

OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL
20050300719 03/11/2005 01:15
ELECTRONIC RECORDING

WHEN RECORDED, RETURN TO:

Donald E. Dyekman
Mariscal, Weeks, McIntyre & Friedlander
2901 N. Central Avenue
Suite 200
Phoenix, AZ 85012

1238-68-1-1--
Fontesm

CONDOMINIUM DECLARATION

FOR

THE CARLYLE CONDOMINIUM

**CONDOMINIUM DECLARATION
FOR
THE CARLYLE CONDOMINIUM**

TABLE OF CONTENTS

ARTICLE 1 DEFINITIONS	1
ARTICLE 2 SUBMISSION OF PROPERTY; UNIT BOUNDARIES; ALLOCATION	6
2.1 SUBMISSION OF PROPERTY	6
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	7
2.7 ALLOCATION OF VOTES IN THE ASSOCIATION	8
2.8 ALLOCATION OF LIMITED COMMON ELEMENTS	8
2.9 ACCESS GATE	10
2.10 CONVERSION DISCLOSURE	10
ARTICLE 3 EASEMENTS AND DEVELOPMENT RIGHTS	11
3.1 UTILITY EASEMENT	11
3.2 EASEMENTS FOR INGRESS AND EGRESS	11
3.3 UNIT OWNERS' EASEMENTS OF ENJOYMENT	11
3.4 DECLARANT'S RIGHTS AND EASEMENTS	13
3.5 EASEMENT FOR SUPPORT	14
3.6 EASEMENTS AND RIGHTS OF THE ASSOCIATION	14
3.7 COMMON ELEMENTS EASEMENT IN FAVOR OF UNIT OWNERS	15
3.8 UNITS AND LIMITED COMMON ELEMENTS EASEMENT IN FAVOR OF ASSOCIATION	15
3.9 EASEMENT FOR UNINTENDED ENCROACHMENTS	16
3.10 EASEMENTS FOR UTILITIES AND MAINTENANCE	16
ARTICLE 4 USE AND OCCUPANCY RESTRICTIONS	17
4.1 RESIDENTIAL USE	17
4.2 ANTENNAS	17
4.3 IMPROVEMENTS AND ALTERATIONS	17
4.4 TRASH CONTAINERS AND COLLECTION	19
4.5 ANIMALS	19
4.6 DISEASES AND INSECTS	20
4.7 MOTOR VEHICLES	20
4.8 TOWING OF VEHICLES	21
4.9 SIGNS	21

4.10	LAWFUL USE	21
4.11	NUISANCES AND OFFENSIVE ACTIVITY.....	21
4.12	WINDOW COVERINGS	21
4.13	PATIOS AND BALCONIES	21
4.14	RENTAL OF UNITS	22
4.15	HAZARDOUS MATERIALS	22
4.16	NOISE REDUCTION	22
4.17	DECLARANT APPROVAL REQUIRED	23
ARTICLE 5 MAINTENANCE AND REPAIR OF COMMON ELEMENTS AND UNITS		
	23
5.1	DUTIES OF THE ASSOCIATION	23
5.2	DUTIES OF UNIT OWNERS.....	23
5.3	REPAIR OR RESTORATION NECESSITATED BY OWNER	24
5.4	OWNER'S FAILURE TO MAINTAIN	24
5.5	PRIVATE SEWER FACILITIES	25
ARTICLE 6 THE ASSOCIATION		25
6.1	RIGHTS, POWERS AND DUTIES OF THE ASSOCIATION	25
6.2	DIRECTORS AND OFFICERS	26
6.3	RULES.....	26
6.4	IDENTITY OF MEMBERS	26
6.5	PERSONAL LIABILITY	26
6.6	UTILITY SERVICE.....	26
ARTICLE 7 ASSESSMENTS.....		27
7.1	PREPARATION OF BUDGET.	27
7.2	REGULAR ASSESSMENT	27
7.3	SPECIAL ASSESSMENTS.....	28
7.4	INDIVIDUAL EXPENSE ASSESSMENT	28
7.5	ENFORCEMENT ASSESSMENT	29
7.6	PURPOSES FOR WHICH ASSOCIATION'S FUNDS MAY BE USED.....	29
7.7	EFFECT OF NONPAYMENT OF ASSESSMENTS; REMEDIES OF THE ASSOCIATION	29
7.8	CERTIFICATE OF PAYMENT	30
7.9	NO EXEMPTION OR OFFSETS.....	30
7.10	INITIAL WORKING CAPITAL FUND	30
7.11	RESERVE CONTRIBUTION.....	31
7.12	TRANSFER FEE	31
7.13	RESERVES.....	31
ARTICLE 8 INSURANCE.....		32
8.1	SCOPE OF COVERAGE.	32
8.2	FIDELITY BONDS OR INSURANCE	35
8.3	PAYMENT OF PREMIUMS	36
8.4	INSURANCE OBTAINED BY UNIT OWNERS	36

8.5	PAYMENT OF INSURANCE PROCEEDS	36
8.6	CERTIFICATE OF INSURANCE	37
ARTICLE 9 DESTRUCTION OF IMPROVEMENTS		37
9.1	AUTOMATIC RECONSTRUCTION	37
9.2	DETERMINATION NOT TO RECONSTRUCT WITHOUT TERMINATION	37
9.3	DISTRIBUTION OF INSURANCE PROCEEDS IN THE EVENT OF TERMINATION OF THE CONDOMINIUM.....	37
9.4	NEGOTIATIONS WITH INSURER	37
9.5	REPAIR OF UNITS	38
9.6	PRIORITY.....	38
ARTICLE 10 EMINENT DOMAIN		38
10.1	TOTAL TAKING OF A UNIT.....	38
10.2	PARTIAL TAKING OF A UNIT	38
10.3	TAKING OF COMMON ELEMENTS.....	39
10.4	TAKING OF ENTIRE CONDOMINIUM.....	39
10.5	PRIORITY AND POWER OF ATTORNEY	39
ARTICLE 11 DISPUTE RESOLUTION		39
11.1	DEFINED TERMS.....	39
11.2	AGREEMENT TO RESOLVE CERTAIN DISPUTES WITHOUT LITIGATION	40
11.3	NOTICE OF ALLEGED DEFECT.....	40
11.4	NOTICE OF CLAIM	41
11.5	MEDIATION	41
11.6	BINDING ARBITRATION	42
11.7	RIGHT TO ENTER, INSPECT, REPAIR AND/OR REPLACE	44
11.8	USE OF FUNDS	44
11.9	APPROVAL OF LITIGATION.....	44
11.10	STATUTE OF LIMITATIONS	45
11.11	CONFLICTS	45
ARTICLE 12 RIGHTS OF FIRST MORTGAGEES		46
12.1	NOTIFICATION TO FIRST MORTGAGEES.....	46
12.2	APPROVAL REQUIRED FOR AMENDMENT TO DECLARATION, ARTICLES OR BYLAWS	46
12.3	RIGHT OF INSPECTION OF RECORDS.....	48
12.4	PRIOR WRITTEN APPROVAL OF FIRST MORTGAGEES.....	48
12.5	LIENS PRIOR TO FIRST MORTGAGE.....	49
12.6	CONDEMNATION OR INSURANCE PROCEEDS	49
12.7	LIMITATION ON PARTITION AND SUBDIVISION.....	49
12.8	CONFLICTING PROVISIONS.....	49
12.9	RESTORATION OR REPAIR OF CONDOMINIUM.....	50

ARTICLE 13 GENERAL PROVISIONS.....	50
13.1 ENFORCEMENT	50
13.2 SEVERABILITY.....	52
13.3 DURATION	52
13.4 TERMINATION OF CONDOMINIUM.....	52
13.5 AMENDMENT	52
13.6 NOTICES	53
13.7 GENDER.....	53
13.8 TOPIC HEADINGS	53
13.9 SURVIVAL OF LIABILITY.....	53
13.10 CONSTRUCTION.....	54
13.11 JOINT AND SEVERAL LIABILITY	54
13.12 GUESTS AND TENANTS	54
13.13 ATTORNEYS' FEES	54
13.14 NUMBER OF DAYS	54
13.15 DECLARANT'S RIGHT TO USE SIMILAR NAME	54

**CONDOMINIUM DECLARATION
FOR
THE CARLYLE CONDOMINIUM**

This Condominium Declaration for The Carlyle Condominium (this "Declaration") is made this 7th day of March, 2005, by Carlyle Apartments L.L.C., an Arizona limited liability company (the "Declarant").

