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**AMENDED AND RESTATED  
CONDOMINIUM DECLARATION**

**FOR**

**ARRIVA CONDOMINIUM HOMES, A CONDOMINIUM**

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**CONDOMINIUM DECLARATION  
FOR  
ARRIVA CONDOMINIUM HOMES, A CONDOMINIUM**

This Amended and Restated Condominium Declaration for ARRIVA CONDOMINIUM HOMES, a Condominium, is made this 3rd day of May, 2006, by A.P. Partners, L.L.P., an Arizona limited liability partnership ("A.P. Partners"), and amends and restates the Declaration executed on December 8, 2005, and originally recorded on December 9, 2005 in the office of the Maricopa County, Arizona Recorder at document No. 05-1866855.

**INTRODUCTION**

A. A.P. Partners is the owner of fee title to that certain real property situated in the City of Mesa, Arizona, which is more particularly described in Exhibit A attached hereto (the "Parcel"). A.P. Partners desires to submit the Parcel to a condominium form of ownership pursuant to the Condominium Act.

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

**ARTICLE 1**

**DEFINITIONS**

As used in this Declaration, the 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, Enforcement Assessments and User Fee 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 Arriva Condominium Association, Inc., an Arizona nonprofit corporation, its successors and assigns.

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

1.7 **"Building"** means the buildings in which Units are located as shown on the Plat.

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

1.9 **"City"** means the City of Mesa, Arizona, a municipal corporation.

1.10 **"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.

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

1.12 **"Common Expenses"** means expenditures made by or financial liabilities of the Association, together with any allocations to reserves, including, without limitation, (i) the cost of inspection, maintenance, management, operation, repair and replacement of the Common Elements and Areas of Association Responsibility, all Improvements thereon, including clustered mailboxes, private streets and driveways; (ii) the cost of sewer, utilities and trash removal which serve the Units and/or the Common Elements except to the extent such utilities and services are separately metered or billed to specific Units; (iii) the cost of insurance premiums for fire, liability, workers' compensation, errors and omissions and directors, officers and agents liability, and any other insurance that may be required for the Association or the Condominium or that the Board of Directors determines advisable to obtain, the costs of bonding the members of the Board of Directors, and the cost of compensation, wages, materials, services, supplies and other expenses required for the administration, operation, maintenance and repair of the Condominium, including landscape and maintenance; (iv) the costs of rendering to the Unit Owners all services required to be rendered by the Association under the Condominium Documents; (v) such other funds as may be necessary to provide general operating reserves and reserves for contingencies and replacements deemed appropriate by the Board of Directors; and (vi) the cost of any other item or items incurred by the Association, for any reason whatsoever in connection with the Condominium, for the common benefit of the Unit Owners.

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

1.14 **"Condominium"** means the Parcel, together with the Building and other Improvements located thereon.

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

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

**1.17 "Declarant"** means A.P. Partners, an Arizona limited liability partnership and its successors and any Person to whom it may transfer any Special Declarant Right by a Recorded instrument.

**1.18 "Declaration"** means this Condominium Declaration for Arriva Condominium Homes, a Condominium, as amended from time to time.

**1.19 "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) Convert Units into Common Elements or convert Common Elements into Units;

(c) Amend the Condominium Documents during the Period of Declarant Control to comply with (a) the Condominium Act; (b) 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 Federal National Mortgage Association "FNMA", the Federal Home Loan Mortgage Corporation ("FHLMC"), the Federal Housing Administration ("FHA") or the Veterans Administration ("VA"); (c) the rules or requirements of any federal, state or local governmental entity or agency whose approval of the Condominium Documents is required by law or requested by Declarant; or (d) to correct any error or inconsistency in the Condominium Documents.

**1.20 "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.

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

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

**1.23 "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.

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



1.25 **"Identifying Number"** means the number shown on the Plat that identifies a particular Unit.

1.26 **"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.

1.27 **"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.

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

1.29 **"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.

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

1.31 **"Modification"** means any additions, alterations or improvements, repair, change or replacement of any Improvement.

1.32 **"Occupant"** means any Person residing on a temporary or permanent basis within a Unit in the Condominium, including a Unit Owner, family members of a Unit Owner, or any guest, invitee, licensee or lessee of such Unit Owner.

1.33 **"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. In the case of Units the fee simple title to which is vested in a trustee pursuant to a subdivision trust agreement or similar agreement, the beneficiary of any such trust who is entitled to possession of the Unit shall be deemed to be the Unit Owner.

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

1.35 **"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.

1.36 **"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.

1.37 **"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.

1.38 **"Plat"** means the condominium plat for Arriva Condominium Homes, a condominium, recorded in Book 790, Page 06, and Recording No. 2005-1672957, in the records of the County Recorder of Maricopa County, Arizona, and any amendments, supplements or corrections thereto.

1.39 **"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.

1.40 **"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.

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

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

1.43 **"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.

**1.44 "Unit"** means a portion of the Condominium subject to this Declaration and designated as a Unit on the Plat. The boundaries of each Unit are described in Section 2.5 of this Declaration and shown on the Plat.

**1.45 "User Fee Assessment"** means any assessment levied pursuant to Section 7.6.

## **ARTICLE 2**

### **SUBMISSION OF PROPERTY; UNIT BOUNDARIES; ALLOCATION OF PERCENTAGE INTERESTS, VOTES AND COMMON EXPENSE LIABILITIES**

**2.1 Submission of Property.** 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. 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, 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 Arriva Condominium Homes, a Condominium.

**2.3 Name of Association.** The name of the Association is Arriva Condominium Association.

**2.4 Identifying Numbers of Units.** The Identifying Numbers of the Units are:

101-156; 201-256; and 309-348.

