the Board of Directors to exercise and discharge their respective rights, powers and duties under the Condominium Documents.

Except in case of emergency, the Association shall only enter a Unit at reasonable times and upon reasonable notice to the Unit Owner or, if the Unit is leased, to the Lessee. In the event of an emergency, the Association may enter a Unit without prior notice to the Unit Owner or the Lessee, but promptly following the Association's entry into the Unit, the Association shall notify the Unit Owner or the Lessee of the nature of the emergency condition which required entry without notice. The Association shall be responsible for the repair of any damage to a Unit or the Common Elements caused by the Association's exercise of its rights under this Section.

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

3.10 Easements for Utilities and Maintenance. On behalf of all Owners, the Association may create and dedicate easements over the Common Elements for the following purposes: (1) for the benefit of all service providers for the installation, repair, replacement and maintenance of sanitary sewers, water, electric, gas and telephone lines and facilities, heating and air-conditioning facilities, cable, telephone or master television antenna or satellite lines or cables, and drainage facilities, and for ingress to and egress from the Condominium in connection therewith, and (2) for ingress to and egress from the Condominium for the benefit of all municipal, state and federal vehicles, including, without limitation, all emergency and service type vehicles as may be required from time to time to service the Condominium and the Owners, Lessees and Occupants including, without limitation, for U.S. Mail distribution and collection and private or municipal refuse collection, without the joinder or consent of any First Mortgagee or other Person.

ARTICLE 4

USE AND OCCUPANCY RESTRICTIONS

4.1 Units. All Units shall be used, improved and devoted exclusively to residential use. No trade or business may be conducted on any Unit or in or from any Unit, except that an Owner, Lessee or Occupant of a Unit may conduct a business activity within a Unit so long as: (1) the existence or operation of the business activity is not apparent or detectable by sight, sound, vibration or smell from outside the Unit; (2) the business activity conforms to all applicable zoning ordinances or requirements for the Condominium; (3) the business activity is conducted solely in the Unit; (4) the business activity does not involve persons coming to the Unit or the door-to-door solicitation of Owners, Lessees or Occupants; and (5) the business activity is consistent with the residential character of the Condominium and does not constitute a nuisance or a hazardous or offensive use or threaten the security or safety of other Owners, Lessees or Occupants, as may be determined from time to time in the sole discretion of the Board of Directors. The terms "business" and "trade" as used in this Section shall be construed to have ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether: (1) such activity is engaged in full or part time; (2) such activity is intended or does generate a profit; or (3) a license is required for such activity. The leasing of a Unit by the Owner thereof shall not be considered a trade or business within the meaning of this Section.

4.2 Antennas. Except for antennas, satellite dishes and other over-the-air receiving devices covered by the FCC rules governing Over-the-Air Reception Devices; Television Broadcast Service and Multi-channel Multipoint Distribution Service (the "FCC Rule"), no antenna for the transmission or reception of television or radio signals or for access to the internet shall be erected in a Unit or in any Limited Common Element allocated to the Unit. Any antenna, satellite dish or other receiving device covered by the FCC Rule may be installed in a Unit or in a Limited Common Element allocated to the Unit provided the antenna, satellite dish or receiving device is placed inside the Unit or in the portion of a Limited Common Element which is the least visible from the outside of the Building and does not interfere with the viewer's ability to install, maintain or use the antenna, satellite dish or receiving device. Any satellite dish or antenna installed on a Patio must be placed on a tripod, and the satellite dish or antenna shall not extend above the wall or railing of the Patio. No wire for the satellite dish or antenna shall be run through or placed on the perimeter wall of the Building. The Board of Directors shall have the right to adopt rules and regulations with respect to the installation and placement of antennas, satellite dishes and other receiving devices; provided, however, that the Board of Directors shall not impose or enforce any rule or regulation which is inconsistent with or prohibited by the FCC Rule. The Association may designate certain areas of the Common Elements which are available for the installation of satellite dishes by the Owners or Lessees to provide satellite television service to a Unit. The installation of satellite dishes in such areas shall be subject to such rules and regulations as may be adopted by the Board of Directors.

4.3 Improvements and Alterations.

(a) No Owner, Lessee, Occupant or other Person shall construct or install any Improvements on the Common Elements or alter, modify or remove any Common Elements without the prior written approval of the Board of Directors.

(b) Any Unit Owner may make any improvements or alterations to the Owner's Unit that do not impair the structural integrity or mechanical systems or lessen the support of any portion of the Condominium. Except as permitted by the first sentence of this Subsection, no Owner, Lessee or Occupant shall make any additions, alterations or improvements within a Unit, unless prior to the commencement of each addition, alteration or improvement, the Owner, Lessee or Occupant receives the prior written approval of the Board of Directors. The Board of Directors may require that an architect or engineer, licensed in Arizona, certifies that such addition, alteration or improvement will not impair the structural integrity or the mechanical systems of the Building or lessen the support of any portion of the Condominium. Notwithstanding any provision of this Section 4.3, no approval of the Board of Directors shall be required for any addition, alteration or improvement made by or at the direction of the Declarant or for any addition, alteration or improvement approved in writing by the Declarant. Except for additions, alterations or improvements to the Units made by or on behalf of the Declarant, all additions, alterations or improvements to a Unit must be performed by contractors licensed by the Arizona Registrar of Contractors. All construction, whether or not such construction must be approved by the Board of Directors, shall be subject to reasonable rules, regulations or guidelines established from time to time by the Board of

Directors. Any Owner making any additions, alterations or improvements within his Unit shall be responsible for any damage to other Units and to the Common Elements which results from any such alterations, additions or improvements.

(c) Notwithstanding Section 4.3(b), no addition, alteration or improvement within a Unit, whether structural or not, which would be visible from the exterior of a Building or from the exterior of any Limited Common Element shall be made without the prior written approval of the Board of Directors, which approval shall only be granted if the Board of Directors finds that the proposed addition, alteration or improvement is aesthetically pleasing and in harmony with the surrounding Improvements.

(d) No Owner, Lessee or Occupant shall overload the electric wiring in the Building, or operate machines, appliances, accessories or equipment in such manner as to cause, in the judgment of the Board of Directors, an unreasonable disturbance to others or connect any machines, appliances, accessories or equipment to the heating or plumbing system, without the prior consent of the Board of Directors, acting in accord with the direction of the Board of Directors. No Owner, Lessee or Occupant shall overload the floors of any Unit. No water bed or aquariums holding in excess of thirty (30) gallons of water may be installed or kept in any Unit or any Limited Common Element.

(e) The Board of Directors may condition the approval of any proposed additions, alterations or improvements to a Unit or the Common Elements in any manner, including, without limitation: (1) retaining approval rights of the contractor to perform the work; (2) restricting the time during which such work may be performed or the length of time during which the work must be completed; (3) requiring the placement of a security deposit in an amount determined by the Board of Directors in an account controlled by the Board of Directors; (4) requiring the provision to the Board of Directors of plans and specifications prepared and sealed by a professional engineer or architect duly licensed by the State of Arizona; and (5) requiring that the Owner requesting the change obtain, prior to commencing any work, and maintain until completion of such work, comprehensive general liability insurance in such amounts as may be required by the Board of Directors. The Owner shall be obligated to designate Declarant, the Association, the Board of Directors and any other Person designated by the Board of Directors as additional insureds under the policies.

(f) The Board of Directors may establish a non-refundable review fee that shall be paid by each Owner, Lessee or Occupant who requests approval of any proposed additions, alterations or improvements to a Unit or the Common Elements. Such review fee shall be payable to the Association at the time the application for approval is submitted to the Board of Directors. The Owner, Lessee or Occupant also shall be responsible for all costs incurred by the Board of Directors in connection with the Board of Director's review of proposed changes to a Unit or the Common Elements, including, without limitation, all costs of architects, engineers and other professionals which may be retained by the Board of Directors to assist in their review. Any such costs not timely paid shall be deemed an Individual Expense Assessment against the Owner of the applicable Unit.

(g) Proposed additions, alterations and improvements to a Unit or the Common Elements shall be made in compliance with all laws, rules, ordinances and regulations of all governmental authorities having jurisdiction, may only be made once all required permits have been obtained and must be in compliance with any conditions imposed by the Association with respect to design, structural integrity, sound attenuation, water-proofing, construction details, lien protection or otherwise. The Owner of a Unit to which additions, alterations or improvements are made shall defend, indemnify and hold harmless the Association and its directors, officers, employees and agents, the Declarant and all other Owners, Lessees or Occupants for, from and against any and all liability, loss or damage resulting from such additions, alterations or improvements and shall be solely responsible for the maintenance, repair and insurance of such additions, alterations and improvements from and after their date of installation or construction as may be required by the Association.

(h) In addition to all other remedies provided in the Condominium Documents or at law or in equity, the Association shall have the right to (1) stop any work that is not in compliance with the terms contained in this Section 4.3 or any rules of the Association governing additions, alterations or improvements to the Units or the Common Elements, (2) deny access to contractors performing such work, and (3) levy reasonable monetary penalties against the Owner or Occupant who caused such work to be performed. The Association's rights of review and approval of plans and other submissions under this Declaration are intended solely for the benefit of the Association. Neither Declarant, the Association nor any of the officers, directors, employees, agents, contractors, consultants or attorneys shall be liable to any Owner or any other Person by reason of mistake in judgment, failure to point out or correct deficiencies in any plans or other submissions, negligence, or any other misfeasance, malfeasance or nonfeasance arising out of or in connection with the approval or disapproval of any plans or submissions. Without limiting the generality of the foregoing, the Association shall not be responsible for reviewing, nor shall its review of any plans be deemed approval of, any plans from the standpoint of structural safety, soundness, workmanship, materials, usefulness, conformity with building or other codes or industry standards, or compliance with governmental requirements. Further, each Owner agrees to indemnify and hold Declarant, the Association and their respective directors, officers, managers, agents and employees harmless from and against any and all costs, claims (whether rightfully or wrongfully asserted), damages, expenses or liabilities whatsoever (including, without limitation, reasonable attorneys' fees and court costs at all trial and appellate levels), arising out of any review, approval or disapproval by the Board of Directors of plans submitted by the Owner or any Lessee or Occupant of the Owner's Unit.