ARTICLE 1

DEFINITIONS

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

1.1 "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.

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

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

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

1.5 "Association" means The Carlyle Condominium Association, an Arizona nonprofit corporation, its successors and assigns.

1.6 "Balcony" means a balcony adjoining a Unit and designed to serve a single Unit.

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

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

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

1.10 "City" means the City of Phoenix, Arizona, a municipal corporation.

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

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

1.13 "Common Expenses" means the actual or estimated costs or expenses incurred or to be incurred by the Association or financial liabilities of the Association including, without limitation, the following:

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

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

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

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

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

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

(g) all real property taxes levied against the Parcel as a whole or separately against the Common Elements;

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

(i) 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.

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

1.15 "Condominium" means the Parcel, together with the Building and all other Improvements located thereon.

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

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

1.18 "Declarant" means Carlyle Apartments L.L.C., an Arizona limited liability company, and its successors and any Person to whom it may transfer any Special Declarant Right by a Recorded instrument.

1.19 "Declaration" means this Condominium Declaration for The Carlyle Condominium, as amended from time to time.

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

(a) Create easements, Units, Common Elements or Limited Common Elements within the Condominium;

(b) Subdivide Units, convert Units into Common Elements or convert Common Elements into Units;

(c) Amend the Declaration during the Period of Declarant Control to comply with the Condominium Act or any other applicable law or to correct any error or inconsistency in the Declaration if the amendment does not adversely affect the rights of any Unit Owner;

(d) Amend the Declaration during the Period of Declarant Control to comply with the rules or guidelines, in effect from time to time, of any governmental or quasi-governmental entity or federal corporation guaranteeing or insuring mortgage loans or governing transactions involving mortgage instruments.

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

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

1.23 "Enforcement Assessment" means an assessment levied pursuant to Section 7.5.

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

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

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

1.27 "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, hedges, plants, trees and shrubs of every type and kind.

1.28 "Individual Expense Assessment" means an assessment levied by the Association pursuant to Section 7.4.

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

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

1.31 "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.

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

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

1.34 "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.

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

1.36 "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, but the term "Parking Space" shall not include space within a Garage.

1.37 "Patio" means a patio adjoining a Unit and designed to serve a single Unit.

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

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

1.40 "Plat" means the condominium plat for The Carlyle Condominium recorded in Book 732, Page 44, in the records of the County Recorder of Maricopa County, Arizona, and any amendments, supplements or corrections thereto.

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

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

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

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

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

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

1.46 "Unit" means a portion of a Building subject to this Declaration and designated as a Unit on the Plat. 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 is the owner of fee title to the Parcel. Declarant hereby submits the Parcel to the provisions of the Condominium Act for the purpose of creating a condominium in accordance with the provisions of the Condominium Act and hereby declares that the Parcel shall be held and conveyed subject to the terms, covenants, conditions and restrictions set forth in this Declaration. 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 Parcel 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 or any part thereof, their heirs, successors, successors in title and assigns. Each Person who acquires any right, title or interest in the Condominium, or any part thereof, agrees to abide by all of the provisions of the Condominium Documents. This Declaration shall be binding upon and shall be for the benefit of and enforceable by the Association. Declarant makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of the Condominium Documents, or as to the compliance of

any of the provisions of the Condominium Documents with public laws, ordinances and regulations applicable thereto.

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

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

2.4 Identifying Numbers of Units. There are a total of 118 Units in the Condominium. The Identifying Numbers of the Units are 101 through 138, inclusive, 201 through 244, inclusive, 301 through 334, inclusive, 337 and 338.

2.5 Unit Boundaries.

2.5.1 The boundaries of each Unit are the interior unfinished surfaces of the perimeter walls, floor, ceiling, doors and windows of the Unit. 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 or floor are part of the Unit, and all other portions of the walls and floor are part of the Common Elements. All spaces, interior partitions and other fixtures and improvements (including, but not limited to, chutes, flues, wires, conduits, heating and air conditioning 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. In the event of any inconsistency or conflict between the provisions of this Subsection 2.5.1 and the Plat in regard to the description of the boundaries of the Unit, this Section shall control.

2.5.2 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.

2.5.3 In the event of any inconsistency or conflict between the provisions of this Subsection 2.5.1 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 square footage of all the Units. For purposes of calculating the undivided interests in the Common Elements and in the Common Expenses, the square footage of each Unit shall be determined by the dimensions of the perimeter walls of the Unit as shown on the Plat regardless of any variances between those dimensions and the dimensions of the perimeter walls as initially constructed or as reconstructed

following the damage or destruction of such walls. The percentage of undivided interest in the Common Elements and in the Common Expenses allocated to each Unit is set forth on Exhibit B attached to this Declaration. The percentage of undivided interest of each Unit in the Common Elements shall be an undivided interest, and the Common Elements shall be owned by the Unit Owners as tenants in common in accordance with their respective percentages of undivided interest. The ownership of each Unit shall not be conveyed separate from the percentage of undivided 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.

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

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

(b) If a chute, flue, pipe, duct, wire, conduit or other fixture (including, but not limited to, hot water heaters, heating and air conditioning units and related equipment and natural gas, cable television, water and electric pipes, lines or meters) 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;

(c) All doors and windows in the perimeter 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.

(d) Each Unit on the second or third floor of a Building is allocated the Balcony adjoining the Unit and designed to serve that Unit. The boundaries of each Balcony shall be as follows: (i) the lower boundary shall be the unfinished floor of the Balcony; (ii) the upper boundary shall be the unfinished ceiling of the Balcony; and (iii) the vertical boundaries shall be vertical planes corresponding to the exterior wall of the Building and the inside surface of the railing of the Balcony extended to the upper and lower boundaries.

(e) Each Unit on the first floor of a Building is allocated the Patio adjoining the Unit and designed to serve that Unit. The boundaries of each Patio shall be as follows: (i) the lower boundary shall be the unfinished concrete floor of the Patio; (ii) the upper boundary shall be a horizontal plane having an elevation equal to the elevation of the finished ceiling of the Unit to which the Patio is allocated; and (iii) the vertical boundaries shall be the vertical planes corresponding to the exterior wall of the Building in which the Unit is located and interior unfinished surfaces of the wall enclosing the Patio.

(f) Each Unit is allocated the covered Parking Space listed opposite the number of the Unit on Exhibit C attached to this Declaration.

2.8.2 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.

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

2.8.4 So long as the Declarant owns any Unit, the Declarant shall have the right to allocate as a Limited Common Element any part of the Common Elements (including, but not limited to, Garages and Parking Spaces) 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. After the Declarant no longer owns any Unit, the Board of Directors shall have the right, with the approval of Members holding at least sixty-seven percent (67%) of

the total number of votes entitled to be cast by Members, to allocate as a Limited Common Element any portion of the Common Elements not previously allocated as a Limited Common Element. Any such allocation by the Board of Directors shall be made by an amendment to this Declaration and an amendment to the Plat if required by the Condominium Act.

2.9 Access Gates. Two electronically activated access gates limit access and provide more privacy for the Unit Owners and the other Residents 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 Resident acknowledges and agrees that the access gate does not guarantee the safety or security of the Owners, Lessees or Residents or their guests or guarantee that no unauthorized person will gain access to the Condominium. Each Owner, Lessee and Resident, 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 Resident 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.

2.10 Conversion Disclosure. The Parcel is being converted by the recording of the Plat and this Declaration from multifamily rental to condominiums. The original construction of the improvements situated on the Parcel was completed in 1997. The name and address of the original owner, builder, developer and general contractor as shown on the building permit issued by the City is as follows:

Owner:

Carlyle Apartments LLC
1850 N. Central Avenue
Phoenix, Arizona 85004

General Contractor and Builder:

MT Builders
8603 E. Royal Palm Road
Scottsdale, Arizona 85258

The name and address of each subsequent owner of the Parcel as determined by a search of the records of the County Recorder of Maricopa County is as follows:

Name

Address

None

The Declarant agrees to provide the following information on request: (a) the name and address of any builder, developer, general contractor, subcontractors, architects and engineers who designed or made improvements to the Parcel immediately before the first Unit was sold; and (b) a specific description of all improvements made.