**2.5 Unit Boundaries.**

2.5.1 The boundaries of each Unit are as follows:

(a) The vertical boundaries are the interior unfinished surfaces of the perimeter walls, doors and windows of the Unit.

(b) The lower horizontal boundary is the unfinished surface of the floor of the Unit.

(c) The upper horizontal boundary is the interior unfinished surfaces of the ceiling of the Unit.

Each Unit shall include the openings and outlets of all utility installations in the Unit and any fireplace and firebox located in or adjoining 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 The location and dimensions of the boundaries of the Units as shown on the Plat are based on architectural drawings and are approximate. The actual location and dimensions of the boundaries of the Units may vary from the location and dimensions of the boundaries as shown on the Plat. The actual physical location and dimensions of the boundaries of a Unit, as initially constructed, or as reconstructed following the damage or destruction of such walls, shall be considered the location and dimensions of the boundaries of the Units for purposes of this Declaration regardless of any variances from the location and dimensions of the boundaries as shown on the Plat, except for the allocation to each Unit of a percentage undivided interest in the Common Elements and in the Common Expenses pursuant to Section 2.6 based on the square footage of the Unit as shown on the Plat.

2.5.3 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.

**2.6 Allocation of Common Element Interest and Common Expense Liabilities.** Each Unit is allocated a percentage of undivided interest in the Common Elements and in the Common Expenses calculated by dividing the square footage of the Unit by the total square footage of the Units. The percentage of undivided interests in the Common Elements and in the Common Expenses are set forth on Exhibit B attached hereto. The percentage of interest of each Unit in the Common Elements shall be an undivided interest, and the Common Elements shall be owned by the Unit Owners as tenants in common in accordance with their respective percentages of interest. The ownership of each Unit shall not be conveyed separate from the percentage of interest in the Common Elements allocated to the Unit. The undivided percentage of interest in the Common Elements allocated to any Unit shall always be deemed conveyed or encumbered

with any conveyance or encumbrance of that Unit, even though the legal description in the instrument conveying or encumbering the Unit may refer only to the fee title to the Unit. Except as permitted by the Condominium Act, the Common Elements are not subject to partition, and any purported conveyance, encumbrance, judicial sale or other voluntary or involuntary transfer of an undivided interest in the Common Elements made without the Unit to which that interest is allocated is void.

**2.7 Allocation of Votes in the Association.** Each Unit is allocated one vote in the Association.

**2.8 Allocation of Limited Common Elements.**

2.8.1 The following portions of the Common Elements are Limited Common Elements 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, 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) All balconies and patios are Limited Common Elements allocated to the adjoining Unit.

(e) Any Parking Space that has been allocated by the Declarant to a Unit is a Limited Common Element of that Unit, subject to reassignment by the Declarant or the Association. Parking Spaces are allocated to the Units according to Exhibit C attached hereto.

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. An Owner of a Unit to which a Parking Space has been allocated as a Limited Common Element may lease such parking space to another Owner, Lessee or Occupant, but no Parking Space shall be leased to any Person who is not an Owner, Lessee or Occupant.

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 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 Security Disclaimer.** The Association may, but shall not be obligated to install, implement, maintain or support certain activities within the Condominium designed to make the Condominium safer than it might otherwise be. HOWEVER, NEITHER THE ASSOCIATION, THE ASSOCIATION'S MANAGING AGENT NOR THE DECLARANT SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE CONDOMINIUM, AND NEITHER THE ASSOCIATION, THE ASSOCIATION'S MANAGING AGENT NOR THE DECLARANT SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OR FAILURE TO PROVIDE SECURITY OR THE INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. ALL OWNERS LESSEES AND OCCUPANTS OF ANY UNIT AND THEIR GUESTS AND INVITEES ACKNOWLEDGE THAT THE ASSOCIATION, THE BOARD OF DIRECTORS AND ITS COMMITTEES, THE ASSOCIATION'S MANAGING AGENT AND THE DECLARANT DO NOT REPRESENT OR WARRANT THAT ANY SECURITY SYSTEM INSTALLED OR IMPLEMENTED BY THE DECLARANT OR THE ASSOCIATION, MAY NOT BE COMPROMISED OR CIRCUMVENTED, THAT ANY FIRE PROTECTION OR SECURITY SYSTEMS WILL PREVENT LOSS BY FIRE, SMOKE, BURGLARY, THEFT, HOLD-UP, OR OTHERWISE, NOR THAT FIRE PROTECTION OR SECURITY SYSTEMS WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. EACH OWNER, LESSEE OR OCCUPANT OR ANY UNIT AND EACH GUEST AND INVITEE OF ANY OWNER, LESSEE OR OCCUPANT ASSUMES ALL RISK FOR LOSS OR DAMAGE TO PERSONS, UNITS AND THE

CONTENTS OF UNITS AND FURTHER ACKNOWLEDGES THAT THE ASSOCIATION, THE BOARD OF DIRECTORS AND ITS COMMITTEES, THE ASSOCIATION'S MANAGING AGENT OR THE DECLARANT HAVE MADE NO REPRESENTATIONS OR WARRANTIES NOR HAS ANY OWNER, OCCUPANT, GUEST OR INVITEE RELIED UPON ANY REPRESENTATION OR WARRANTY, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY TO FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO ANY FIRE AND/OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS RECOMMENDED OR INSTALLED OR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE CONDOMINIUM.

**2.10 No Combination or Subdivision of Units.** A Unit may not be subdivided into two or more Units, nor may adjoining Units be combined.