4.4 Trash Containers and Collection. No garbage or trash or recyclables shall be placed or kept on the Common Elements except in the trash and recyclable containers located in the trash room which is part of the Common Elements. No incinerators shall be kept or maintained in any Unit. No rubbish, trash or garbage shall be kept on any Patio or Balcony. The Rules may contain provisions governing the disposal of trash, garbage and rubbish in the Condominium.

4.5 Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated or maintained upon the Condominium except such machinery or equipment as is usual and customary in connection with the uses permitted by this Declaration, and except that which Declarant or the Association may require for the construction, operation and maintenance of the Common Elements.

4.6 Animals.

(a) Except as expressly permitted by this Section no animals, birds, reptiles, fish, fowl, poultry or livestock shall be maintained or kept in any Unit or on any other portion of the Condominium. For purposes of this Section, a "**Permitted Pet**" shall mean a dog, cat, fish or small bird of a variety commonly kept as a household pet. Permitted Pets may be kept in a Unit if they are kept, bred or raised solely as domestic pets and not for commercial purposes. Not more than two dogs or two cats or one dog and one cat shall be kept or maintained in a Unit.

(b) No Permitted Pet shall be allowed to make an unreasonable amount of noise, cause an odor which is detectable outside the Unit, or be an annoyance to a person of ordinary sensibilities. No Permitted Pet shall be allowed to run loose on any part of the Common Elements. All dogs shall be kept on a leash when outside a Unit and all dogs shall be directly under the control of the Owner, Lessee or Occupant at all times. Any Person bringing a Permitted Pet onto the Common Elements shall immediately remove any feces or urine deposited on the Common Elements by the Permitted Pet, and such Person shall be liable to the Association for the cost of any cleaning of the Common Elements or the repair of any damage to the Common Elements caused or required by the Permitted Pet. Any Unit where a Permitted Pet is kept or maintained shall at all times be kept in a neat and clean condition. No structure for the care, housing, confinement, or training of any Permitted Pet shall be maintained on any portion of the Common Elements or in any Unit so as to be visible from the exterior of the Building or any other Unit. Each Owner, Lessee, Occupant or other Person bringing or keeping a Permitted Pet within the Condominium shall be absolutely liable to other Owners, Lessees, and Occupants and their invitees for any damage to Persons or Property caused by such Permitted Pet.

(c) Upon the written request of any Owner, the Board of Directors shall determine whether, for the purposes of this Section, a Permitted Pet makes an unreasonable amount of noise, causes an odor which is detectable outside the Unit or is an annoyance to a person of ordinary sensibilities. Notwithstanding any other provision of this Section, no Permitted Pet which the Board of Directors determines, in its sole discretion, is of a breed which has a propensity to attack persons or other animals or otherwise constitutes a threat to the safety of persons or other animals shall be kept in a Unit or on any other portion of the Condominium. Any Permitted Pet which has bitten or attacked a person or other animal or any Permitted Pet which the Board of Directors, in its sole discretion, determines has a propensity to attack persons or other animals or otherwise constitutes a threat to the safety of persons or other animals in the Property or which because of incessant barking or other behavior

constitutes an unreasonable annoyance or nuisance to Owners, Lessees or Occupants or their guests shall be removed from the Condominium by the owner of the Permitted Pet within five (5) days after written demand for removal of the Permitted Pet is given to the owner by the Board of Directors. Each Owner and Occupant acknowledges and agrees that the Association must report any instance of a Permitted Pet attacking or biting any person or other animal to the appropriate governmental agencies.

4.7 Diseases and Insects. No Unit Owner shall permit any condition to exist upon the Condominium, which could induce, breed or harbor infectious plant or animal diseases or noxious insects. Each Unit Owner shall perform such pest control activities in his Unit as may be necessary to prevent insects, rodents and other pests from being present in the Unit.

4.8 Motor Vehicles.

(a) As used in this Section, the term "Authorized Vehicles" means motorized land vehicles designed and used primarily for non-commercial passenger transport, such as automobiles, sport utility vehicles, passenger vans designed to accommodate ten (10) or fewer people, two-wheel motorcycles and pickup trucks having a manufacturers rating or payload capacity of one ton or less, all of which shall not exceed seven (7) feet in height.

(b) Authorized Vehicles may be parked only in a Parking Space. No Authorized Vehicle of an Owner, Lessee or Occupant of a Unit shall be parked in a Parking Space other than the Parking Space allocated to such Unit as a Limited Common Element. No vehicles of any kind other than Authorized Vehicles shall be parked, stored or kept on any part of the Common Elements.

(c) No Authorized Vehicle shall be parked in a Parking Space if such Authorized Vehicle does not completely and clearly fit within the marked boundaries of the Parking Space. No maintenance, repair, restoration or construction of any Authorized Vehicle should be conducted in a Parking Space or any other part of the Common Elements.

(d) No mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, recreational vehicle, boat, boat trailer, or other similar equipment or vehicle may be parked, kept, maintained, constructed, reconstructed or repaired on any part of the Condominium.

(f) The Board of Directors shall have the right to have any automobile, sport utility vehicle, van, truck, recreational vehicle, motorcycle, motorbike, or other motor vehicle parked, kept, maintained, constructed, reconstructed or repaired in violation of the Condominium Documents towed away at the sole cost and expense of the owner of the vehicle. Any expense incurred by the Association in connection with the towing of any vehicle shall be paid to the Association upon demand by the owner of the vehicle.

4.9 Signs. Except for signs which under applicable law the Association may not prohibit, no signs (including, but not limited to, "For Sale" or "For Rent" signs) shall be permitted on the exterior of a Building or in the interior of a Unit if the signs would be visible from the exterior of the Building, or on any other portion of the Condominium without the prior written approval of the Board of Directors.

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

4.11 Nuisances and Offensive Activity. No nuisance shall be permitted to exist or operate upon the Condominium, and no activity shall be conducted upon the Condominium which is offensive or detrimental to any portion of the Condominium or to any Owner, Lessee or Occupant or is an annoyance to any Owner, Lessee or Occupant or which interferes with the quiet enjoyment of a Unit by the Owner, Lessee or Occupant thereof, including any criminal or illegal activity by any Owner, Lessee or Occupant or their guests. Except as part of a security system, no exterior speakers, horns, whistles, bells or other sound devices shall be located, used or placed on the Condominium without the prior written approval of the Board of Directors.

4.12 Window Coverings. No reflective materials, including, but without limitation, aluminum foil, reflective screens or glass, mirrors or similar items, shall be installed or placed upon the outside or inside of any windows of a Unit without the prior written approval of the Board of Directors. No enclosures, drapes, blinds, shades, screens or other items affecting the exterior appearance of a Unit shall be constructed or installed without the prior written consent of the Board of Directors. No tinting or film may be installed on any windows of a Unit without the prior written approval of the Board of Directors.

4.13 Patios and Balconies. No furniture, furnishings, umbrellas, pots, plants or other items shall be placed, kept or maintained on any Patio or Balcony unless expressly permitted by the Rules or approved in writing by the Board of Directors. No Patio or Balcony shall be used as a storage area for items or materials that are not customarily intended for use on a Patio or Balcony, such as the use of a Patio or Balcony to store bicycles or exercise equipment. No items may be hung from any Patio Balcony or the ceiling, wall or railing enclosing the Patio or Balcony, and no items shall be affixed to any wall or railing enclosing the Patio or Balcony. The Rules may govern and regulate the nature and extent of plants, shrubs, flowers and other landscaping that may be installed or kept in Patios or Balconies. Without the prior written approval of the Board of Directors, no Owner, Lessee or Occupant shall remove or alter any flooring installed in a Patio or Balcony as part of the original construction of the Patio or Balcony. No spas or hot tubs shall be installed or kept on any Patio or Balcony. No barbecue grill or other open flame device and no fixed or portable Lp-gas burners or barbecues shall be operated or used on any Patio or Balcony.

4.14 Leasing Restrictions. No Unit shall be leased by a Unit Owner for an initial term of less than six (6) months. No portion of a Unit which is less than the entire Unit shall be leased. The Association may establish Rules concerning the procedure to be utilized by Unit Owners that seek to rent or lease their Units to ensure compliance with this Section. All leases must be in writing and must provide that the terms of the lease are subject in all respects to the provisions of this Declaration and the Rules and that any violation of this Declaration or the Rules by the Lessee or the other occupants shall be in default under the lease. There shall be no subleasing of the Units or assignment of leases. At least ten (10) days before executing a lease, the Unit Owner shall provide the Association with the following information: (1) the commencement date and expiration date of the lease term; (2) the name and contact information for any adults occupying the Unit during the lease term; and (3) a description and license plate numbers of the Lessee's vehicles. Any Owner who leases his Unit must provide the Lessee with copies of this Declaration and the Rules. A Unit Owner shall be liable for any violation of this Declaration or the Rules by the Lessees or other occupants of the Unit and their guests and invitees and, in the event of any such violation, the Unit Owner, upon demand of the Association, shall immediately take all necessary steps to correct any such violations or, if demanded by the Board of Directors, immediately take all necessary action (including, but not limited to, legal action) to remove from the Unit the Lessees and all other persons residing in the Unit pursuant to the lease. The provisions of this Section shall not apply to the leasing or subleasing of a Unit by the Declarant or the Association.