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, electricity and cable television or other communication lines and systems. By virtue of this easement, it shall be expressly permissible for the providing utility or service company, the Association or the Declarant to install and maintain the necessary utility lines, pipes, facilities and equipment on the Common Elements and the Units, but no sewer lines, natural gas lines, electrical lines, water lines, or other utility or service lines or facilities may be installed or located on the Common Elements or the Units except as initially designed, approved and constructed by the Declarant or as approved by the Board of Directors. This easement shall in no way affect any other recorded easements on the Common Elements.

3.2 Easements for Ingress and Egress. 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.

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

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

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

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

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

(e) 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.

3.3.2 Notwithstanding the provisions of Subsection 3.3.1 to the contrary, if a Unit is leased or rented, the Lessee and the members of his family residing with the Lessee shall have the right to use any recreational amenities which are part of the Common Elements during the term of the lease, and the Unit Owner shall have no right to use such recreational amenities until the termination or expiration of the lease.

3.3.3 The guests of any Owner, Lessee or Occupant entitled to use the Common Elements pursuant to this Section 3.3 may use the Common Elements provided they are accompanied by a Member, Lessee or Occupant entitled to use the Common Elements pursuant to this Section 3.3. The Board of Directors shall have the right to limit the number of guests who may use the Common Elements at any one time and may restrict the use of the Common Elements by guests to certain specified times.

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

3.3.5 The provisions of this Section 3.3 shall not apply to any of the Limited Common Elements that are allocated to the exclusive use of one or more but less than all of the Units.

3.4 Declarant's Rights and Easements.

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

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

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

3.4.4 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 the 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. So long as the Declarant owns any Unit, the Declarant shall have the right to expand or modify the clubhouse or any other amenity which is part of the Common Elements.

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

3.4.6 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 discharging 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.

3.4.7 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.

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

3.4.9 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 fifteen (15) days nor more than thirty (30) days notice of the need to temporarily vacate shall be given to occupants and to the Owner of the Unit affected. The notice shall state: (a) the reason for the temporary relocation; (b) the date and time of the beginning of the treatment; (c) the anticipated dated and time of termination of treatment; and (d) that the

Owner, Lessee or Occupant will be responsible for their own accommodations during the temporary relocation.

3.7 Common Elements Easement in Favor of Unit Owners.

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

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

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

(c) For the performance of the Unit Owners' obligation to maintain, repair, replace and restore those portions of the Limited Common Elements that the Unit Owner is obligated to maintain under Section 5.2.

3.7.2 Notwithstanding any other provision of this Declaration to the contrary, no Owner, Lessee or Occupant or any other Person (except for the Association) shall penetrate, alter or damage any part of the Common Elements, including but not limited to, the perimeter walls of the Units. Penetrating the perimeter walls of the Units could damage the soundproofing of the Units, cause water intrusion into the Common Elements or the Units or damage the insulation in the perimeter 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:

(a) 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 Residents of the Unit;

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

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

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

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

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

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

ARTICLE 4

USE AND OCCUPANCY RESTRICTIONS

4.1 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: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound, vibration or smell from outside the Unit; (b) the business activity conforms to all applicable zoning ordinances or requirements for the Condominium; (c) the business activity is conducted solely in the Unit; (d) the business activity does not involve persons coming to the Unit or the door-to-door solicitation of Owners, Lessees or Occupants; and (e) the business activity is consistent with the residential character of the Condominium and does not constitute a nuisance or a hazardous or offensive use or threaten the security or safety of other Owners, Lessees or Occupants, as may be determined from time to time in the sole discretion of the Board of Directors. The terms "business" and "trade" as used in this Section shall be construed to have ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether: (a) such activity is engaged in full or part time; (b) such activity is intended or does generate a profit; or (c) a license is required for such activity. The leasing of a Unit by the Owner thereof shall not be considered a trade or business within the meaning of this Section.

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

4.3 Improvements and Alterations.

4.3.1 Except as otherwise expressly provided in this Declaration, no Owner, Lessee or Occupant or any other Person other than the Association shall make any alterations or modifications to the Common Elements or construct or install any Improvement on the Common Elements without the prior written approval of the Board of Directors.

4.3.2 Any Owner, Lessee or Occupant may make nonstructural additions, alterations and improvements within his Unit without the prior written approval of the Board of Directors, but the Owner of the Unit shall be responsible for any damage to other Units and to the Common Elements which results from any such alterations, additions or improvements. No

Owner, Lessee or Occupant shall make any structural 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 and 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 a Building or lessen the support of any portion of the Condominium.

4.3.3 Notwithstanding Subsection 4.3.2, no addition, alteration or improvement within a Unit, whether structural or not, which would be visible from the exterior of a Building shall be made without the prior written approval of the Board of Directors, which approval shall only be granted if the Board of Directors affirmatively finds that the proposed addition, alteration or improvement is aesthetically pleasing and in harmony with the surrounding Improvements. No Owner shall make any addition, alteration or improvement to the Common Elements without the prior written approval of the Board of Directors. Except as expressly permitted by this Section 4.3, no wall, partition, fixture or other Improvement situated within a Unit shall be constructed, installed or modified without the prior written approval of the Board of Directors.

4.3.4 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. Water-beds and other furnishings which may cause floor overloads shall not be placed, kept or used in any Unit, except with advance written approval of the Board of Directors.

4.3.5 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: (a) retaining approval rights of the contractor to perform the work; (b) restricting the time during which such work may be performed; (c) requiring the placement of a security deposit in an amount determined by the Board of Directors in an account controlled by the Board of Directors; (d) requiring the provision to the Board of Directors of plans and specifications prepared and sealed by a professional engineer or architect duly licensed by the State of Arizona; and (e) requiring that the Owner requesting the change obtain, prior to commencing any work, and maintain until completion of such work, comprehensive general liability insurance in such amounts as may be required by the Board of Directors. The Owner shall be obligated to designate Declarant, the Association, the Board of Directors and any other Person designated by the Board of Directors as additional insureds under the policies. The Owner shall be responsible for all costs incurred by the Board of Directors in connection with the Board of Director's review of proposed changes to the Owner's Unit, including, without limitation, all costs of architects, engineers and other professionals which may be retained by the Board of Directors to assist in their review. Any such costs not timely paid by the Unit Owner shall be deemed an Individual Expense Assessment.

4.3.6 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, 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.

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

4.4 Trash Containers and Collection. No rubbish, trash or garbage shall be placed or kept on the Common Elements except in covered containers of a type, size and style which are provided by the Association's trash collection company or approved by the Board of Directors. All rubbish, trash and garbage shall be regularly removed from the Units by the Owners, Lessees or Occupants thereof. All trash, garbage or rubbish must be kept in sanitary containers and must be bagged and deposited in designated trash receptacles. No rubbish, trash or garbage shall be kept on any Balcony. The Rules may contain provisions governing the disposal of trash, garbage and rubbish in the Condominium.

4.5 Animals. Except as expressly permitted by this Section no animals, birds, reptiles, fish, fowl, poultry or livestock shall be maintained or kept in any Unit or on any other portion of the Condominium. A reasonable number of Permitted Pets may be kept or maintained

in a Unit if they are kept, bred or raised solely as domestic pets and not for commercial purposes. For purposes of this Section, a "Permitted Pet" shall mean a dog, cat, fish or bird of a variety commonly kept as a household pet. The Board of Directors shall have the absolute authority to determine what constitutes a reasonable number of Permitted Pets. No Permitted Pet shall be allowed to make an unreasonable amount of noise, cause an odor which is detectable outside the Unit, or be an annoyance to a person of ordinary sensibilities. All dogs 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 dog onto the Common Elements shall immediately remove any feces deposited on the Common Elements by the dog. Any Unit where a Permitted Pet is kept or maintained shall at all times be kept in a neat and clean condition. No structure for the care, housing, confinement, or training of any Permitted Pet shall be maintained on any portion of the Common Elements or in any Unit so as to be visible from the exterior of the Building or any other Unit. Upon the written request of any Owner, the Board of Directors shall determine whether, for the purposes of this Section, a Permitted Pet makes an unreasonable amount of noise, causes an odor which is detectable outside the Unit or is an annoyance to a person of ordinary sensibilities. Notwithstanding any other provision of this Section, no dog 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 dog or other Permitted Pet which has bitten or attacked a person or other animal or any dog or other 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 three (3) days after written demand for removal of the Permitted Pet is given to the owner by the Board of Directors. The Board of Directors shall have the right to adopt, amend and repeal rules and regulations governing the keeping of Permitted Pets in the Condominium, and such rules and regulations may include limitations on the height and/or weight of Permitted Pets; provided, however, that any rule placing limitations on the height and/or weight of a Permitted Pet must be approved by the affirmative vote of Members having more than fifty percent (50%) of the votes cast with respect to such proposed rule at a meeting of the Members.