**2.11 Conversion Disclosure.**

The Parcel is being converted by the recording of the Plat and this Declaration from multifamily rental to condominiums. The buildings and other improvements situated on the Parcel were designed and constructed in accordance with design requirements and building codes applicable to rental apartments. The design criteria and building codes applicable to rental apartments may vary significantly from the design criteria and building codes applicable to condominium projects. The Declarant makes no representation or warranty that the buildings or other improvements situated on the Parcel comply with the design criteria or building codes applicable to condominium projects either when the improvements were constructed or currently. The original construction of the improvements situated on the Parcel was completed in 1985.

The Declarant believes that the names of the original owner and general contractor are:

Owner: Karl Joseph Nielson and Georgia May Nielson, Trustees under the Nielson Revocable Trust dated February 8, 1973

General Contractor: Concord General Contracting, Mesa, Arizona

The name 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:

<u>Name:</u>	<u>Date Acquired:</u>
Karl Nielson Family Limited Partnership	April 17, 1986
Brian D. Lardner, Pamela S. McCredie and Donald P. McCredie	December 30, 1988
Alta Place Partners, a California limited partnership	April 17, 1990
Alta Place Property Partnership, an Arizona general partnership	January 6, 1999
Cedar Park, LLC, a Washington limited liability company	March 30, 1999
Alta Place Apartments, LLC, an Arizona limited liability company	June 7, 1999
Wachtler Family Partners, L.P., a California limited partnership, and Marjorie L. Peniston, Trustee of the Marjorie L. Peniston Trust dated April 6, 1987	June 25, 2002
CGI 4 L.P., a Delaware limited partnership	June 30, 2003

Name:

A.P. Partners, L.L.P., an Arizona limited liability partnership

Date Acquired:

July 29, 2005

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.

The Declarant was not the original owner of the Parcel and did not construct any of the Buildings or other improvements on the Parcel. Seller specifically disclaims, and neither Seller nor any of Seller's members, employees, agents or affiliates is making any representation, warranty or assurance whatsoever to the Unit Owner or the Association, and no warranties or representations of any kind or character, either express or implied, are made by Seller or may be relied upon by any Unit Owner or the Association with respect to the physical condition of the Buildings or other improvements within the Condominium or the construction, design, marketability or any other matter pertaining to the Unit or the Common Elements. Each Unit Owner, by accepting a deed to a Unit or by otherwise becoming the Owner of a Unit, acknowledges and agrees that such Person is accepting the Unit and the Common Elements in their "AS IS" and "WHERE IS" condition and with all faults and without any warranty, express or implied, from the Declarant. Neither the Declarant nor any of its members, employees, agents or affiliates shall be liable to any Unit Owner, Lessee or Occupant or the Association for any claim or liability with respect to or arising out of the condition of the Units or the Common Elements or any alleged defect or deficiency in the planning, design, engineering, grading, construction or development of the Common Elements or any Unit including, without limitation, any failure to comply with applicable building codes or federal, state or local laws, ordinances or regulations or any failure to comply with any express or implied warranty or standard of workmanship.

### ARTICLE 3

#### EASEMENTS AND DEVELOPMENT RIGHTS

##### 3.1 Utility Easement.

3.1.1 There is hereby granted and created a non-exclusive, perpetual 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.



3.1.2 There is hereby granted and created a non-exclusive, perpetual easement upon, across and through the area between the finished ceiling of each Unit and the upper horizontal boundary of the Unit as described in Subsection 2.5.1(c) and as shown on the Plat for the installation by the Declarant or its agents, employees and contractors of utility lines and systems (including but not limited, natural, gas, electric, water, sewer, telephone, cable television and other cable lines and systems) serving the Common Elements or other Units and for the maintenance, repair and replacement of such utility lines and systems by the Association or by the Owner of the Unit or Units served by such utility lines and systems. The easement granted pursuant to this Subsection shall be exercised so as to minimize any inconvenience to the Owner and Occupants of the Unit encumbered by the easement, and except in the case of an emergency, neither the Association, the Declarant nor any Unit Owner shall enter a Unit for the purpose of the maintenance, repair or replacement of utility lines and installations within the easement area without at least 48 hours prior written notice to the Unit Owner.

**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, which rules and regulations may require that the guests of any Owner, Lessee or Occupant entitled to use the Common Elements pursuant to this Section 3.3 must be accompanied by a Member, Lessee or Occupant entitled to use the Common Elements pursuant to this Section 3.3, may 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..

(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;

(f) The right of the Association to restrict or limit the use of any recreational or other common amenities by an Owner and such Owner's family, guests and invitees during any period that the Unit is leased to a Lessee.

3.3.2 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.

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

#### **3.4 Declarant's Rights and Easements.**

3.4.1 Declarant and its employees and agents 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 from time to time relocate models, storage areas, management offices and sales and leasing offices to different locations within the Condominium. Declarant and its employees and agents shall have the right and an easement to install or post signs, flags, awnings, lights 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. Declarant shall have the right to lease to an Owner, Lessee or Occupant or any other Person any Parking Spaces which have not been allocated as a Limited Common Element.

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.

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

3.4.7 The Declarant and its employees, agents, contractors and subcontractors shall have the right and an easement on, over, and through the Common Elements as may be reasonably necessary for the purpose of performing the Declarant's obligations under the Condominium Act and the Condominium Documents and for the purpose of exercising Special Declarant Rights whether arising under the Condominium Act or reserved in this Declaration.

3.4.8 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.

3.4.9 Declarant shall have the right to create additional Units, Common Elements and Limited Common Elements within the Condominium.

3.4.10 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 for employee meetings, administrative purposes, special events or any other purpose. The Declarant's rights under this Subsection shall have priority over the rights of any Owner, Lessee or Occupant to use the Common Elements.