4.16 Time Sharing. No Unit shall be divided or conveyed on a time increment basis or measurable chronological periods or pursuant to any agreement, plan, program or arrangement under which the right to use, occupy or possess a Unit, or any portion thereof, rotates among various Persons on a periodically recurring basis for value exchanged, whether monetary or like-kind use privileges, according to a fixed or floating interval or period of time one hundred eighty (180) consecutive calendar days or less.

4.17 Hazardous Materials. No Owner, Lessee or Occupant shall use or keep in a Unit or any Limited Common Element allocated to the Unit any kerosene, gasoline, or inflammable or combustible fluid or material or other hazardous materials, other than those required, in limited quantities, for normal cleaning of the Unit and the Limited Common Element.

ARTICLE 5

MAINTENANCE AND REPAIR OF COMMON ELEMENTS AND UNITS

5.1 Duties of the Association.

(a) The Association shall maintain, repair and replace all Common Elements, except for (1) the Limited Common Elements which the Unit Owners are obligated to maintain, repair and replace pursuant to Section 5.2 and any part of the Common Elements to be maintained, repaired and replaced by a governmental body or agency. The Association shall

maintain, repair and replace the concrete floors of the Patios and Balconies and any finish, waterproofing or pavers installed as part of the original construction of a Patio or Balcony. The Association shall not be responsible for the maintenance, repair or replacement of any carpeting or other floor covering that may be installed on a Patio or Balcony by the Owner, Lessee or Occupant thereof with the approval of the Association. The Association also shall maintain, repair and replace and the walls, railings and gates enclosing Patios or Balconies.

(b) The Board of Directors shall be the sole judge as to the appropriate maintenance, repair and replacement of all Common Elements, but all Common Elements shall be maintained in good condition and repair at all times. No Owner, Lessee, Occupant or other Person shall construct or install any Improvements on the Common Elements or alter, modify or remove any Common Elements without the prior written approval of the Board of Directors. No Owner, Lessee, Occupant or other Person shall obstruct or interfere with the Association in the performance of the Association's maintenance, repair and replacement of the Common Elements or any components of the Units which the Association is obligated to maintain, repair or replace.

(c) Owners, Lessees and Occupants shall immediately notify the Association of any broken or leaking water pipes, toilets, clothes washers or hot water heaters and any water intrusion into the Buildings from the roofs or windows, and any Owner, Lessee or Occupant who fails to provide such notification shall be liable to the Association and the other Owners, Lessees and Occupants for any damages that may be caused by such failure.

(d) In the event any plumbing pipes or fixtures serving a Unit are located within the boundaries of another Unit, then the Owner of the Unit served shall have an easement over, upon and through such other Unit for the maintenance, repair and replacement of such plumbing pipes and fixtures; provided, however, that except in case of emergency, the Owner of the Unit served shall give the Owner or Lessee of the other Unit at least forty-eight hour notice prior to entering the other Unit.

5.2 Duties of Unit Owners.

(a) Each Owner shall maintain, repair and replace, at his own expense, all portions of the Owner's Unit in a good, clean and sanitary condition. In addition, each Owner shall be responsible for the maintenance, repair and replacement of the Limited Common Elements allocated to his Unit pursuant to Subsections 2.8(a)(1), 2.8(a)(2) and 2.8(a)(3). Each Owner shall be responsible for maintaining the interior of the Patio or Balcony allocated to the Owner's Unit as a Limited Common Element in a good, clean and sanitary condition. Each Owner shall be responsible for the maintenance, repair or replacement of any carpeting or other floor covering that may be installed by the Owner, Lessee or Occupant thereof with the approval of the Association in the Patio or Balcony allocated to the Owner's Unit as a Limited Common Element.

(b) Any Owner, Lessee or Occupant that leaves their Unit unoccupied for more than seven (7) consecutive days shall turn off the water to all toilets and the clothes washer in the Unit. Each Unit Owner shall (1) regularly inspect the Owner's Unit and any part of the Common Elements that the Owner is obligated to maintain, and which are visible and accessible without having to first remove building components or conduct invasive testing, for the existence of mold, mildew, and/or water intrusion (except when the water intrusion is part of the normal functioning of improvements and appliances such as showers, sinks, dishwashers, and other similar appliances and improvements) and/or water damage; (2) upon discovery, immediately repair in a good and workmanlike condition the source of any water intrusion in the Owner's Unit and any part of the Common Elements that the Owner is obligated to maintain; (3) remediate or replace, in accordance with the current industry accepted methods, any building material located in the Owner's Unit and any part of the Common Elements that the Owner is obligated to maintain that has absorbed water or moisture as a result of water intrusion; and (4) promptly and regularly remediate in accordance with current industry-accepted methods all mold and/or mildew discovered in the Owner's Unit and any part of the Common Elements that the Owner is obligated to maintain. Each Owner, Lessee and Occupant further agrees not to block or cover any of the heating, ventilation or air-conditioning ducts located in the Unit.

5.3 Repair or Restoration Necessitated by Owner. Each Owner shall be liable to the Association for any damage to the Common Elements or the Improvements, landscaping or equipment thereon which results from the negligence or willful misconduct of the Owner or of the Owner's Lessees, Occupants or Invitees or from any violation of this Declaration or the Rules by an Owner or by the Owner's Lessees, Occupants or Invitees. The cost to the Association of any such repair, maintenance or replacements required by such act of an Owner or of the Owner's Lessees, Occupants or Invitees shall be assessed against the Owner as provided in Section 7.2(d). In addition, each Owner shall be liable to the other Unit Owners for any damage caused to such Owner's Unit which results from the negligence or willful misconduct of the Owner or the Owner's Lessees, Occupants or Invitees.

5.4 Owner's Failure to Maintain. If an Owner fails to maintain in good condition and repair the Owner's Unit or any Limited Common Element which the Owner is obligated to maintain under this Declaration and the required maintenance, repair or replacement is not performed within fifteen (15) days after written notice has been given to the Owner by the Association, the Association shall have the right, but not the obligation, to perform the required maintenance, repair or replacement. The cost of any such maintenance, repair or replacement, plus an administrative fee equal to fifteen percent (15%) of such costs, shall be assessed against the nonperforming unit Owner pursuant to Section 7.2(d).

ARTICLE 6

THE ASSOCIATION

6.1 Rights, Powers and Duties of the Association. No later than the date on which the first Unit is conveyed to a Purchaser, the Association shall be organized as a nonprofit

Arizona corporation. The Association shall be the entity through which the Unit Owners shall act. The Association shall have such rights, powers and duties as are prescribed by law and as are set forth in the Condominium Documents together with such rights, powers and duties as may be reasonably necessary in order to effectuate the objectives and purposes of the Association as set forth in this Declaration and the Condominium Act. The Association shall have the right to finance capital improvements in the Condominium by encumbering future Assessments if such action is approved by the affirmative vote of Unit Owners holding more than two-thirds (2/3) of the votes in the Association. Unless the Condominium Documents or the Condominium Act specifically require a vote of the Members, the Board of Directors may act in all instances on behalf of the Association.

6.2 Directors and Officers. 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 directors and officers do not have to be Unit Owners. The initial directors and officers of the Association shall be designated in the Articles, and such designation shall constitute the appointment of such directors and officers by the Declarant. When the Period of Declarant Control expires, the Unit Owners shall elect the Board of Directors which shall consist of at least three members, all of whom must be Unit Owners. The Board of Directors elected by the Unit Owners shall then elect the officers of the Association. For the limited purpose of determining whether a natural person is a Unit Owner and therefore eligible to serve on the Board of Directors, the spouse of a natural person who is a Unit Owner and any member, manager, shareholder, partner, director, officer or other authorized representative of a corporation, general partnership, limited partnership, limited liability company, limited liability partnership or other legal entity that is a Unit Owner shall be considered a Unit Owner. The Declarant may voluntarily surrender the right to appoint and remove the members of the Board of Directors and the officers of the Association before the expiration 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.

6.3 Rules. The Board of Directors, from time to time and subject to the provisions of this Declaration and the Condominium Act, may adopt, amend, and repeal rules and regulations. The Rules may, among other things, restrict and govern the use of the Units and the Common Elements.

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

6.5 Personal Liability. No director or officer of the Association, no member of any committee of the Association, no managing agent of the Association or such managing agent's employees and no other person acting on behalf of the Board of Directors shall be personally liable to any Member or to any other Person other than the Association for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence in the discharge of such person's duties and responsibilities under the Condominium Documents provided such person acted in good faith and without intentional misconduct.

ARTICLE 7 **ASSESSMENTS**

7.1 Preparation of Budget.

(a) At least thirty (30) days before the beginning of each fiscal year of the Association commencing with the fiscal year in which the first Unit is conveyed to a Purchaser, the Board of Directors shall adopt a budget for the Association containing an estimate of the total amount of funds which the Board of Directors believes will be required during the ensuing fiscal year to pay all Common Expenses including, but not limited, to: (1) the amount required to pay the cost of maintenance, management, operation, repair and replacement of the Common Elements, which maintenance, repair and replacement shall include, at a minimum, all maintenance and repair requirements set forth in the Maintenance Manual; (2) the amount required to pay the cost of maintenance, management, operation, repair and replacement of those parts of the Units, if any, which the Association has the responsibility of maintaining, repairing and replacing; (3) the cost of wages, materials, insurance premiums, services, supplies and other expenses required for the administration, operation, maintenance and repair of the Condominium; (4) the amount required to render to the Unit Owners all services required to be rendered by the Association under the Condominium Documents; and (5) such amounts as may be necessary to provide reserves for annual inspections and repair and replacement of major systems of the Common Elements (including, but not limited to, all inspections, repairs and replacements required by the Maintenance Manual). The budget shall separately reflect any Common Expenses to be assessed against less than all of the Units. The Board of Directors is expressly authorized to adopt and amend budgets for the Association, and no ratification of any budget by the Unit Owners shall be required.