4.6 Diseases and Insects. No Owner, Lessee or Occupant shall permit any thing or condition to exist upon the Condominium which could induce, breed or harbor infectious plant diseases or noxious insects. In addition to such pest control services as may be provided by the Association, each Owner shall perform such pest control activities in his Unit as may be necessary to prevent insects, rodents and other pests from being present in the Unit.

4.7 Motor Vehicles. Except for emergency repairs, no automobile, motorcycle, motorbike or other motor vehicle shall be constructed, reconstructed, serviced or repaired on any portion of the Condominium, and no inoperable vehicle may be stored or parked on any portion of the Condominium. No automobile, motorcycle, motorbike or other motor vehicle shall be parked upon any part of the Condominium, except in the Garage Parking Spaces or Parking Spaces. The Owners, Lessees or Occupants of a Unit shall park their automobiles, motorcycles,

motor bikes or other motor vehicles only in the Garage Parking Space or Parking Spaces allocated to their Unit as a Limited Common Element. No boat, boat trailer or other trailer shall be parked or kept on any part of the Common Elements.

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

4.9 Signs. No signs (including, but not limited to, "For Sale" or "For Rent" signs) 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 valid laws, zoning ordinances, and regulations of all governmental bodies having jurisdiction over the Condominium shall be observed. Any violation of such laws, zoning ordinances or regulations shall be a violation of this Declaration.

4.11 Nuisances and Offensive Activity. No nuisance shall be permitted to exist or operate upon the Condominium, and no activity shall be conducted upon the Condominium which is offensive or detrimental to any portion of the Condominium or any Owner, Lessee or Occupant or which interferes with quiet enjoyment of a Unit by the Owner, Lessee or Occupant thereof. No exterior speakers, horns, whistles, bells or other sound devices 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. Except for tinting which is part of the original construction of the Building, window tinting is prohibited.

4.13 Patios and Balconies. Furniture, furnishings, umbrellas, pots and plants kept and maintained on any Patio or Balcony shall be of a neutral color harmonious with and not in conflict with the color scheme of the exterior walls of the Building in which the Unit is located and must be approved in writing by the Board of Directors unless expressly permitted by the Rules. No furniture, furnishings, umbrellas, pots, plants or other items which extend above the wall or railing of a Patio or Balcony shall be kept and maintained on any Patio or Balcony unless expressly permitted by the Rules or approved in writing by the Board of Directors. No astro turf, carpet or other floor covering shall be installed in any Patio or Balcony without the prior written approval of the Board of Directors. No Patio or Balcony shall be used as a storage area for items

or materials that are not customarily intended for use on a Patio or Balcony, such as the use of a Patio or Balcony to store bicycles or exercise equipment. No items may be hung from any Patio or Balcony or the ceiling, wall or railing enclosing the Balcony. The Rules may govern and regulate the nature and extent of plants, shrubs, flowers and other landscaping that may be installed in Patios. No Owner, Lessee or Occupant shall remove or alter any existing flooring in a Patio or Balcony without the prior written approval of the Board of Directors. No spas or hot tubs shall be installed or kept on any Patio or Balcony.

4.14 Rental of Units. Any Owner may lease all or any part of the Owner's Unit, subject to the provisions of this Condominium Documents. All leases must be in writing and must provide that the terms of the lease are subject in all respects to the provisions of this Declaration and the Rules and that any violation of this Declaration or the Rules by the Lessee or the other Occupants shall be a default under the lease. There shall be no subleasing of Units or assignments of leases. At least ten (10) days before commencement of the lease term, the Owner shall provide the Association with a copy of the signed lease and the following information: (a) the commencement date and expiration date of the lease term; (b) the names of each of the Lessees and each other person who will reside in the Unit during the lease term; (c) the address and telephone number at which the Owner can be contacted by the Association during the lease term; and (d) the name, address and telephone number of a person whom the Association can contact in the event of an emergency involving the Unit. Any Owner who leases his Unit must provide the Lessee with copies of this Declaration and the Rules. The Owner shall be liable for any violation of this Declaration or the Rules by the Lessees or other persons residing in the Unit and their guests or invitees and, in the event of any such violation, the Unit Owner, upon demand of the Association, shall immediately take all necessary actions to correct any such violations. The provisions of this Section shall not apply to the Declarant.

4.15 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 work.

4.16 Noise Reduction. Any hard floor coverings installed in a Unit must use a sound control underlayment system which must include perimeter insulative material which will insure that impact noises will not be transmitted into the Unit below the floor either directly through the floor or by going around the floor and through the surrounding walls. In order to maintain the highest level of acoustical privacy possible, the Board of Directors may, from time to time, adopt rules and regulations to reduce levels of noise emission from Units. Additionally, no loudspeakers shall be affixed to any wall, ceiling, shelving or cabinets so as to cause vibrations discernable between Units. The use of stereo equipment, televisions and musical instruments shall be subject to and must be used in accordance with the Rules. All Owners, Lessees and Occupants shall take all reasonable precautions to lower noise transference between Units and to abide by the rules and regulations of the Association and any noise reduction ordinance of the City. Each Owner, Lessee and Occupant acknowledges that Declarant has not made any written or oral representation or warranty concerning the sound insulation capabilities of the Units or the Garages and that in any multi-family dwelling sound may be audible between Units, particularly

where the sound level of the source is sufficiently high and the background noise in an adjacent Unit is very low.

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

ARTICLE 5

MAINTENANCE AND REPAIR OF COMMON ELEMENTS AND UNITS

5.1 Duties of the Association. The Association shall maintain, repair and replace all Common Elements, except for the Limited Common Elements which the Unit Owners are obligated to maintain, repair and replace pursuant to Section 5.2. The Association shall also maintain, repair and replace the walls of the Balconies. The cost of all such maintenance, repairs and replacements shall be a Common Expense and shall be paid for by the Association. The Board of Directors shall be the sole judge as to the appropriate maintenance, repair and replacement of all Common Elements, but all Common Elements shall be maintained in good condition and repair at all times. No Owner, Lessee, Occupant or other Person shall construct or install any Improvements on the Common Elements or alter, modify or remove any Common Elements without the prior written approval of the Board of Directors. No Owner, Lessee, Occupant or other Person shall obstruct or interfere with the Association in the performance of the Association's maintenance, repair and replacement of the Common Elements or any components of the Units which the Association is obligated to maintain, repair or replace. The Declarant, at its option, may provide to the Association a maintenance program for the maintenance, care, up-keep, repair, inspection and replacement of the Common Elements and Units (the "Maintenance Program"). If the Declarant provides a Maintenance Program to the Association, the Board of Directors shall utilize the Maintenance Program in the determination of the appropriate maintenance of the Common Elements. The failure to maintain, repair and replace the Common Elements in accordance with any Maintenance Program provided by the Declarant shall void all express or implied warranties by the Declarant or by any contractor, subcontractor, supplier or manufacturer. Owners, Lessees and Occupants shall immediately notify the Association of (a) any broken or leaking water pipes, toilets, clothes washers or hot water heaters and (b) any water intrusion into the Buildings from the roofs or windows.