3.4.11 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 the Owners, Lessees and Occupants 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 The exercise of the easements created by Subsection 3.7.1 shall be subject to the other provisions of this Declaration and the Rules. Notwithstanding any other provision of this Declaration to the contrary, no Owner, Lessee or Occupant or any other Person (except for the Association) shall penetrate, alter or damage any part of the Common Elements, 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 structure of the Building and/or 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 Occupants 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 correction of emergency conditions in one or more Units or Limited Common Elements or casualties to the Common Elements, the Limited Common Elements or the Units.

(e) 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 Residential Use.** 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 Occupant may conduct a business activity within a Unit so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Unit; (b) the business activity conforms to all applicable zoning ordinances or requirements for the Condominium; (c) the business activity is conducted solely in the Unit; (d) the business activity does not involve persons coming on to the Unit or the door-to-door-solicitation of Owners, Lessees or other residents in the Condominium; 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 security or safety of other residents in the Condominium, as may be determined from time to time in the sole discretion of the Board of Directors. The terms "business" and "trade" as used in this Section shall be construed to have ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or

services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether: (i) such activity is engaged in full or part time; (ii) such activity is intended or does generate a profit; or (iii) a license is required for such activity. The leasing of a Unit by the Unit Owner thereof shall not be considered a trade or business within the meaning of this Section.

**4.2 Antennas.** Except for antennas, satellite dishes or other over-the-air receiving devices covered by the FCC rules governing Over-the-Air Reception Devices; Television Broadcast Service and Multi-channel Multipoint Distribution Service (the "FCC Rule"), no antenna for the transmission or reception of television or radio signals or for access to the internet shall be erected in a Unit or in any Limited Common Element allocated to the Unit unless approved by the Board of Directors. Any antenna, satellite dish or other receiving device covered by the FCC Rule may be installed in a Unit or in a Limited Common Element allocated to the Unit without the approval of the Board of Directors, provided the antenna, satellite dish or receiving device is placed inside the Unit or in the portion of a Limited Common Element which is the least visible from the outside of the Building and does not interfere with the viewer's ability to install, maintain or use the antenna, satellite dish or receiving device. Any satellite dish shall be mounted on a tripod. The cables and/or wires from any antenna, satellite dish or receiving device may be installed through the edge of the door frame only and must be painted to match the exterior of the Unit.

**4.3 Improvements and Alterations.**

4.3.1 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.

4.3.2 Except for paint and wallpaper applied to the interior surface of the walls of the Unit, no Owner, Lessee or Occupant shall make any additions, alterations or improvements within a Unit, unless prior to the commencement of each addition, alteration or improvement, the Owner, Lessee or Occupant receives the prior written approval of the Board of Directors. The Board of Directors may require that an architect or engineer, licensed in Arizona, certifies that such addition, alteration or improvement will not impair the structural integrity or the mechanical systems of the Building or lessen the support of any portion of the Condominium. Notwithstanding any provision of this Section 4.3, no approval of the Board of Directors shall be required for any addition, alteration or improvement made by or at the direction of the Declarant or for any addition, alteration or improvement approved in writing by the Declarant. Except for additions, alterations or improvements to the Units made by or on behalf of the Declarant, all additions, alterations or improvements to a Unit must be performed by contractors licensed by the Arizona Registrar of Contractors. All construction, whether or not such construction must be approved by the Board of Directors, shall be subject to reasonable rules, regulations or guidelines established from time to time by the Board of Directors. Any Owner, Lessee or Occupant making any additions, alterations or improvements within his Unit shall be responsible for any damage to other Units and to the Common Elements which results from any such alterations, additions or improvements.

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

or from the exterior of any Limited Common Element (including, but not limited to, the enclosing of a balcony or patio) 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. The ceilings of the Units will be drop ceilings which will be below the upper horizontal boundary of the Unit. Notwithstanding any other provisions of this Declaration to the contrary, no Unit Owner (other than the Declarant) shall make any additions, alterations or improvements within the area between the finished ceiling of the Unit and the upper horizontal boundary of the Unit without the prior written consent of the Board of Directors.

4.3.4 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, Commercial 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 or the Common Elements, including, without limitation, all costs of architects, engineers and other professionals which may be retained by the Board of Directors to assist in their review. Any such costs not timely paid by the Unit Owner shall be deemed an Individual Expense Assessment.

4.3.5 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.

4.3.6 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, managers, agents and employees harmless from and against any and all costs, claims (whether rightfully or wrongfully asserted), damages, expenses or liabilities whatsoever (including, without limitation, reasonable attorneys' fees and court costs at all trial and appellate levels), arising out of any review, approval or disapproval by the Board of Directors of plans submitted by the Owner or any Lessee or Occupant of the Owner's Unit.

4.3.7 The Board of Directors shall have the right to charge a fee for reviewing requests for approval of any additions, alterations or improvements to the Units or the Common Elements, which fee shall be payable at the time the application for approval is submitted to the Board of Directors. The fee charged by the Board of Directors may include the actual or estimated fees or costs incurred or anticipated to be incurred by the Association in consulting with, or having the application reviewed by, architects, engineers or other professionals. The Association may retain architects, engineers or other persons as deemed necessary to review applications or otherwise assist the Board of Directors.