(b) Within fifteen (15) days after the adoption of the budget for each fiscal year of the Association (except for the first fiscal year), the Board of Directors shall send to each Owner a summary of the budget and a statement of the amount of the Regular Assessment assessed against the Owner's Unit in accordance with Section 7.2. The failure or delay of the Board of Directors to adopt a budget for any fiscal year or to send each Owner a summary of the budget or a notice of the amount of the Regular Assessment for any fiscal year as required by this Subsection shall not constitute a waiver or release in any manner of an Owner's obligation to pay his allocable share of the Common Expenses as provided in Section 7.2, and each Owner shall continue to pay the Regular Assessment for his Unit as established for the

previous fiscal year until notice of the Regular Assessment for the new fiscal year has been given to the Owners by the Board of Directors.

7.2 Regular Assessment.

(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 this Declaration) shall be assessed against each Unit in proportion to the Unit's Common Expense Liability as set forth in Section 2.6. If the Board of Directors determines during any fiscal year that its funds budgeted or available for that fiscal year are, or will become, inadequate to meet all Common Expenses for any reason, including, without limitation, nonpayment of Assessments by Members, the Board of Directors may increase the Regular Assessment for that fiscal year and the revised Regular Assessment shall commence on the date designated by the Board of Directors.

(b) The Regular Assessments shall commence as to all Units on the day that the first Unit is conveyed to a Purchaser. The first Regular Assessment shall be adjusted according to the number of months remaining in the fiscal year of the Association. The Board of Directors may require that the Regular Assessments or Special Assessments be paid in installments.

(c) Except as otherwise expressly provided for in Section 5.1 or elsewhere 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, shall be assessed against all of the Units in accordance with Section 7.2(a).

(d) The Regular Assessments for any Unit owned by the Declarant on which construction has not been substantially completed shall be an amount equal to twenty-five percent (25%) of the Regular Assessment for Units which have been substantially completed. For purposes of this Subsection, a Unit shall be deemed substantially completed when construction of the Unit is sufficiently complete so that the Unit may be occupied for residential use. The Declarant shall provide the Association with a certification of the date of substantial completion for each Unit, and such certification shall be binding on the Declarant, the Association and all Unit Owners. So long as any Unit owned by the Declarant qualifies for the reduced Regular Assessment provided for in this Subsection, the Declarant shall be obligated to pay to the Association any deficiency in the monies of the Association due to the Declarant having paid a reduced Regular Assessment and necessary for the Association to be able to timely pay all Common Expenses.

(e) If any Common Expense is caused by the misconduct of any Owner, the Association shall assess that Common Expense exclusively against such Owner's Unit. Assessments to pay a judgment against the Association may be made only against the Units in

the Condominium at the time the judgment was entered, in proportion to their Common Expense Liabilities. If the use of any Unit increases the cost to the Association of the insurance maintained by the Association pursuant to Article 8, the increased cost shall be assessed solely to such Unit.

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

(g) The Association shall acquire and pay for the following: (1) water, sewer, electric, and other utility service for the Common Elements; (2) refuse and rubbish collection for the Common Elements and the Units; and (3) water and sewer service for the Units. Each Unit will be separately metered for electric service, and all charges for electric service to a Unit shall be billed directly to the Unit Owner by the electric company and shall be paid by the Unit Owner. The Units are not separately metered for water service.

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

7.4 Enforcement Assessment. The Association may assess against a Unit Owner as an Enforcement Assessment any of the following expenses: (1) any Collection Costs incurred by the Association in attempting to collect Assessments or other amounts payable to the Association by the Owner; (2) any attorney fees (whether or not a lawsuit is filed) incurred by the Association with respect to any violation of the Condominium Documents by the Owner or the Owner's Lessees, Occupants or Invitees; (3) any monetary penalties levied against the Owner; or (4) any amounts (other than Assessments) which become due and payable to the Association by the Owner or the Owner's Lessees, Occupants or Invitees pursuant to the Condominium Documents.

7.5 Purposes for which Association's Funds May be Used. The Association may use the funds and property collected and received by the Association (including, but not limited to, all Assessments, fees, loan proceeds, surplus funds and all funds and property received from any other source) for the purpose of: (1) discharging and performing the Association's duties

and obligations under the Condominium Documents or applicable law; (2) exercising the rights and powers granted to the Association by the Condominium Documents or applicable law; (3) providing or promoting activities and services the Board of Directors deems appropriate, necessary or desirable to foster or promote the common good and general welfare of the Condominium and the Owners, Lessees and Occupants; (4) contracting for services (including, without limitation, trash collection or cable television) to be provided to Owners, Lessees and Occupants; and (5) taking such other action as the Board of Directors deems necessary, appropriate or desirable for the management and administration of the Association or the benefit of the Association or the Condominium.

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

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

(b) The Association shall have a lien on each Unit for any Assessment levied against that Unit from the time the Assessment becomes due and for charges for late payment of those Assessments, for reasonable collection fees and for reasonable attorney fees and costs incurred with respect to those Assessments. The Association's lien for Assessments, for charges for late payment of those Assessments, for reasonable collection fees and for reasonable attorney fees and costs incurred with respect to those Assessments may be foreclosed in the same manner as a mortgage on real estate. Fees, charges, late charges, monetary penalties and interest charged pursuant to Section 33-1242, Paragraphs 10, 11 and 12 of the Arizona Revised Statutes, other than charges for late payment of Assessments, are not enforceable as Assessments under this Section 7.6. If an Assessment is payable in installments, the full amount of the Assessment is a lien from the time the first installment of the Assessment becomes due. The Association has a lien for fees, charges, late charges (other than charges for late payment of Assessments), monetary penalties or interest charged pursuant to Section 33-1242, Paragraphs 10, 11 and 12 of the Arizona Revised Statutes after the entry of a judgment in a civil suit for those fees, charges, late charges, monetary penalties or interest from a court of competent jurisdiction and the recording of that judgment in the records of the County Recorder of Maricopa County, Arizona, as otherwise provided by law. The Association's lien for monies other than for Assessments, for charges for late payment of those Assessments, for reasonable collection fees and for reasonable attorney fees and costs incurred with respect to those Assessments may not be foreclosed and is effective only on conveyance of any interest in the Unit. The recording of this Declaration constitutes record notice and perfection of the Association's lien for Assessments, for charges for late payment of those Assessments, for reasonable collection fees and for reasonable attorney fees and costs incurred with respect to those Assessments, and no further recordation of any claim of lien shall be required. Although

not required in order to perfect the Association's lien, the Association shall have the right but not the obligation, to record a notice setting forth the amount of any delinquent Assessments, for charges for late payment of those Assessments, for reasonable collection fees and for reasonable attorney fees and costs incurred with respect to those Assessments which are secured by the Association's lien.

(c) The Association's Lien for Assessments, for charges for late payment of those Assessments, for reasonable collection fees and for reasonable attorney fees and costs incurred with respect to those Assessments shall have priority over all liens, other interests and encumbrances except for: (1) liens and encumbrances Recorded before the recording of this Declaration; (2) liens for real estate taxes and other governmental assessments and charges; and (3) the lien of any First Mortgage or seller's interest in a first contract for sale recorded prior to the Assessment Lien. Any First Mortgagee or any other Person acquiring title or coming into possession of a Unit through foreclosure of the First Mortgage, purchase at a foreclosure sale or trustee's sale, or through any equivalent proceedings, such as, but not limited to, the taking of a deed in lieu of foreclosure shall acquire title free and clear of any claims for unpaid Assessments and charges against the Unit which became payable prior to the acquisition of such Unit by the First Mortgagee or other Person. Any assessments and charges against the Unit which accrue prior to such sale or transfer shall remain the obligation of the defaulting Unit Owner.

(d) The Association shall have the right, at its option, to enforce collection of any delinquent Assessments, monetary penalties and all other fees and charges owed to the Association in any manner allowed by law including, but not limited to: (1) bringing an action at law against the Unit Owner personally obligated to pay the delinquent amounts and such action may be brought without waiving the Assessment Lien securing any such delinquent amounts; or (2) bringing an action to foreclose the Association's lien for Assessments, for charges for late payment of those Assessments, for reasonable collection fees and for reasonable attorney fees and costs incurred with respect to those Assessments in the manner provided by law for the foreclosure of a realty mortgage. The Association shall have the power to bid in at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any and all Units purchased at such sale.

7.7 Certificate of Payment. The Association or the Association's managing agent, upon receipt of a 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 fifteen (15) days after receipt of the request and is binding on the Association, the Board of Directors, and every Unit Owner. The Association or the Association's managing agent may charge a reasonable fee in an amount established by the Board of Directors for each such statement.

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

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

7.9 Initial Working Capital Fund. To provide the Association with initial operating funds, each Purchaser of a Unit shall pay to the Association, immediately upon becoming the Owner of the Unit, the amount set from time to time by the Board of Directors. Payments made pursuant to this Section shall be non-refundable and shall not be considered as an advance payment of any Assessments levied by the Association pursuant to this Declaration. The amounts paid to the Association pursuant to this Section may be used for any purpose for which Association funds may be used pursuant to Section 7.5.