5.2 Duties of Unit Owners. Each Owner shall maintain, repair and replace, at his own expense, all portions of his 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 2.8.1(a), 2.8.1(b) and 2.8.1(c). Each Owner shall be responsible for maintaining the interior of the Balcony and Storage Room allocated to the Unit as a Limited Common Element in a good, clean and sanitary condition. The Owner of a Unit to which a Garage has been allocated as a Limited Common Element shall be

responsible for the maintenance, repair and replacement of any electronic garage door opener for the Garage. 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. If the Declarant provides a Maintenance Program to the Association, each Unit Owner shall obtain from the Board of Directors the Maintenance Program applicable to the Units and utilize the Maintenance Program for the maintenance, upkeep, repair, inspection and replacement of the Unit and all Limited Common Elements that the Owner is obligated to maintain, repair and replace pursuant to this Section. Each Unit Owner (other than the Declarant) shall maintain detailed and complete records of all maintenance, repairs and replacements to the Owner's Unit or the Limited Common Elements made by the Unit Owner. On or before January 31 of each year, each Unit Owner (other than the Declarant) shall submit to the Association and the Declarant a maintenance report detailing all maintenance, repairs and replacements to the Owner's Unit or the Limited Common Elements made by the Unit Owner during the immediately preceding calendar year, and upon request of the Board of Directors, shall provide to the Association the records with respect to such maintenance, repairs and replacements. The failure to maintain, repair and replace the Unit and the Limited Common Elements in accordance with the Maintenance Program shall void all express and implied warranties by the Declarant or by any contractor, subcontractor, supplier or manufacturer. Each Owner shall cause the HVAC system serving the Owner's Unit to be inspected periodically (but in all events, not less than annually) by a qualified technician to properly assess the condition of the system and to identify any necessary repair, maintenance or replacement of the system. The Owner shall promptly make all recommended repairs, maintenance and replacements of the HVAC system, and all repairs, maintenance and replacements must be performed by a licensed contractor. No person other than a licensed contractor performing repairs, maintenance or replacement of an HVAC system or Association employees, agents or contractors shall be permitted on the roof of a Building without the prior written approval of the Board of Directors. 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 hours notice prior to entering the other Unit. Each Owner shall be strictly liable to the Association and the other Owners, Lessees and Occupants for any damage to the Common Elements or other Units caused by water intrusion into the Common Elements or other Units from the Owner's 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. 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 Subsection 7.2.4.

5.4 Owner's Failure to Maintain. If an Owner fails to maintain in good condition and repair his Unit or any Limited Common Element which he is obligated to maintain under this Declaration and the required maintenance, repair or replacement is not performed within fifteen

(15) days after written notice has been given to the Owner by the Association, the Association shall have the right, but not the obligation, to perform the required maintenance, repair or replacement. The cost of any such maintenance, repair or replacement shall be assessed against the nonperforming unit Owner pursuant to Subsection 7.2.4.

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

ARTICLE 6

THE ASSOCIATION

6.1 Rights, Powers and Duties of the Association. No later than the date on which the first Unit is conveyed to a Purchaser, the Association shall be organized as a nonprofit Arizona corporation. The Association shall be the entity through which the Unit Owners shall act. The Association shall have such rights, powers and duties as are prescribed by law and as are set forth in the Condominium Documents together with such rights, powers and duties as may be reasonably necessary in order to effectuate the objectives and purposes of the Association as set forth in this Declaration and the Condominium Act. The Association shall have the right to finance capital improvements in the Condominium by encumbering future Assessments if such action is approved by the affirmative vote of Unit Owners holding more than two-thirds (2/3) of the votes in the Association. Unless the Condominium Documents or

the Condominium Act specifically require a vote of the Members, the Board of Directors may act in all instances on behalf of the Association.

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

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, and no other person acting on behalf of the Board of Directors shall be personally liable to any Member, or to any other Person for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence in the discharge of such person's duties and responsibilities under the Condominium Documents provided such person acted in good faith and without intentional misconduct.

6.6 Utility Service. The Association shall acquire and pay for the following: (a) water, sewer, electric, natural gas and other utility service for the Common Elements; (b) refuse and rubbish collection for the Common Elements and the Units; and (c) 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 paid by the Owner of the Unit. Each Unit Owner shall be responsible for obtaining any telephone, cable television or internet service that such Owner may desire, and the costs of any such services shall be the responsibility of the Unit Owner.

ARTICLE 7

ASSESSMENTS

7.1 Preparation of Budget.

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

7.1.2 At least ten (10) days before the beginning of 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 prepare or adopt a budget for any fiscal year 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.

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

Regular Assessment for that fiscal year and the revised Regular Assessment shall commence on the date designated by the Board of Directors.

7.2.2 The Regular Assessments shall commence as to all Units on the first day of the month following the conveyance of the first Unit 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.

7.2.3 Except as otherwise expressly provided for in this Declaration, all Common Expenses including, but not limited to, Common Expenses associated with the maintenance, repair and replacement of a Limited Common Element, shall be assessed against all of the Units in accordance with Subsection 7.2.1.

7.2.4 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.

7.2.5 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.

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 cast with respect to the Special Assessment. 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 **Individual Expense Assessment.** The Association may contract with various suppliers of goods or services to provide to the Owners, Lessees and Occupants goods or services which the Association is not required to provide under the Condominium Documents. Any such contract may either provide that the Association shall pay for the cost and expense of the goods or services provided to the Owners, Lessees or Occupants under the contract or that the cost and expense shall be billed directly to the Owner, Lessee or Occupant receiving such goods or services. Any such costs and expenses paid by the Association shall be assessed as an Individual Expense Assessment to the Unit receiving such goods or services.

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

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

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

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

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

7.7.3 The Assessment Lien shall have priority over all liens, other interests and encumbrances except for: (a) liens and encumbrances Recorded before the recording of this Declaration; (b) liens for real estate taxes and other governmental assessments and charges; and (c) the lien of any First Mortgage or seller's interest in a first contract for sale recorded prior to the Assessment Lien. Any First Mortgagee or any other Person acquiring title or coming into possession of a Unit through foreclosure of the First Mortgage, purchase at a foreclosure sale or trustee'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.

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

7.8 Certificate of Payment. The Association on written request shall furnish to a lienholder, Unit Owner or person designated by a Unit Owner a recordable statement setting forth the amount of unpaid Assessments against his Unit. The statement shall be furnished within fifteen (15) days after receipt of the request and is binding on the Association, the Board of Directors, and every Unit Owner. The Association may charge a reasonable fee in an amount established by the Board of Directors for each such statement.

7.9 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.

7.10 Initial Working Capital Fund. To provide the Association with initial operating funds, each Purchaser of a Unit from the Declarant shall pay to the Association, immediately upon becoming the Owner of the Unit, a sum equal to two monthly installments of the Regular Assessment for the Unit. Such amount shall be non-refundable and shall not be considered as an advance payment of any Assessments levied by the Association pursuant to this Declaration.

7.11 Reserve Contribution.

7.11.1 Except as provided in Subsection 7.11.2, each Person who purchases or otherwise purchases or otherwise becomes the Owner of a Unit shall pay to the Association, immediately upon becoming the Owner of the Unit, a contribution (the "Reserve Contribution") to the reserves to be established pursuant to Section 7.13. The amount of the initial Reserve Contribution shall be set by the Board of Directors prior to the conveyance of the first Unit to a Purchaser. The Board of Directors may from time to time thereafter increase or decrease the amount of the Reserve Contribution, but the amount of the Reserve Contribution may not be increased by the Board of Directors by more than twenty percent (20%) during any twelve month period without the approval of Members holding more than fifty percent (50%) of the votes in the Association.

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

7.11.3 All Reserve Contributions shall be deposited in the Reserve Account established pursuant to Section 7.13. Reserve Contributions shall be non-refundable and shall not be considered as an advance payment of Assessments.

7.12 Transfer Fee.

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

7.13 Reserves.

7.13.1 The Board of Directors shall establish reserves for the future periodic maintenance, repair or replacement of the major components of the Common Elements which the Association is obligated to maintain, repair and replace. The reserves may be funded from Regular Assessments, the Reserve Contributions paid pursuant to Section 7.11 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. Withdrawal of funds from the Association's reserve account shall require the signatures of either (a) two (2) members of the Board of Directors; or (b) one (1) member of the Board of Directors and an officer of the Association who is not also a member of the Board of Directors. The Board of Directors shall obtain a reserve study at least once every three years, which study shall at a minimum include (a) identification of the major components of the Common Elements which the Association is obligated to repair, replace, restore or maintain which, as of the date of the study, have a remaining useful life of less than thirty (30) years; (b) identification of the probable remaining useful life of the identified major components as of the date of the study; (c) an estimate of the cost of repair, replacement, restoration, or maintenance of the identified major components during and at the end of their useful life; (d) an estimate of the total annual contribution necessary to defray the cost to repair, replace, restore, or maintain the identified major components during and at the end of their useful life, after subtracting total reserve funds as of the date of the study.