4.4 **Trash Containers and Collection.** No garbage or trash shall be placed or kept outside of any Unit except in centralized trash containers of a type, size and style to be approved by the Board of Directors and to be situated within the Condominium at locations to be designated by the Board of Directors, provided, however, following the expiration of the Period of Declarant Control, if any change is proposed with respect to the number, location or type of trash, recycling, or compaction containers or processes, such change shall require the written approval of the City. The Board of Directors shall have the right to subscribe to a trash service for the use and benefit of the Association and all Unit Owners, and to adopt and promulgate rules and regulations regarding garbage, trash, trash containers and collection. No incinerators shall be kept or maintained in any Unit. No rubbish, trash or garbage shall be kept on any balcony or patio. All trash, garbage or rubbish must be kept in sanitary containers and must be bagged and deposited in designated trash chutes or receptacles. The Rules may contain provisions governing the disposal of trash, garbage and rubbish in the Condominium. No Owner or Occupant shall place any items in a trash chute which may block the trash chute. The Rules may identify specific items which may not be placed in the trash chutes. If any Owner, Lessee or Occupant places any items in a trash chute that blocks the trash chute, all costs incurred by the Association in unblocking the trash chute shall be assessed the Owner of the Unit.

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

**4.6 Animals.** 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 maximum of two (2) 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 small bird of a variety commonly kept as a household pet. 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 Permitted Pet onto the Common Elements shall immediately remove any feces and urine deposited on the Common Elements by the Permitted Pet, and such person shall be liable to the Association for the cost of any cleaning of the Common Elements or the repair of any damage to the Common Elements caused or required by the Permitted Pet. Any Unit where a Permitted Pet is kept or maintained shall at all times be kept in a neat and clean condition. No structure for the care, housing, confinement, or training of any Permitted Pet shall be maintained on any portion of the Common Elements or in any Unit so as to be visible from the exterior of the Building or any other Unit. 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 five (5) days after written demand for removal of the Permitted Pet is given to the owner by the Board of Directors.

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

**4.8 Motor Vehicles.** Except for emergency repairs, no automobile, motorcycle, van, sport utility vehicle, truck, 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, van, sport utility vehicle, truck or other motor vehicle shall be parked upon any part of the Condominium, except in the Parking Spaces. No Unit Owner, Lessee or Occupant may park any automobile, motorcycle, motorbike, van, sport utility vehicle, truck or other motor vehicle in any Parking Spaces other than the Parking Spaces allocated to the Unit as a Limited Common Element or assigned to the exclusive use of the Unit by the Association. Bicycles may not be parked, kept or stored on any part of the Condominium, except in a Unit or in areas of the Common Elements designated for such purpose by the Association.

#### **4.9 Parking.**

**4.9.1** As used in this Section, the term "Authorized Vehicles" means motorized land vehicles designed and used primarily for non-retail passenger transport, such as automobiles, sport utility vehicles, passenger vans designed to accommodate ten (10) or fewer people, two-wheel motorcycles and pickup trucks having a manufacturers rating or payload capacity of one ton or less, all of which shall not exceed seven (7) feet in height. Authorized Vehicles may be parked only in Parking Spaces, and Authorized Vehicles of an Owner, Lessee or Occupant of a Unit shall be parked only in the Parking Spaces allocated to such Unit as a Limited Common Element.

**4.9.2** No vehicles of any kind other than Authorized Vehicles shall be parked, stored or kept in the Garage or any other part of the Common Elements.

**4.9.3** No Authorized Vehicle shall be parked in a Parking Space if such vehicle does not completely and clearly fit within the painted parking lines designated for the Parking Space or otherwise physically fit wholly in the Parking Space. Parking Spaces shall be used solely for the parking of Authorized Vehicles and shall not be used for storage. No maintenance, repair, restoration or construction of any Authorized Vehicle should be conducted in the Garage or any other part of the Common Elements.

**4.9.4** The Owner of a Unit may lease to another Owner, Lessee or Occupant, the Parking Space or Parking Spaces allocated to the Owner's Unit as a Limited Common Element, subject to such rules and regulations as may be adopted by the Board of Directors. The Owner of a Unit may not lease a Parking Space to any Person who is not also an Owner, Lessee or Occupant. The conveyance of the Unit to which the Parking Space is allocated as a Limited Common Element shall terminate any lease of such Parking Space.

**4.9.5** On or before the date on which a Unit is conveyed by the Declarant to a Unit Owner, the Declarant shall notify the Unit Owner of the Parking Space that will be allocated to the Owner's Unit as a Limited Common Element, which may change from time to time.

**4.9.6** The provisions of this Section 4.9 shall not apply to Declarant or its employees, contractors or subcontractors.

**4.10 Trucks, Trailers, Campers and Boats.** No mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, recreational vehicle, boat, boat trailer, or other similar equipment or vehicle may be parked, kept, maintained, constructed, reconstructed or repaired on any part of the Condominium.

**4.11 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.

**4.12 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.

**4.13 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.

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

**4.15 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 temporary window coverings, including, but without limitation, sheets or newspapers, shall be installed or placed upon the inside or outside 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. The Board of Directors may establish a "Condominium Standard" window treatment plan to ensure uniformity that will be complied with by all Owners. No tinting or film may be installed on any windows of a Unit without the prior written approval of the Board of Directors.

**4.16 Balconies and Patios.** Furniture, furnishings, umbrellas, pots and plants kept and maintained on any balcony or patio 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 plastic furniture shall be placed or kept on a balcony or patio. No furniture, furnishings, umbrellas, pots, plants or other items which extend above the wall or railing of the balcony shall be kept and maintained on any 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 balcony or patio without the prior written approval of the Board of Directors. No balcony or patio shall be used as a storage area for items or materials that are not customarily intended for use on a balcony or patio, such as the use of a balcony or patio to store bicycles or exercise equipment. No items may be hung from any balcony or the wall or railing enclosing the balcony. No barbeque grills shall be kept or used on any balcony or patio, without the written approval of the Board of Directors unless expressly permitted by the Rules

**4.17 Rental of Units.** No Owner may lease less than his entire unit. 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. No Unit may be leased for a term of less than six (6) months. At least ten (10) days before commencement of the lease term, the Owner shall provide the Association with 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.