7.10 Reserve Contribution.

(a) Except as provided in Section 7.10.(a), each Purchaser shall pay to the Association, immediately upon becoming the Owner of the Unit, a contribution (the “**Reserve Contribution**”) to the reserves to be established pursuant to Section 7.12. The amount of the initial Reserve Contribution shall be \$500.00. The Board of Directors may from time to time thereafter increase or decrease the amount of the Reserve Contribution.

(b) No Reserve Contribution shall be payable with respect to: (1) the transfer or conveyance of a Unit by devise or intestate succession; (2) a transfer or conveyance of a Unit to a family trust, family limited partnership or other Person for bona fide estate planning purposes; (3) a transfer or conveyance of a Unit to a corporation, partnership or other entity in which the grantor owns a majority interest unless the Board determines, in its sole discretion, that a material purpose of the transfer or conveyance was to avoid payment of the Reserve Contribution in which event a Reserve Contribution shall be payable with respect to such transfer or conveyance; (4) the conveyance of a Unit by a trustee's deed following a trustee's sale under a deed of trust; or (5) a conveyance of a Unit as a result of the foreclosure of a realty mortgage or the forfeiture or foreclosure of a purchaser's interest under a Recorded contract for the conveyance of real property subject to A.R.S. § 33-741, et seq.

(c) All Reserve Contributions shall be deposited in the Reserve Account established pursuant to Section 7.12. Reserve Contributions shall be non-refundable and shall not be considered as an advance payment of Assessments.

7.11 Transfer Fee. Each Purchaser shall pay to the Association, or, at the option of the Association, to the Association's managing agent, immediately upon becoming the Owner of the Unit a transfer fee in the amount set from time to time by the Board of Directors to compensate the Association for the administrative cost resulting from the transfer of a Unit. The transfer fee is not intended to compensate the Association for the costs incurred in the

preparation of the statement which the Association is required to mail or deliver to a purchaser under A.R.S. § 33-1260A and, therefore, the transfer fee shall be in addition to the fee which the Association is entitled to charge pursuant to A.R.S. § 33-1260C.

7.12 Reserves.

(a) The Board of Directors shall establish reserves for the future periodic maintenance, repair or replacement of the major components of the Common Elements which the Association is obligated to maintain, repair and replace, which reserves shall include, at a minimum, the inspection, repair, maintenance and replacement of the components of the Common Elements as set forth in the Maintenance Manual. The reserves may be funded from Regular Assessments, the Reserve Contributions paid pursuant to Section 7.10, the Initial Working Capital Fund payments paid pursuant to Section 7.9 or any other revenue of the Association. All amounts designated as reserves shall be deposited by the Board of Directors in a separate bank account (the "**Reserve Account**") to be held for the purposes for which they are collected and are to be segregated from and not commingled with any other funds of the Association. The Board of Directors periodically shall obtain a reserve study, which study shall at a minimum include (1) identification of the major components of the Common Elements which the Association is obligated to repair, replace, restore or maintain which, as of the date of the study, have a remaining useful life of less than thirty (30) years; (2) identification of the probable remaining useful life of the identified major components as of the date of the study; (3) an estimate of the cost of repair, replacement, restoration, or maintenance of the identified major components during and at the end of their useful life; (4) an estimate of the total annual contribution necessary to defray the cost to repair, replace, restore, or maintain the identified major components during and at the end of their useful life, after subtracting total reserve funds as of the date of the study.

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

ARTICLE 8 INSURANCE

8.1 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:

- (1) A special form policy of property insurance with sprinkler leakage, debris removal and water damage endorsements, insuring the

Common Elements and the Units (exclusive of improvements and betterments installed by a Unit Owner other than the Declarant). Such property insurance shall cover the interests of the Association, the Board of Directors and all Unit Owners and their mortgagees, as their interests may appear (subject, however, to the loss payment adjustment provisions in favor of an Insurance Trustee), in an amount equal to one hundred percent (100%) of the then current replacement cost of the Common Elements (exclusive of the land, excavations, foundations and other items normally excluded from such coverage) and the Units (exclusive of improvements and betterments installed by a Unit Owner other than the Declarant), without deduction for depreciation. Such policy must be consistent with state and local insurance laws and at least equal to such coverage as is commonly required by prudent institutional mortgage investors in the area in which the Condominium is located. The Board of Directors shall also obtain and maintain such coverage on all personal property owned by the Association.

(2) Broad form comprehensive general liability insurance, for a limit to be determined by the Board, but not less than \$1,000,000 for any single occurrence and \$2,000,000 in aggregate for the policy term insuring the Association, the Board of Directors, the manager or management agent and their respective agents and employees, and the Unit Owners from liability arising out of or in connection with the use, ownership, maintenance or operation of the Common Elements. Such insurance shall cover all occurrences commonly insured against resulting in death, bodily injury, property damage and/or personal and advertising injury. Such policy shall include (i) a cross liability clause to cover liabilities of the Owners as a group to an Owner; (ii) medical payments insurance; (iii) blanket contractual liability coverage; and (iv) contingent liability coverage arising out of the use of hired and nonowned automobiles.

(3) Worker's compensation insurance to the extent necessary to meet the requirements of the laws of Arizona and, if the Association has any employees, a policy of employer's liability insurance with coverage limits determined by the Board of Directors, but not less than the limits required for excess coverage under the Umbrella Liability Policy.

(4) Directors' and officers' liability insurance in an amount not less than \$1,000,000 covering all the directors and officers of the Association and naming the managing agent of the Association as an additional insured.

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

(6) 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, and employees against Unit Owners and members of their household, except for claims against Unit Owners by members of their households for employee dishonesty or forgery.

(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) A standard mortgagee clause providing that the insurance carrier shall notify the Association and each First Mortgagee named in the policy at least thirty (30) 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) An "Agreed Amount Endorsement" and "Inflation Guard Endorsement" if such endorsements are available and are commonly required by prudent institutional mortgage investors in the area in which the Condominium is located.

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

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

(c) The Board of Directors may select deductibles applicable to the insurance coverage to be maintained by the Association pursuant to this Section 8.1 in order to reduce the premiums payable for such insurance. The deductible, if any, on any insurance policy obtained by the Association shall be a Common Expense, but the Association shall assess solely to an Owner any deductible amount related to any damage caused by the negligence, misuse, neglect or intentional act of the Unit Owner or the Occupants of the Owner's Unit or their respective guests or invitees.

(d) Notwithstanding any of the other provisions of this Article 8 to the contrary, there may be named as an insured, on behalf of the Association, the Association's authorized representative, including any trustee with whom the Association may enter into any Insurance Trust Agreement or any successor to such trustee who shall have exclusive authority to negotiate losses under any policy providing such property or liability insurance and to perform such other functions as are necessary to accomplish such purpose. Each Unit Owner appoints the Association, or any insurance trustee or substitute insurance trustee designated by the Association, as attorney-in-fact for the purpose of purchasing and maintaining such insurance, including: (1) the collection and appropriate disposition of the proceeds thereof; (2)

the negotiation of losses and execution of releases of liability; (3) the execution of all documents; and (4) the performance of all other acts necessary to accomplish such purpose.

(e) The Association and its directors and officers shall have no liability to any Owner or First Mortgagee or other Person having a lien on a Unit if, after a good faith effort, (1) the Association is unable to obtain insurance required hereunder because the insurance is no longer available; (2) if available, the insurance can be obtained only at a cost that the Board, in its sole discretion, determines is unreasonable under the circumstances; or (3) the Members fail to approve any increase in the Regular Assessment needed to pay the insurance premiums.

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

(g) All insurance policies obtained by the Association pursuant to this Article 8 shall be obtained from generally acceptable insurance carriers.

8.2 General Requirements All insurance provided for in this Article 8 shall be written under valid and enforceable policies issued by insurance companies authorized and licensed to transact business in the State of Arizona. All such policies shall provide for a minimum of thirty (30) days advance written notice to the Association prior to the cancellation or material change of any insurance coverage under the policy.

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

8.4 Insurance Obtained by Unit Owners Each Unit Owner shall obtain and maintain (1) property insurance covering all improvements and betterments installed by such Unit Owner or any prior Unit Owner other than the Declarant), as well as all furniture, furnishings and other personal property in such Owner's Unit; (2) liability insurance covering, to the extent not covered by the policies of liability insurance obtained by the Board of Directors for the benefit of all Unit Owners, such Unit Owner's liability for bodily injury, including death, and property damage arising out of the ownership, maintenance or use of the Owner's Unit. If requested to do so by the Board of Directors each Unit Owner shall provide the Board of Directors with a certificate of insurance evidencing such insurance coverage at least ten (10) days prior to the conveyance of the Unit to the Unit Owner, and thereafter at least thirty (30) days prior to the expiration of any policy.

8.5 Payment of Insurance Proceeds Any loss covered by property insurance obtained by the Association in accordance with this Article 8 shall be adjusted with the Association and the insurance proceeds shall be payable to the Association and not to any

mortgagee or beneficiary under a deed of trust. The Board shall have the right to negotiate a settlement of the loss with the insurer and shall be entitled to receive all insurance proceeds paid by the insurer with respect to such loss. The Association or any Trustee under an Insurance Trust Agreement executed pursuant to Subsection 8.1(d) shall hold any insurance proceeds in trust for the Unit Owners and lienholders as their interests may appear, and the proceeds shall be disbursed and applied as provided for in the Condominium Act.