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

ARTICLE 8

INSURANCE

8.1 Scope of Coverage.

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

(a) A special form policy of property insurance with sprinkler leakage, debris removal and water damage endorsements, insuring the Common Elements. The Board of Directors, in its discretion, may elect to have the property insurance also cover the Units, except for: (i) additions, alterations and improvements supplied or installed by the Unit Owners; and (ii) furniture, furnishings or other personal property of the Unit Owners. Such property insurance shall cover the interests of the Association, the Board of Directors and all Unit Owners and their mortgagees, as their interests may appear (subject, however, to the loss payment adjustment provisions in favor of an Insurance Trustee), in an amount equal to one hundred percent (100%) of the then current replacement cost of the insured property (exclusive of the land, excavations,

foundations and other items normally excluded from such coverage), without deduction for depreciation. The replacement cost shall be reviewed annually by the Board of Directors with the assistance of the insurance company affording such coverage. The Board of Directors shall also obtain and maintain such coverage on all personal property owned by the Association.

(b) Broad form comprehensive general liability insurance, for a limit to be determined by the Board, but not less than \$1,000,000 for any single occurrence and Umbrella or Excess Liability Coverage in an amount not less than \$2,000,000. Such insurance shall cover all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Common Elements. Such policy shall include (i) a cross liability clause to cover liabilities of the Owners as a group to an Owner, and (ii) medical payments insurance and contingent liability coverage arising out of the use of hired and nonowned automobiles.

(c) Workmen'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.

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

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

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

(i) Each Unit Owner shall be an insured under the policy with respect to liability arising out of 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) For policies of property insurance, a standard mortgagee clause providing that the insurance carrier shall notify the Association and each First Mortgagee named in the policy at least ten (10) days in advance of the effective date of any substantial change in coverage or cancellation of the policy.

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

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

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

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

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

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

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

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

8.2 Fidelity Bonds or Insurance.

8.2.1 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:

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

(b) 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;

(c) 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.

8.2.2 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 Subsection 8.2.1. The fidelity bond or fidelity insurance maintained by the management agent shall cover funds maintained in bank accounts of the management agent and need not name the Association as an obligee or an insured.

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. To the extent not covered by the policies of liability insurance obtained by the Board of Directors for the benefit of all of the Unit Owners, each Unit Owner shall be responsible for obtaining: (a) property insurance on his Unit and all fixtures, furnishings, cabinets and appliances and all personal property of the Owner located in the Unit; and (b) comprehensive general liability insurance covering his Unit.

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

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

ARTICLE 9

DESTRUCTION OF IMPROVEMENTS

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

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

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

9.4 Negotiations with Insurer. The Association shall have full authority to negotiate in good faith with representatives of the insurer of any totally or partially destroyed building or any other portion of the Common Elements, and to make settlements with the insurer for less

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

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

9.6 Priority. Nothing contained in this Article shall entitle an Owner to priority over any lender under a lien encumbering 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 or an Owner.

ARTICLE 11

DISPUTE RESOLUTION

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

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

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

(c) **"Claim"** means: (i) any claim or cause of action arising out of or related in any way to an Alleged Defect, including,

without limitation, any claim or cause of action that the Common Elements or the Units are defective or that the Declarant, its agents, contractors, employees, subcontractors, architects, engineers or consultants were negligent in the planning, design, engineering, grading, construction or development thereof; or (ii) any claim or cause of action against the Declarant or any employee, agent, director, member or officer of Declarant arising out of or in any way related to the development of the Condominium or the management or operation of the Association, including, without limitation, any claim for negligence, fraud, intentional misconduct or breach of fiduciary duty. The term "Claim" shall not include any claim or cause of action by the Association against an Owner (other than the Declarant), Lessee or Occupant relating to the addition to or alteration of a Unit or the Common Elements in violation of the Condominium Documents.

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

11.3 Notice of Alleged Defect. The Association or any Unit Owner who becomes aware of any Alleged Defect which could be the basis for a Claim against any Bound Party shall give written notice (the "Notice of Alleged Defect") promptly to each Bound Party who could be responsible for the Alleged Defect. The Notice of Alleged Defect shall state plainly and concisely: (a) the nature and location of the Alleged Defect; (b) the date on which the Association or Unit Owner giving the Notice of Alleged Defect first became aware of the Alleged Defect; and (c) whether the Alleged Defect has caused any damage to any persons or property. Following the receipt by a Bound Party of a Notice of Alleged Defect, the Bound Party and any of its employees, agents, contractors, subcontractors and consultants shall have the right, upon reasonable notice to the Association or Unit Owner giving the Notice of Alleged Defect to enter onto or into, as applicable, the Common Elements or any Unit for the purposes of inspecting and/or conducting testing to determine the existence, nature and extent of the Alleged Defect and, if deemed necessary by the Bound Party, to correct, repair and/or replace the Alleged Defect. In conducting such inspection, testing, repairs and/or replacement, the Bound Party shall be entitled to take any actions it deems reasonable and necessary under the circumstances. Nothing set forth in this Section 11.3 shall be construed to impose any obligation on any Bound Party to inspect, test, repair or replace any item or Alleged Defect for which the Bound Party is not otherwise obligated under applicable law or any warranty provided by the Declarant or any other Bound Party. The right of a Bound Party and its employees, agents, contractors and consultants to enter, inspect, test, repair and/or replace under this Section shall be irrevocable and may not be waived or otherwise terminated, except by written document, in recordable form, executed and recorded by the Bound Party. In no event shall any statute of limitations be tolled during the period in which a Bound Party conducts any inspection, testing, repair or replacement of the Alleged Defect. If the Alleged Defect is not repaired or replaced to the satisfaction of the Association or Unit Owner giving the Notice of Alleged Defect within sixty (60) days after the

Notice of Alleged Defect is given to the Bound Party, then the Association or Unit Owner may proceed with the preparation of the delivery of a Notice of Claim as provided in Section 11.4.

11.4 Notice of Claim. Any Bound Party who contends or alleges to have a Claim (a "Claimant") against any other Bound Party (a "Respondent") shall notify each Respondent in writing of the Claim (the "Claim Notice"), stating plainly and concisely: (a) the nature of Claim, including, date, time, location, Persons involved, and Respondent's role in the Claim; (b) the factual and legal basis of the Claim; and (c) what Claimant wants Respondent to do or not do to resolve the Claim. In the event the Claimant is the Association and the Claim involves an Alleged Defect, the Association must provide written notice to all Members prior to delivering a Claim Notice to a Bound Party or initiating any legal action, cause of action, proceeding, or arbitration against any Bound Party which notice shall (at a minimum) include: (a) a description of the Claim; (b) a description of the attempts of Declarant or any other Bound Party to correct such Alleged Defect and the opportunities provided to Declarant or any other Bound Party to correct such Alleged Defect; (c) a certification from an engineer licensed in the State of Arizona that such Alleged Defect exists along with a description of the scope of work necessary to cure such Alleged Defect and a resume of such engineer; (d) the estimated cost to repair such Alleged Defect; (e) the name and professional background of the attorney retained by the Association to pursue the Claim and a description of the relationship between such attorney and member(s) of the Board of Directors (if any); (f) a description of the fee arrangement between such attorney and the Association; (g) the estimated attorneys' fees and expert fees and costs necessary to pursue the Claim and the source of the funds which will be used to pay such fees and expenses; (h) the estimated time necessary to conclude the action; and (i) an affirmative statement from the Board of Directors that the action is in the best interests of the Association and its Members. 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.

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

set forth when and where the Parties met, that the Parties are at an impasse, and the date that mediation was terminated.