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

**4.19 Hazardous Materials.** No Owner 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 or landscaping work.

**4.20 Noise Reduction.** Any hard floor coverings (including, but not limited to, tile, marble or wood) 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 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. PENETRATION OF OR DAMAGE TO DEMISING WALLS, CORRIDOR WALLS AND UNIT CEILINGS WILL DAMAGE THE SOUNDPROOFING AND STRUCTURE OF THE BUILDING. PENETRATION OF OR DAMAGE TO THE ACOUSTICAL ISOLATION BELOW THE FINISHED FLOOR SURFACE OR THE ACOUSTICAL INSULATION ABOVE THE

CEILING OR IN THE DEMISING AND CORRIDOR WALLS WILL DAMAGE THE SOUNDPROOFING OF THE BUILDING.

**4.21 Storage.** Without the prior written approval of the Board of Directors, nothing shall be stored by an Owner, Lessee or Occupant in any part of the Common Elements other than any storage room allocated as a Limited Common Element to the Unit of the Owner, Lessee or Occupant. No hazardous materials shall be stored by an Owner, Lessee or Occupant in any Unit or in any part of the Common Elements.

**4.22 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 concrete floors of the balconies and patios, and the walls or railings enclosing the balconies, but the Association shall not be responsible for the maintenance, repair or replacement of any floor covering that may be installed by the Owner, Lessee or Occupant thereof with the approval of the Association. 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. The Association shall maintain, repair and replace the Common Elements in good condition and repair. 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. 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, and any Owner, Lessee or Occupant who fails to provide such notification shall be liable to the Association and the other Owners, Lessees and Occupants for any damages that may be caused by such failure.

**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), except that the Association shall be responsible for the cleaning, maintenance, repair and replacement of the

windows allocated to the Unit pursuant to Subsection 2.8.1(c). Each Owner shall be responsible for the maintenance, repair and replacement of any floor covering that may be installed on a balcony by the Owner, Lessee or Occupant with the approval of the Association. Each Owner shall be responsible for maintaining the interior of the balcony allocated to the Owner's Unit as a Limited Common Element in a good, clean and sanitary condition. Each Owner shall be responsible for the maintenance, repair or replacement of any floor covering that may be installed on the balcony by the Owner, Lessee or Occupant thereof with the approval of the Association. Any Owner, Lessee or Occupant that leaves their Unit unoccupied for more than seven (7) consecutive days shall turn off the water to all toilets and the clothes washer in the Unit. Each Unit Owner (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 of a Unit Owner to maintain, repair and replace the Owner's Unit and the Limited Common Elements or to otherwise comply with the Owner's obligations under this Section shall void all express and implied warranties by the Declarant or by any contractor, subcontractor, supplier or manufacturer.

**5.3 Repair or Restoration Necessitated by Owner.** Each Owner shall be liable to the Association for any damage to the Common Elements or the Improvements, landscaping or equipment thereon which results from the negligence or willful misconduct of the Owner or of the Owner's Lessees, Occupants or Invitees or from any violation of this Declaration or the Rules by an Owner or 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. In addition, each Owner shall be liable to the other Unit Owners for any damage caused to such Owner's Unit which results from the negligence or willful misconduct of the Owner or the Owner's Lessees, Occupants or Invitees.

**5.4 Owner's Failure to Maintain.** If an Owner fails to maintain in good condition and repair 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, plus an administrative fee equal to fifteen percent (15%) of such costs, 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. The Association shall have the right to grant permits, licenses and easements over the Common Elements for utilities, roads and other purposes necessary for proper operation of the Condominium.

**6.2 Directors and Officers.** During the Period of Declarant Control, Declarant shall have the right to appoint and remove the members of the Board of Directors and the officers of the Association who do not have to be Unit Owners. Upon the termination of the Period of Declarant Control, the Unit Owners shall elect the Board of Directors which shall consist of at least three (3) members, all of whom must be Unit Owners. The Board of Directors elected by the Unit Owners shall elect the officers of the Association. Declarant may voluntarily surrender the right to appoint and remove the members of the Board of Directors and the officers of the Association before termination of the Period of Declarant Control, and in that event Declarant may require, for the duration of the Period of Declarant Control, that specified actions of the Association or the Board of Directors, as described in a Recorded instrument executed by Declarant, be approved by Declarant before they become effective.



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

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, electric, natural gas and other utility service for the Common Elements; and (b) refuse and rubbish collection for the Common Elements; and (c) water and sewer service for the Units. Each Unit will be separately metered for electric and cable service, and all charges for electric and cable service to a Unit shall be paid by the Owner of the Unit.

6.7 **Implied Rights.** The Association may exercise any right or privilege given to the Association expressly by the Condominium Documents and every other right or privilege reasonably to be implied from the existence of any right or privilege given to the Association by the Condominium Documents or reasonably necessary to effectuate any such right or privilege.

## 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 thirty (30) 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.

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

## **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. Notwithstanding anything to the contrary herein, during the Period of Declarant Control, the Declarant shall only be required to pay 25% of the Regular Assessment for any Unit owned by the Declarant. During the Period of Declarant Control, the Association may bill the Declarant for such funds as may be necessary, when added to the Regular Assessment levied by the Association, to pay all Common Expenses of the Association as they become due

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 or Occupant, 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.

7.2.6 All charges billed to the Association for electric service to the Units shall be assessed to the Units based on the usage of electricity by each Unit as determined by a submetering system which will measure the usage of electricity by each Unit. The Association may contract with an independent contractor to operate the submetering system and bill the Owners for the expense of the electricity assessed to each Unit.