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

8.7 Fidelity Bonds or Insurance.

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

(1) The fidelity bonds shall name the Association as an obligee, and fidelity insurance shall name the Association as the named insured;

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

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

(b) The Association shall require any management agent of the Association to maintain its own fidelity bond or fidelity insurance in an amount equal to or greater than the amount of the fidelity bond or fidelity insurance to be maintained by the Association pursuant to Section 8.7(a). The fidelity bond or fidelity insurance maintained by the management agent

shall cover funds maintained in bank accounts of the management agent and shall name the Association as an obligee or an insured.

ARTICLE 9

DESTRUCTION OF IMPROVEMENTS

9.1 Automatic Reconstruction. Any portion of the Condominium for which insurance is maintained by the Association which is damaged or destroyed shall be repaired or replaced promptly by the Association unless: (1) the Condominium is terminated; (2) repair or replacement would be illegal under any state or local health or safety statute or ordinance; or (3) eighty percent (80%) of the Unit Owners, including every Owner of a Unit or allocated Limited Common Element which will not be rebuilt, vote not to rebuild. The cost of repair or replacement of the damaged or destroyed portion of the Condominium in excess of insurance proceeds and reserves shall be a Common Expense and shall be assessed to the Members as a Special Assessment pursuant to Section 7.3.

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

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

9.4 Negotiations with Insurer. The Association shall have full authority to negotiate in good faith with representatives of the insurer of any totally or partially destroyed building or any other portion of the Common Elements, and to make settlements with the insurer for less than full insurance coverage on the damage to such building or any other portion of the Common Elements. Any settlement made by the Association in good faith shall be binding upon all Owners and First Mortgagees. Insurance proceeds for any damage or destruction of any part of the Condominium covered by property insurance maintained by the Association shall be paid to the Association and not to any First Mortgagee or other lienholder. The Association shall hold any proceeds in trust for the Unit Owners and lienholders as their

interests may appear. Except as otherwise provided in Sections 9.1 and 9.2, all insurance proceeds shall be disbursed first for the repair or restoration of the damaged Common Elements, and Unit Owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the damaged or destroyed Common Elements have been completely repaired or restored or the Condominium is terminated.

9.5 Repair of Units. Installation of improvements to, and repair of any damage to, the interior of a Unit not covered by property insurance maintained by the Association shall be made by and at the individual expense of the Owner of that Unit and shall be completed as promptly as practicable and in a lawful and workmanlike manner. Any installation or repair of improvements by an Owner shall be subject to the provisions of Section 4.3.

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

ARTICLE 10

EMINENT DOMAIN

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

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

10.3 Taking of Common Elements. If part of the Common Elements is acquired by eminent domain, the portion of the award attributable to the Common Elements taken shall be paid to the Association for the benefit of the Unit Owners, and any portion of the award

attributable to the acquisition of a Limited Common Element shall be equally divided among the Owners of the Units to which that Limited Common Element was allocated at the time of the acquisition.

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

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

ARTICLE 11

DISPUTE RESOLUTION

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

(a) **"Declarant Party"** means: (1) the Declarant and its members, managers, officers and employees; (2) an Affiliate of Declarant; (iii) any architects, general contractors, subcontractors, material suppliers, labor suppliers, architects, engineers, surveyors, consultants or other Persons who furnished labor or services or supplied materials in connection with the initial design, development and/or construction of the Buildings and other Improvements in the Condominium or in connection with any addition, renovation, repair or reconstruction of the Buildings or other Improvements in the Condominium; or (3) any employee or other representative of the Declarant who serves as a director or officer of the Association.

(b) **"Claim"** means any claim or cause of action by a Claimant against a Declarant Party arising out of or related in any way to the development, design or construction of the Condominium or the management or operation of the Association, including, without limitation, any claim for negligence, fraud, intentional misconduct or breach of fiduciary duty.

11.2 Agreement to Resolve Certain Disputes Without Litigation. The Association, all Owners and all Declarant Parties agree that it is in the best interests of the Association, the

Owners and the Declarant Parties to encourage the amicable resolution of Claims and to resolve Claims without the emotional and financial costs of litigation. Therefore, the Association, all current and future Owners and all Declarant Parties each acknowledge and agree that all Claims shall be resolved exclusively in accordance with the dispute resolution procedures set forth in this Article 11. The Association, all Owners and all Declarant Parties waive their right to have Claims resolved in court and to have a jury trial. Declarant and each Owner acknowledges and agrees that the provisions of this Article 11 shall be binding upon current and future Owners and upon the Association, whether acting for itself or on behalf of any Owner or Owners.

11.3 Notice of Claim. The Association or any Owner who contends or alleges to have a Claim (a "**Claimant**") against any Declarant Party shall notify each applicable Declarant Party (a "**Respondent**") in writing of the Claim (the "**Claim Notice**"), stating plainly and concisely: (a) the nature of Claim, including, date, time, location, Persons involved, and Respondent's role in the Claim; (b) the factual and legal basis of the Claim; and (c) what Claimant wants Respondent to do or not do to resolve the Claim. If the Claim involves an Alleged Defect, the Claim Notice shall state plainly and concisely: (a) the nature and location of the Alleged Defect; (b) the date on which the Association or Owner giving the Notice of Claim first became aware of the Alleged Defect; and (c) whether the Alleged Defect has caused any damage to any persons or property. If the Alleged Defect is alleged to be the result of an act or omission of a person licensed by the State of Arizona under Title 20 or Title 32 of the Arizona Revised Statutes (a "**Licensed Professional**"), then the Claim Notice from the Association must be accompanied by an affidavit from a Licensed Professional in the same discipline as the Licensed Professional alleged to be responsible for the Alleged Defect. The affidavit must contain the information required to be contained in a preliminary expert opinion affidavit submitted pursuant to Section 12-2602B of the Arizona Revised Statutes. Within a reasonable period of time after receipt of the Notice of Claim, which period shall not exceed sixty (60) days, the Respondent and the Claimant shall meet at a mutually acceptable place within the Condominium to discuss the Claim and attempt to reach a resolution.

11.4 Right to Enter, Inspect, Repair and/or Replace. To the extent a Notice of Claim relates to or arises out of an Alleged Defect (a "**Construction Dispute**"), the provisions and procedures of this Section 11.4 shall apply. At any time after the delivery of the Notice of Claim, the Respondent and its representatives shall have full access to the property that is the subject of the Notice of Claim and shall have the right, but not the obligation, to conduct inspections, testing and/or destructive and invasive testing in a manner deemed appropriate by the Respondent (provided the Respondent shall repair or replace any property damaged or destroyed during such inspection or testing), which rights shall continue until such time as the Claim is resolved. If the Respondent elects to take any corrective action, it shall do so in a prompt manner considering the circumstances and the Respondent and its representatives and contractors shall be provided access to the Condominium and the property that is the subject of the Notice of Claim to take and complete such corrective action. Nothing set forth in this Section 11.4 shall be construed to impose any obligation on any Declarant Party to inspect, test, repair, or replace any item of the Condominium subject to a Construction Dispute. The right of

a Declarant Party and its employees, agents, contractors and consultants to enter, inspect, test, repair and/or replace reserved in this Section shall be irrevocable and may not be waived or otherwise terminated except by a written document, in recordable form, executed and Recorded by the Declarant Party.

11.5 Binding Arbitration.

(a) In the event a Claim is not resolved by direct negotiations between the Claimant and the Respondent, the Claimant, if the Claimant desires to pursue the Claim further shall submit the Claim to binding arbitration in accordance with this Section 11.5. If the Claimant fails to timely submit the Claim to arbitration pursuant to the Federal Arbitration Act (9 U.S.C. §1, et. seq.). The Arbitration shall be initiated and conducted in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association as modified or as otherwise provided in this Section 11.5, unless the Notice of Claim involves a Construction Dispute by an Owner against a Declarant Party, in which case the arbitration shall be conducted in accordance with the Construction Industry Arbitration Rules and the Supplementary Consumer/Residential Construction Rules of the American Arbitration Association as modified or as otherwise provided in this Section 11.5. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on the Notice of Claim would be barred by the applicable statutes of limitations or repose.

(b) A Person with any Claim may only submit such Claim in arbitration on such Person's own behalf. No Person may submit a Claim in arbitration as a representative or member of a class, and no Claim may be arbitrated as a class action.

(c) Any arbitration proceeding may not be joined or consolidated with the Claims of the Association or any other Owner unless specifically agree to in writing by all parties to the Claim.

(d) The Declarant Parties, the Association and the Owners agree that any arbitration of a Claim is a private proceeding whose results shall be binding only on the parties to the arbitration and shall not be afforded binding effect as to any issue or result by any non-party to the arbitration.

(e) To the extent any Construction Dispute relates to or involves the conduct or work of any contractor, subcontractor, or supplier, any such contractors, subcontractors, or suppliers may be joined in the arbitration.

(f) The Association, each Owner and the Declarant acknowledge that arbitration involves certain expenses (including payment of fees to the American Arbitration Association and compensation of the arbitrator or arbitrators) depending on the nature of and amount of claims asserted which may be substantial and in excess of court fees for filing of a lawsuit. The payment of such arbitration related expenses shall be governed by the Rules of the

American Arbitration Association. The American Arbitration Association fee schedule and rules may be found at www.adr.org.

(g) The arbitrator may award the prevailing party in the proceeding all or a part of such party's reasonable attorneys' fees and expert witness fees, that such fees bear to percentage of success achieved by the prevailing party measured as an amount recovered in excess of the amount offered, taking into consideration the final result of arbitration or other relevant factors. The arbitrator shall not award any punitive damages. The arbitrator shall not award indirect, consequential or special damages regardless of whether the possibility of such damage or loss was disclosed to, or reasonably foreseen by, the party against whom the claim is made. The arbitrator shall assess the costs of the proceedings (including the fees of the arbitrator) against the non-prevailing party.