11.6 Binding Arbitration. In the event a Claim is not resolved by mediation, the Claimant shall have ninety (90) days after the date of the Termination of Mediation Notice to submit the Claim to binding arbitration in accordance with this Section 11.6. If the Claimant fails to timely submit the Claim to arbitration, then the Claim shall be deemed waived and abandoned and the Respondent shall be relieved of any and all liability to Claimant arising out of the Claim. A Claimant may only submit a Claim in arbitration on its own behalf. No Claimant may submit a Claim in arbitration as a representative or member of a class, and no Claim may be arbitrated as a class action. All Bound Parties agree that all Claims that are not resolved by negotiation or mediation shall be resolved exclusively by arbitration conducted in accordance with this Section 11.6. All Bound Parties waive their right to have a Claim resolved by a court, including, without limitation, the right to file a legal action as the representative or member of a class or in any other representative capacity. The Claimant and Respondent shall cooperate in good faith to assure that all Bound Parties who may be liable to the Claimant or Respondent with respect to the Claim are made parties to the arbitration. If the Claimant submits the Claim to binding arbitration in accordance with this Section 11.6, the arbitration shall be conducted in accordance with the following rules:

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

(b) **Governing Procedures.** The arbitration shall be conducted in accordance with the AAA Rules and A.R.S. § 12-1501, et seq. In the event of a conflict between the AAA Rules and this Section 11.6, the provisions of this Section 11.6 shall govern.

(c) **Appointment of Arbitrator.** The parties shall appoint a single Arbitrator by mutual agreement. If the parties have not agreed within ten (10) days of the date of the Notice of Intention to Arbitrate on the selection of an arbitrator willing to serve, the AAA shall appoint a qualified Arbitrator to serve. Any arbitrator chosen in accordance with this Subsection (c) is referred to in this Section 11.6 as the "Arbitrator".

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

(e) **Disclosure.** Any candidate for the role of Arbitrator shall promptly disclose to the parties all actual or perceived conflicts of interest

involving the dispute or the parties. No Arbitrator may serve if such person has a conflict of interest involving the subject matter of the dispute or the parties. If an Arbitrator resigns or becomes unwilling to continue to serve as an Arbitrator, a replacement shall be selected in accordance with the procedure set forth in Subsection 11.6.(c).

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

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

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

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

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

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

11.7 Right to Enter, Inspect, Repair and/or Replace. Following the receipt by a Bound Party of a Claim Notice with respect to an Alleged Defect, the Bound Party and its employees, agents, contractors, subcontractors and consultants shall have the right, upon reasonable notice to Claimant and during normal business hours, to enter onto or into, as applicable, the Common Elements and any Unit for the purposes of inspecting and/or conducting testing to determine the validity of the Claim and, if deemed necessary by the Bound Party, to correct, repair and/or replace the Alleged Defect. In conducting such inspection, testing, repairs and/or replacement, the Bound Party shall be entitled to take any actions as it shall deem reasonable and necessary under the circumstances. Nothing set forth in this Section 11.7 shall be construed to impose any obligation on any Bound Party to inspect, test, repair, or replace any item or Alleged Defect for which the Bound Party is not otherwise obligated under applicable law or any warranty provided by Declarant or any other Bound Party in connection with the sale of the Units. The right of a Bound Party and its employees, agents, contractors and consultants to enter, inspect, test, repair and/or replace reserved hereby shall be irrevocable and may not be waived or otherwise terminated except by a written document, in recordable form, executed and Recorded by the Bound Party. In no event shall any statutes of limitations be tolled during the period in which a Bound Party conducts any inspection, testing, repair or replacement of any Alleged Defects.

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

11.9 Approval of Arbitration or Litigation. The Association shall not deliver a Claim Notice to any Bound Party or commence any legal action or mediation or arbitration proceeding in connection with any Claim without the written approval of Unit Owners entitled to cast more than eighty percent (80%) of the total votes in the Association, excluding the votes of any Unit Owner who would be a defendant in such proceedings. The Association shall not borrow money or use reserve funds to pay legal fees, expert witness fees or other costs incurred

by the Association in connection with a Claim. In the event that the Association commences any legal action or arbitration proceeding involving a Claim, all Unit Owners must notify prospective purchasers of their Unit of such legal action or arbitration proceeding and must provide such prospective purchasers with a copy of the notice received from the Association in accordance with Section 11.4.

11.10 Statute of Limitations. All statutes of limitations applicable to Claims shall apply to the commencement of arbitration proceedings under Section 11.6. 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.

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

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

IF A UNIT OWNER, THE ASSOCIATION, OR ANY OTHER BOUND PARTY FILES A CIVIL ACTION ASSERTING ANY CLAIM AGAINST ANY DECLARANT OR ANY OTHER BOUND PARTY INSTEAD OF COMPLYING WITH THE DISPUTE RESOLUTION PROVISIONS OF THIS ARTICLE 11 (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.

ARTICLE 12

RIGHTS OF FIRST MORTGAGEES

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

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

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

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

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

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

12.2.1 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 approval of Eligible Mortgage Holders that represent at least fifty-one percent (51%) of the votes in the Association allocated to Units that are subject to First Mortgages held by Eligible Mortgage Holders shall be required to add or amend any material provisions of the Declaration, Articles or Bylaws which establish, provide for, govern or regulate any of the following:

(a) Voting rights;

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

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

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

12.2.3 Any action to terminate the legal status of the Condominium for reasons other than substantial destruction or condemnation of the Condominium must be agreed to by

Eligible Mortgage Holders that represent at least sixty-seven percent (67%) of the votes in the Association allocated to Units subject to First Mortgages held by Eligible Mortgage Holders.

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

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

12.4 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.

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

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

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

12.8 Conflicting Provisions. In the event of any conflict or inconsistency between the provisions of this Article and any other provision of the Condominium Documents, the provisions of this Article shall prevail; provided, however, that in the event of any conflict or inconsistency between the different Sections of this Article or between the provisions of this Article and any other provision of the Condominium Documents with respect to the number or percentage of Unit Owners, First Mortgagees, Eligible Mortgage Holders or Eligible Insurers Or Guarantors that must consent to (a) an amendment of the Declaration, Articles or Bylaws, (b) a termination of the Condominium, or (c) certain actions of the Association as specified in Sections 12.2 and 12.4, the provision requiring the consent of the greatest number or percentage of Unit Owners, First Mortgagees, Eligible Mortgage Holders or Eligible Insurers Or Guarantors shall prevail; provided, however, that the Declarant shall have the right to unilaterally amend this Declaration, the Articles or the Bylaws during the Period of Declarant Control in order to (a) comply with the Condominium Act or any other applicable law if the amendment does not adversely affect the rights of any Unit Owner, (b) correct any error or inconsistency in the Declaration, the Articles or the Bylaws if the amendment does not adversely affect the rights of any Unit Owner, or (c) comply with the requirements or guidelines in effect from time to time of any governmental or quasi-governmental entity or federal corporation guaranteeing or insuring mortgage loans or governing transactions involving mortgage instruments including, without limitation, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Department of Veterans Affairs.

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

ARTICLE 13

GENERAL PROVISIONS

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

- (a) imposing reasonable monetary penalties after notice and an opportunity to be heard is given to the Unit Owner or other violator. A Unit Owner shall be responsible for payment of any fine levied or imposed against a Lessee or Occupant of the Owner's Unit or by any Invitee of the Unit Owner or any Lessee or Occupant;
- (b) suspending a Unit Owner's right to vote;
- (c) suspending any Person's right to use any facilities within the Common Elements; provided, however, nothing herein shall authorize the Board to limit ingress or egress to or from a Unit;
- (d) suspending any services provided by the Association to a Unit Owner or the Owner's Unit if the Unit Owner is more than fifteen (15) days delinquent in paying any assessment or other charge owed to the Association;
- (e) exercising self-help 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;
- (f) requiring a Unit Owner, at the Unit Owner's expense, to remove any Improvement installed or constructed in such Owner's Unit or in any Limited Common Element allocated to the Owner's Unit in violation of this Declaration and to restore the Unit or the Limited Common Element to its previous condition and, upon failure of the Unit Owner to do so, the Board of Directors or its designee shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as previously existed and any such action shall not be deemed a trespass;

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

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

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

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

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

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

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

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

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

13.4 Termination of Condominium. Except in the case of a taking of all the Units by eminent domain, the Condominium may be terminated only by 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.

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

13.5.2 Except to the extent expressly permitted or required by 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 Subsection 13.5.2 in the absence of the unanimous consent of the Unit Owners.