7.2.7 Any costs incurred by the Association in connection with the maintenance of a Limited Common Element, if any, or the areas described in Section 5.1.4 of this Declaration, shall be assessed and allocated against the Units benefited in proportion to each Unit's benefit as determined by the Board. Any assessment due pursuant to this subsection shall be considered a Common Expense Assessment for the purposes of this Declaration.

7.2.8 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 shall have first been approved by Owners representing two-thirds (2/3) of the votes in the Association who are voting in person or by proxy at a meeting duly called for such purpose. Unless otherwise specified by the Board of Directors, Special Assessments shall be due thirty (30) days after they are levied by the Association and notice of the Special Assessment is given to the Owners.

**7.4 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 User Fee Assessment.** The Association may establish and charge fees for the use of certain recreational or other facilities in the Condominium. All such fees shall be assessed to the Owners as a User Fee Assessment which shall be payable within fifteen (15) days after notice of the Use Fee Assessment is given to the Owner.

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

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

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

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

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

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

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

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

**7.11 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 (2) 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. The amounts paid to the Association pursuant to this Section may be used for any proper purpose.

**7.12 Reserve Contribution.**

7.12.1 Except as provided in Subsection 7.10.2, each Person who purchases (from the Declarant or other Owner) 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. 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.

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

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

**7.13 Transfer Fee.**

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

**7.14 Reserves.**

7.14.1 The Board of Directors shall establish reserves for the future periodic maintenance, repair or replacement of the major components of the Common Elements that the Association is obligated to maintain, repair and replace. The reserves may be funded from Regular Assessments, the Reserve Contributions paid pursuant to Section 7.10 or any other

revenue of the Association (except revenue payable pursuant to Section 7.2.5). 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; or (c) the Board of Directors may by resolution provide for withdrawal by a management company for purposes consistent with this paragraph. The Board of Directors shall have the reserve study reviewed and updated, if necessary, 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.

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

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

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

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

(e) Fidelity insurance or fidelity bonds to protect against acts and inaction on the part of its officers, directors, trustees and employees, and all others, including any manager or managing agent or other person handling the funds belonging to or administered by the Association in an amount not less than the estimated maximum of funds, including reserve funds, in the custody or control of the Association, manager or management agent, as the case may be, at any given time during the term of each policy as calculated from the current budget of the Association, but in no event less than a sum equal to three (3) months aggregate assessment plus reserve funds. Such bond shall contain waivers of any defense based on the exclusion of persons who serve without compensation from any definition of "employee" or similar expression.

(f) Umbrella Liability Insurance at a limit determined by the Board of Directors, providing "follow form" coverage in excess of primary liability insurance required herein.

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



(h) 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.

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

(j) 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 the responsibility of each Unit Owner with respect to damage to that Unit.

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     General Requirements** All insurance provided for in this Article 8 shall be written under valid and enforceable policies issued by insurance companies authorized and licensed to transact business in the State of Arizona with a financial strength rating of A:VII or better from A.M. Best Company and/or A+ or better from Standard & Poor's. All such policies shall provide for a minimum of thirty (30) days advance written notice to the Association prior to the cancellation or material change of any insurance coverage under the policy.

**8.3     Fidelity Bonds or Insurance.**

8.3.1 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.

8.3.2 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 8.3.1. 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.

**8.4     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.

**8.5     Insurance Obtained by Unit Owners.** Each Unit Owner shall obtain and maintain (a) property insurance covering the Owner's Unit and all additions, alterations, and

improvements (whether installed by such Unit Owner or any prior Unit Owner or whether originally in such Owner's Unit), as well as all furniture, furnishings and other personal property in such Owner's Unit and elsewhere on the Parcel; (b) liability insurance covering, to the extent not covered by the policies of liability insurance obtained by the Board of Directors for the benefit of all Unit Owners, such Unit Owner's liability for bodily injury, including death, and property damage arising out of the ownership, maintenance or use of the Owner's Unit, at a limit of not less than \$1,000,000 applicable to each occurrence. Each Unit Owner shall provide the Board of Directors with a certificate of insurance evidencing such insurance coverage at least ten (10) days prior to the conveyance of the Unit to the Unit Owner, and thereafter at least thirty (30) days prior to the expiration of any policy.

**8.6 Payment of Insurance Proceeds.** Any loss covered by property insurance obtained by the Association in accordance with this Article 8 shall be adjusted with the Association and the insurance proceeds shall be payable to the Association and not to any mortgagee or beneficiary under a deed of trust. The Board shall have the right to negotiate a settlement of the loss with the insurer and shall be entitled to receive all insurance proceeds paid by the insurer with respect to such loss. The Association shall hold any insurance proceeds in trust for Unit Owners and lienholder its their interests may appear, and the proceeds shall be disbursed and applied as provided for in the Condominium Act.

**8.7 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, any Unit Owner, mortgagee, or beneficiary under a deed of trust shall have a right to request a certificate or memoranda of insurance. The Association shall use its best efforts to obtain an agreement from the insurer issuing the policy that it 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. Any installation or repair of improvements by an Owner shall be subject to the provisions of Section 4.3.

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

## ARTICLE 10

### EMINENT DOMAIN

**10.1 Total Taking of a Unit.** If a Unit is acquired by eminent domain, or if part of a Unit is acquired by eminent domain leaving the Owner with a remnant which may not be practically or lawfully used for any purpose permitted by this Declaration, the award must

compensate the Owner for his Unit and interest in the Common Elements, regardless of whether any Common Elements are taken. Upon such a taking, unless the decree otherwise provides, that Unit's allocated interests in the Common Elements and in the Common Expenses shall automatically be reallocated to the remaining Units in proportion to their respective allocated interests immediately before the taking. Upon such a taking, the Association shall prepare, execute and record an amendment to the Declaration in compliance with the Condominium Act. Any remnant of a Unit remaining after part of a Unit is taken becomes a Common Element.