(h) The filing of a proper demand for arbitration in accordance with this Section 11.5 and the rules of the American Arbitration Association shall act to toll any applicable statutes of limitation or repose.

11.6 Approval of Arbitration or Litigation. The Association shall not deliver a Claim Notice to any Declarant Party or commence any legal action or arbitration proceeding or incur legal expenses (including without limitation, attorneys' fees) in connection with any Claim without the written approval of Owners entitled to cast more than seventy-five percent (75%) of the total votes in the Association, excluding the votes of any Owner who would be a defendant in such proceedings. Before requesting the approval of the Owners required by this Section 11.6, the Association must provide written notice to all Owners, which notice shall (at a minimum) include the following: (1) a description of the nature of the Claim; (2) a description of the attempts of the Respondent to resolve the Claim; (3) the name and professional background of the attorney proposed to be retained by the Association to pursue the Claim and a description of the relationship between such attorney and any member of the Board of Directors; (4) a description of the fee arrangement between such attorney and the Association; (5) the estimated attorneys' fees and expert fees and costs necessary to pursue the Claim and the source of funds that will be used to pay such fees and expenses; (6) the estimated time necessary to conclude the action or proceeding; and (7) an affirmative statement from the Board of Directors that the action or proceeding is in the best interest of the Association and its Members. The Association shall not borrow money or use reserve funds to pay the fees and costs of the arbitration or litigation. In the event that the Association commences any legal action or arbitration proceeding involving a Claim, all Owners must notify prospective purchasers of their Lot of such legal action or arbitration proceeding and must provide such prospective purchasers with a copy of the notice received from the Association in accordance with this Section 11.6.

11.7 Use of Funds. Any judgment, award or settlement received by a Claimant in connection with a Claim involving an Alleged Defect shall first be used to correct and/or repair such Alleged Defect or to reimburse the Claimant for any costs actually incurred by such Claimant in correcting and/or repairing the Alleged Defect. If the Claimant receiving the

judgment, award or settlement is the Association, any excess funds remaining after repair of such Alleged Defect shall be paid into the Association's reserve fund.

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

11.9 Conflicts. In the event of any conflict between this Article 11 and any other provision of the Condominium Documents, this Article 11 shall control. In the event of any conflict between the provisions of this Article 11 and the terms of any express warranty provided to a Purchaser by a Declarant or any third party home warranty company in connection with the purchase of a Unit from a Declarant, the provisions of the express warranty shall control; provided, however, that if the Claim is being asserted by the Association, the approval of the members of the Association required by Section 11.8 must be obtained prior to the Association demanding arbitration of the Claim or filing any legal action with respect to the Claim.

BY ACCEPTANCE OF A DEED OR BY ACQUIRING A UNIT, EACH PERSON, FOR HIMSELF, HIS HEIRS, PERSONAL REPRESENTATIVES, SUCCESSORS, TRANSFEREES AND ASSIGNS, AGREES TO HAVE ANY CLAIM RESOLVED ACCORDING TO THE FEDERAL ARBITRATION ACT, THE ARIZONA REVISED STATUTES PERTAINING TO THE ARBITRATION OF DISPUTES TO THE EXTENT NOT INCONSISTENT WITH THE FEDERAL ARBITRATION ACT AND THE PROVISIONS OF THIS ARTICLE 11 AND WAIVES THE RIGHT TO PURSUE ANY DECLARANT PARTY IN ANY MANNER OTHER THAN AS PROVIDED IN ARTICLE 11. THE ASSOCIATION, EACH UNIT OWNER AND DECLARANT ACKNOWLEDGE THAT BY AGREEING TO RESOLVE ALL CLAIMS AS PROVIDED IN THIS ARTICLE 11, THEY ARE GIVING UP THEIR RESPECTIVE RIGHTS TO HAVE SUCH CLAIM TRIED BEFORE A JURY. THE ASSOCIATION, EACH UNIT OWNER AND DECLARANT FURTHER WAIVE THEIR RESPECTIVE RIGHTS TO AN AWARD OF PUNITIVE AND CONSEQUENTIAL DAMAGES RELATING TO A CLAIM. BY ACCEPTANCE OF A DEED OR BY ACQUIRING A UNIT, EACH UNIT OWNER VOLUNTARILY ACKNOWLEDGES THAT HE IS WAIVING ANY RIGHTS HE MAY POSSESS TO PUNITIVE AND CONSEQUENTIAL DAMAGES OR OTHER EXEMPLARY RELIEF OR THE RIGHT TO A TRIAL BEFORE A JURY RELATING TO A CLAIM.

IF AN OWNER OR THE ASSOCIATION FILES A CIVIL ACTION ASSERTING ANY CLAIM AGAINST ANY DECLARANT PARTY INSTEAD OF COMPLYING WITH THE DISPUTE RESOLUTION PROVISIONS OF THIS ARTICLE 10 (OR THE OTHER DISPUTE RESOLUTION PROVISIONS, AS APPLICABLE), THE PARTY AGGRIEVED BY THE FILING MAY APPLY TO THE MARICOPA COUNTY SUPERIOR COURT FOR AN ORDER DISMISSING THE CIVIL ACTION AND COMPELLING THE FILING PARTY TO SUBMIT THE CLAIM TO THE DISPUTE RESOLUTION PROVISIONS APPLICABLE THERETO. THE APPLYING PARTY SHALL BE ENTITLED TO IMMEDIATE ENTRY OF AN ORDER OF DISMISSAL AND A MANDATORY AWARD OF ATTORNEY'S FEES AND TAXABLE COSTS INCURRED IN COMPELLING COMPLIANCE WITH THE APPLICABLE DISPUTE RESOLUTION PROVISION.

IN THE EVENT THE ARBITRATION PROVISIONS OF THIS ARTICLE 11 ARE HELD NOT TO APPLY OR ARE HELD INVALID OR UNENFORCEABLE FOR ANY REASON, ALL DISPUTES SHALL BE TRIED BEFORE A JUDGE IN A COURT OF COMPETENT JURISDICTION WITHOUT A JURY. EACH OWNER IN THE ASSOCIATION, BY ACCEPTING A DEED TO ANY PORTION OF THE PROPERTY, HEREBY WAIVE AND COVENANT NOT TO ASSERT THEIR CONSTITUTIONAL RIGHT TO TRIAL BY JURY OF ANY DISPUTES, INCLUDING, BUT NOT LIMITED TO, DISPUTES RELATING TO CONSTRUCTION DEFECTS, MISREPRESENTATION OR DECLARANT'S FAILURE TO DISCLOSE MATERIAL FACTS. THIS MUTUAL WAIVER OF JURY TRIAL SHALL BE BINDING UPON THE RESPECTIVE SUCCESSORS AND ASSIGNS OF SUCH PARTIES AND UPON ALL PERSONS AND ENTITIES ASSERTING RIGHTS OR CLAIMS OR OTHERWISE ACTING ON BEHALF OF DECLARANT, ANY OWNER, THE ASSOCIATION OR THE RESPECTIVE SUCCESSORS AND ASSIGNS.

ARTICLE 12

RIGHTS OF FIRST MORTGAGEES

12.1 Notification to First Mortgagees. The Association shall provide each Mortgagee or guarantor of the Mortgage on any Unit with timely written notice of the following:

- (a) Any condemnation loss or any casualty loss which affects either a material portion of the Condominium or the Unit securing its Mortgage;
- (b) Any 60-day delinquency in the payment of Assessments or charges owed by the Owner of any Unit on which it holds the Mortgage;
- (c) Any lapse, cancellation or material modification of any insurance policy maintained by the Association; and
- (d) Any proposed action which requires the consent of a specified percentage Mortgagees as set forth in Section 12.2.

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

- (a) Any amendments to the Condominium Documents of a material adverse nature to Mortgagees must be agreed to by Mortgagees that represent at least fifty-one percent (51%) of the votes in the Association allocated to Units that are subject to Mortgages.
- (b) Any action to terminate the legal status of the Condominium after substantial destruction or condemnation occurs or for other reasons must be agreed to Mortgagees that represent at least fifty-one percent (51%) of the votes of Units subject to Mortgages.
- (b) Any Mortgagee who receives a written proposal for an amendment to the Condominium Documents who fails to submit a response to the proposal within sixty (60) days after the Mortgagee receives proper notice of the proposal shall be deemed to have

approved the proposed amendment, provided the notice was delivered by certified or registered mail, with a "return receipt" requested.

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

- (a) By act or omission, seek to abandon or terminate this Declaration or the Condominium;
- (b) Change the pro rata interest or obligations of any individual Unit for the purpose of: (i) levying Assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or (ii) determining the pro rata share of ownership of each Unit in the Common Elements;
- (c) Partition or subdivide any Unit;
- (d) By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Elements. The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements shall not be deemed a transfer within the meaning of this Subsection;
- (e) Use Hazard insurance proceeds for losses to any Units or the Common Elements for any purpose other than the repair, replacement or reconstruction of such Units or the Common Elements.

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

12.4 Prohibition Against Right of First Refusal. Any right of first refusal in the Condominium Documents will not apply to/adversely impact the rights of a Mortgagee or its assignee to: (a) foreclose or take title to a Unit pursuant to the remedies in the Mortgage; (b) accept a deed or assignment in lieu of foreclosure in the event of default by a mortgagor; or (c) sell or lease a Unit acquired by the Mortgage or its assignee.

12.5 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.