13.5.3 An amendment to the Declaration shall not terminate or decrease any unexpired Development Right, Special Declarant Right or Period of Declarant Control unless the Declarant approves the amendment in writing. No amendment to Article 11 shall be effective unless the Declarant approves the amendment in writing even if the Declarant no longer owns any Unit at the time of such amendment.

13.5.4 During the Period of Declarant Control, the Declarant shall have the right to amend the Declaration, including the Plat, to: (a) comply with the Condominium Act or any other applicable law if the amendment does not adversely affect the rights of any Unit Owner; (b) correct any error or inconsistency in the Declaration if the amendment does not adversely

affect the rights of any Unit Owner; or (c) comply with the rules or guidelines in effect from time to time of any governmental or quasi-governmental entity or federal corporation guaranteeing or insuring mortgage loans or governing transactions involving mortgage instruments, including without limitation, the Department of Veterans Affairs, the Federal Housing Administration, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.

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

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

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

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

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

13.13 Attorneys' Fees. In the event 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.

13.15 Declarant's Right to Use Similar Name. The Association hereby irrevocably consents to the use by any other nonprofit corporation which may be formed or incorporated by Declarant of a corporate name which is the same or deceptively similar to the name of the Association provided one or more words are added to the name of such other corporation to make the name of the Association distinguishable from the name of such other corporation. Within five (5) days after being requested to do so by the Declarant, the Association shall sign such letters, documents or other writings as may be required by the Arizona Corporation Commission in order for any other nonprofit corporation formed or incorporated by the Declarant to use a corporate name which is the same or deceptively similar to the name of the Association.

CARLYLE APARTMENTS L.L.C., an Arizona
limited liability company

By: P.B. Bell & Associates, Inc., an Arizona
corporation

Its: Manager

By: R. J. Bell

Its: President

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 10th day of March, 2005, by R. Chapin Bell, the President of P.B. Bell & Associates, Inc., an Arizona corporation, the Manager of Carlyle Apartments L.L.C., an Arizona limited liability company, on behalf of the company.

Jeannie Dawn Young
Notary Public

My Commission Expires:

June 19, 2008



Notary Public State of Arizona
Maricopa County
Jeannie Dawn Young
Expires June 19, 2008

EXHIBIT A

**LEGAL DESCRIPTION OF
PROPERTY SUBMITTED TO CONDOMINIUM**

Lot 1, Carlyle Luxury Apartments, according to the plat recorded in Book 438 of Maps, Page 2, in the records of the County Recorder of Maricopa County, Arizona.

EXHIBIT B**ALLOCATION OF UNDIVIDED INTEREST
IN COMMON ELEMENTS AND COMMON EXPENSES**

<u>Unit No.</u>	<u>Square Footage</u>	<u>Percentage of Undivided Interest</u>
101	1,169	0.96%
102	1,030	0.85%
103	1,030	0.85%
104	1,169	0.96%
105	1,169	0.96%
106	1,030	0.85%
107	1,030	0.85%
108	1,169	0.96%
109	1,169	0.96%
110	1,030	0.85%
111	1,030	0.85%
112	1,169	0.96%
113	1,169	0.96%
114	1,030	0.85%
115	1,030	0.85%
116	1,169	0.96%
117	1,217	1.00%
118	826	0.68%
119	826	0.68%
120	1,217	1.00%
121	1,217	1.00%
122	826	0.68%
123	826	0.68%
124	1,217	1.00%
125	1,169	0.96%
126	826	0.68%
127	826	0.68%
128	1,169	0.96%
129	1,169	0.96%
130	826	0.68%
131	826	0.68%
132	1,169	0.96%
133	1,169	0.96%
134	826	0.68%
135	826	0.68%
136	826	0.68%
137	826	0.68%

<u>Unit No.</u>	<u>Square Footage</u>	<u>Percentage of Undivided Interest</u>
138	1,169	0.96%
201	1,169	0.96%
202	1,030	0.85%
203	1,030	0.85%
204	1,169	0.96%
205	1,169	0.96%
206	1,030	0.85%
207	1,030	0.85%
208	1,169	0.96%
209	1,169	0.96%
210	1,030	0.85%
211	1,030	0.85%
212	1,169	0.96%
213	1,169	0.96%
214	1,030	0.85%
215	1,030	0.85%
216	1,169	0.96%
217	1,217	1.00%
218	826	0.68%
219	826	0.68%
220	1,217	1.00%
221	1,217	1.00%
222	826	0.68%
223	826	0.68%
224	1,217	1.00%
225	1,169	0.96%
226	826	0.68%
227	826	0.68%
228	1,169	0.96%
229	1,169	0.96%
230	826	0.68%
231	826	0.68%
232	1,169	0.96%
233	1,169	0.96%
234	826	0.68%
235	826	0.68%
236	826	0.68%
237	826	0.68%
238	1,169	0.96%
239	847	0.70%
240	847	0.70%
241	847	0.70%

<u>Unit No.</u>	<u>Square Footage</u>	<u>Percentage of Undivided Interest</u>
242	847	0.70%
243	847	0.70%
244	847	0.70%
301	1,169	0.96%
302	1,030	0.85%
303	1,030	0.85%
304	1,169	0.96%
305	1,169	0.96%
306	1,030	0.85%
307	1,030	0.85%
308	1,169	0.96%
309	1,169	0.96%
310	1,030	0.85%
311	1,030	0.85%
312	1,169	0.96%
313	1,169	0.96%
314	1,030	0.85%
315	1,030	0.85%
316	1,169	0.96%
317	1,217	1.00%
318	826	0.68%
319	826	0.68%
320	1,217	1.00%
321	1,217	1.00%
322	826	0.68%
323	826	0.68%
324	1,217	1.00%
325	1,169	0.96%
326	826	0.68%
327	826	0.68%
328	1,169	0.96%
329	1,169	0.96%
330	826	0.68%
331	826	0.68%
332	1,169	0.96%
333	1,169	0.96%
334	826	0.68%
337	826	0.68%
338	1,169	0.96%
TOTAL	121,588	100.04%

EXHIBIT C
ALLOCATION OF PARKING SPACES

<u>Unit No.</u>	<u>Parking Space No. As Shown on Plat</u>
101	465
102	456
103	470
104	450
105	451
106	468
107	457
108	464
109	562
110	487
111	563
112	477
113	480
114	483
115	485
116	535
117	492
118	532
119	559
120	545
121	520
122	546
123	531
124	493
125	519
126	518
127	524
128	502
129	510
130	500
131	505
132	506
133	529
134	537
135	541
136	540
137	517
138	504

<u>Unit No.</u>	<u>Parking Space No. As Shown on Plat</u>
201	463
202	458
203	455
204	452
205	453
206	469
207	459
208	462
209	490
210	560
211	565
212	482
213	484
214	479
215	566
216	486
217	554
218	491
219	557
220	547
221	533
222	548
223	550
224	555
225	514
226	498
227	511
228	503
229	509
230	512
231	496
232	516
233	523
234	536
235	539
236	538
237	543
238	527
239	475
240	558
241	474
242	476
243	449

<u>Unit No.</u>	<u>Parking Space No. As Shown on Plat</u>
244	448
301	461
302	460
303	454
304	472
305	473
306	471
307	467
308	466
309	489
310	488
311	567
312	478
313	481
314	564
315	556
316	549
317	530
318	494
319	553
320	561
321	534
322	552
323	495
324	551
325	513
326	499
327	508
328	501
329	507
330	522
331	497
332	515
333	528
334	542
337	525
338	526

LENDER CONSENT

The undersigned, as beneficiary under that certain Deed of Trust recorded at Recording No. 2005-0182943, in the records of the County Recorder of Maricopa County, Arizona (the "Deed of Trust") hereby consents to and approves the foregoing Condominium Declaration for The Carlyle 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.

Dated this 10th day of MARCH, 2005.

BANK OF AMERICA, N.A., a national
banking association

By: [Signature]
Its: SENIOR VICE PRESIDENT

State of Arizona)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 10 day of March, 2005, by James Brisbane, the Senior Vice President of Bank of America, N.A., a national banking association, on behalf of the association.

[Signature]
Notary Public

My commission expires:

7-30-06