ARTICLE 13
GENERAL PROVISIONS

13.1 Enforcement.

(a) The Association may enforce the Condominium Documents in any manner provided for in the Condominium Documents or by law or in equity, including, but not limited to:

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

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

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

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

(5) exercising self-help or taking action to abate any violation of the Condominium Documents provided, however, that judicial proceedings must be instituted before any items of construction can be altered or demolished;

(6) requiring a Unit Owner, at the Unit Owner's expense, to remove any Improvement installed or constructed in such Owner's Unit or in any Limited Common Element allocated to the Owner's Unit in violation of this Declaration and to restore the Unit or the Limited Common Element to its previous condition and, upon failure of the Unit Owner to do so, the Board of Directors or its designee shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as previously existed and any such action shall not be deemed a trespass and all costs incurred by the Association shall be paid to the Association by the Unit Owner upon demand by the Association;

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

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

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

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

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

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

(d) All rights and remedies of the Association under the Condominium Documents or at law or in equity are cumulative, and the exercise of one right or remedy shall not waive the Association's right to exercise another right or remedy. The failure of the Association or an Owner to take enforcement action with respect to a violation of the Condominium Documents shall not constitute or be deemed a waiver of the right of the Association or any Owner to enforce the Condominium Documents in the future. If any lawsuit

is filed by the Association or any Owner to enforce the provisions of the Condominium Documents or otherwise arising out of the Condominium Documents or the operations of the Association, the prevailing party in such action shall be entitled to recover from the other party all attorney fees incurred by the prevailing party in the action.

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

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

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

13.5 Amendment.

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

(b) Except to the extent expressly permitted or required by the Condominium Act, an amendment to this Declaration shall not create or increase Special Declarant Rights, increase the number of Units or change the boundaries of any Unit, the Allocated Interest of a Unit, or the use as to which any Unit is restricted, in the absence of unanimous consent of the Unit Owners. Any amendment to this Declaration adopted by the Unit Owners during the Period of Declarant Control must be approved in writing by the Declarant. After the expiration of the Period of Declarant Control, an amendment to this Declaration shall not amend or delete any provisions of Article 11 or this Section 13.5(b) in the absence of the unanimous consent of the Unit Owners.

(c) 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. No amendment to Article 11, Section 13.5(b) or

this Section 13.5(c) shall be effective unless the Declarant approves the amendment in writing even if the Declarant no longer owns any Unit at the time of such amendment.

(d) During the Period of Declarant Control, the Declarant shall have the right to amend the Declaration, including the Plat, to: (1) comply with the Condominium Act or any other applicable law if the amendment does not adversely affect the rights of any Unit Owner; (2) correct any error or inconsistency in the Declaration if the amendment does not adversely affect the rights of any Unit Owner; or (3) comply with the rules or guidelines in effect from time to time of any governmental or quasi-governmental entity or federal corporation guaranteeing or insuring mortgage loans or governing transactions involving mortgage instruments, including without limitation, the Department of Veterans Affairs, the Federal Housing Administration, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.

(e) Any amendment adopted by the Unit Owners pursuant to Section 13.5(a) shall be signed by the President or Vice President of the Association and shall be Recorded within thirty (30) days after the adoption of the amendment. Any amendment made by the Declarant pursuant to Section 13.5(d) or the Condominium Act shall be executed by the Declarant and shall be Recorded.

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

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

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

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

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

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

13.12 Guests and Tenants. Each Unit Owner shall 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 insure compliance by such Persons shall be grounds for the same action available to the Association or any other Unit Owner by reason of such Unit Owner's own noncompliance.

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

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

Signature of Declarant appears on the following page

artHAUS, LLC, an Arizona limited liability company

By: [Signature]

Its: MANAGER

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 29 day of JULY, 2015, by JASON BOYER, the _____ of artHAUS, LLC, an Arizona limited liability company, on behalf of the company.

[Signature]
Notary Public

My Commission Expires:

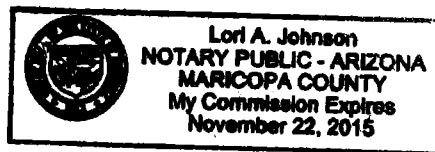


EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY SUBMITTED TO CONDOMINIUM

Lot 2 of the Arizona Opera according to the plat recorded in Book 1118 of Maps, Page 30, in the records of the County Recorder of Maricopa County, Arizona.

EXHIBIT B**ALLOCATION OF INTERESTS**

UNIT	SQUARE FOOTAGE	PERCENTAGE UNDIVIDED INTEREST
101	1,656	5.57
102	1,620	5.45
103	1,620	5.45
104	1,620	5.45
105	1,620	5.45
106	1,620	5.45
107	1,711	5.75
112	724	2.43
116	724	2.43
122	500	1.68
208	1,322	4.45
209	1,322	4.45
210	1,322	4.45
211	1,322	4.45
212	1,322	4.45
213	1,319	4.44
214	1,322	4.45
215	1,322	4.45
216	1,042	3.50
217	1,042	3.50
218	749	2.52
219	749	2.52
220	749	2.52
221	749	2.52
222	749	2.52

EXHIBIT C

ALLOCATION OF PARKING SPACES

RECORDED BY

<u>UNIT</u>	<u>PARKING SPACE</u>	1st AMENDMENT	3rd AMENDMENT
101	P1	←	ADD P36
102	P2	← ADD P4	
103	P3		
104	P5	←	ADD P6
105	P7	←	ADD P8
106	P9		
107	P11		
112	P14		
116	P31	←	REMOVE P31, ADD P28
122	P30		
208	P13	←	ADD P10
209	P15		
210	P17		
211	P21	←	ADD P16
212	P18		
213	P27		
214	P24		
215	P25		
216	P22		
217	P23	← ADD P29	
218	P28	←	REMOVE P28, ADD P19
219	P35		
220	P34	← ADD P26	← REMOVE P26
221	P33		
222	P32	← ADD P20	

LENDER CONSENT AND SUBORDINATION

Artemis Realty Capital Advisors, LLC, a Delaware limited liability company, as beneficiary under that certain Deed of Trust, Assignment of Rents and Security Agreement recorded at Recording No. 20150330393, in the records of the County Recorder of Maricopa County, Arizona (the "Deed of Trust") hereby consents to the recording of the foregoing Condominium Declaration for arTHAUS Condominium (the "Declaration") and acknowledges and agrees that the Deed of Trust shall be subordinate to the Declaration and that the Declaration shall survive any trustee's sale or execution sale resulting from a default under the Deed of Trust or the obligations secured thereby. In addition, Artemis Realty Capital Advisors, LLC hereby consents to and subordinates the lien of the Deed of Trust to the Final Plat for arTHAUS Condominium recorded in Book 1236, Map 13, in the records of the County Recorder of Maricopa County, Arizona, which consent and subordination shall have the same force and effect as if Artemis Realty Capital Advisors, LLC had signed the original of such plat.

Dated this 27 day of JULY, 2015.

ARTEMIS REALTY CAPITAL ADVISORS, LLC, a
Delaware limited liability company

By: _____

Name: GREG NELSON

Its: MANAGER

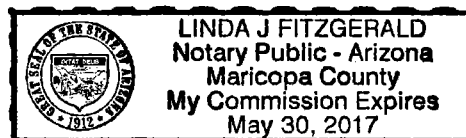
State of Arizona)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 27th day of July, 2015, by Greg Nelson, the Manager of Artemis Realty Capital Advisors, LLC, a Delaware limited liability company, on behalf of the company.

Linda J. Fitzgerald
Notary Public

My commission expires:

May 30, 2017




LENDER CONSENT AND SUBORDINATION

City of Phoenix, Community and Economic Development Department, as beneficiary under that certain Deed of Trust and Assignment of Rents recorded at Recording No. 20150330397, in the records of the County Recorder of Maricopa County, Arizona (the "Deed of Trust") hereby consents to the recording of the foregoing Condominium Declaration for arthAUS Condominium (the "Declaration") and acknowledges and agrees that the Deed of Trust shall be subordinate to the Declaration and that the Declaration shall survive any trustee's sale or execution sale resulting from a default under the Deed of Trust or the obligations secured thereby. In addition, City of Phoenix, Community and Economic Development Department hereby consents to and subordinates the lien of the Deed of Trust to the Final Plat for arthAUS Condominium recorded in Book 1236, Map 13, in the records of the County Recorder of Maricopa County, Arizona, which consent and subordination shall have the same force and effect as if the City of Phoenix, Community and Economic Development Department had signed the original of such plat.

Dated this 27 day of July, 2015.

CITY OF PHOENIX, a municipal corporation
Ed Zuercher, City Manager

By:  For C.M.
Christine Mackay
Community and Economic Development
Director

ATTEST:


City Clerk

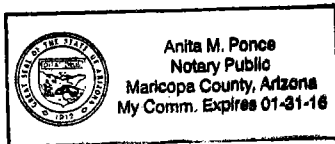
APPROVED AS TO FORM:

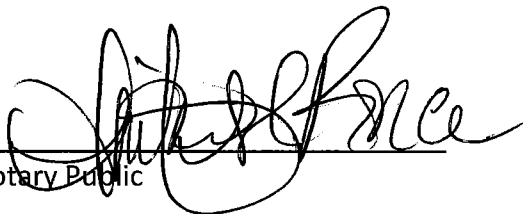

Acting City Attorney IGS



State of Arizona)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 27th day of July, 2015, by Hank Marshall the Executive Officer of City of Phoenix, Community and Economic Development Department.




Notary Public

My commission expires:

1-31-16

PHOENIX 64758-1 223664v3