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

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

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

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

## ARTICLE 11

### DISPUTE RESOLUTION

**11.1 Agreement to Resolve Certain Disputes without Litigation.** As used in this Article 11, the term "Claim" shall mean: any claim or cause of action against Declarant or the Association or any employee, agent, director, member or officer of Declarant or the Association 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, or arising out of or in any way related to a purchase contract between the Declarant and an Owner for the sale and purchase of a Unit. The term "Claim" shall not include enforcement of the provisions of the Declaration by the Association. The Association, the Declarant, all Unit Owners, Lessees and other Persons bound by this Declaration, and any Person not otherwise bound by this Declaration who agrees to submit to this Article 11 (collectively, the "Bound Parties") agree that the dispute resolution procedures set forth in this Article 11 shall apply to all Claims.

**11.2 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.

**11.3 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.

**11.4 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 11.4. 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 11.4. 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 11.4, 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 11.4, the provisions of this Section 11.4 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 11.4 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 11.4.(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 Maricopa County, 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.

**11.5 Approval of Arbitration or Litigation.** The Association shall not deliver a Claim Notice to any Bound Party or commence any legal action or arbitration proceeding or incur legal expenses (including without limitation, attorneys' fees) in connection with any Claim without the written approval of Unit Owners entitled to cast more than 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 must pay for any such legal action or mediation or arbitration proceeding with monies that are specifically collected for such purposes and may not borrow money or use reserve funds or other monies collected for specific Association obligations other than legal fees. In the event that the Association commences any legal action or arbitration proceeding involving a Claim, all Unit Owners must notify prospective purchasers of their Unit of such legal action or arbitration proceeding and must provide such prospective

purchasers with a copy of the notice received from the Association in accordance with Section 11.2.

**11.6 Statute of Limitations.** All statutes of limitations applicable to Claims shall apply to the commencement of arbitration proceedings under Section 11.4. 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.

**11.7 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) 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 an 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 of taking action to abate any violation of the Condominium Documents in a non-emergency situation;

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

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

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

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

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

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

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

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

**13.2 Severability.** Invalidity 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, excluding 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. If the Plat is amended solely for the purpose of modifying the building envelope of a Unit (and, therefore, the boundaries of the Unit), and the Declarant owns the Units whose description is to be modified, the amendment shall be made upon the request of the Declarant without the approval of any other Unit Owners, but if the Plat is being amended for other purposes or if the Declarant does not own any remaining Units, then the Plat may be amended only in the same manner as an amendment to the Declaration (and upon the same consents and approvals).



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 (except as provided in Section 13.5.1) 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. 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. In addition, any amendment to this Declaration adopted during the Period of Declarant Control must be approved in writing by the Declarant, and 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; (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; and (d) as provided in Section 13.5.1.

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.

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**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.

**A.P. PARTNERS, L.L.P.,** an Arizona limited liability partnership

By: PEGASUS DEVELOPMENT CORP., an Arizona corporation, Administrative Partner,

By: Martyn G. White  
Martyn G. White, President

STATE OF ARIZONA       )  
                                      ) ss.  
County of Maricopa       )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of May, 2006, by Martyn G. White, the President of Pegasus Development Corp., an Arizona corporation, the Administrative Partner of A.P. PARTNERS, L.L.P., an Arizona limited liability partnership, on behalf of the partnership.

Nancy A. Robins  
Notary Public

My Commission Expires



**EXHIBIT A**

**LEGAL DESCRIPTION OF  
PROPERTY SUBMITTED TO CONDOMINIUM**

**LEGAL DESCRIPTION**

Tracts A through D, Units 101 through 156, 201 through 256, and 309 through 348, of ARRIVA CONDOMINIUM HOMES, according to Declaration of Condominium recorded in Instrument No. 2005-1866855 and in Book 790 of Plat Maps, Page 6, records of Maricopa County, Arizona;

TOGETHER WITH an undivided interest in and to the common elements as set forth in said Declaration.

SUCH PROPERTY ALSO DESCRIBED AS:

THE FINAL PLAT FOR ARRIVA CONDOMINIUM HOMES, A CONDOMINIUM, AS RECORDED IN THE RECORDS OF THE MARICOPA COUNTY RECORDER AT DOCUMENT NO. 2005-1672957.

# EXHIBIT B

## ALLOCATION OF UNDIVIDED INTEREST IN COMMON ELEMENTS AND COMMON EXPENSES AND VOTES

Unit No	Plan 1 or 2	Approximate square footage	Percentage Undivided Interest	Votes
101	1	790	0.587%	0.587
102	2	980	0.729%	0.729
103	2	980	0.729%	0.729
104	1	790	0.587%	0.587
105	1	790	0.587%	0.587
106	2	980	0.729%	0.729
107	2	980	0.729%	0.729
108	1	790	0.587%	0.587
109	1	790	0.587%	0.587
110	2	980	0.729%	0.729
111	2	980	0.729%	0.729
112	1	790	0.587%	0.587
113	1	790	0.587%	0.587
114	2	980	0.729%	0.729
115	2	980	0.729%	0.729
116	1	790	0.587%	0.587
117	1	790	0.587%	0.587
118	2	980	0.729%	0.729
119	2	980	0.729%	0.729
120	1	790	0.587%	0.587
121	1	790	0.587%	0.587
122	2	980	0.729%	0.729
123	2	980	0.729%	0.729
124	1	790	0.587%	0.587
125	1	790	0.587%	0.587
126	2	980	0.729%	0.729
127	2	980	0.729%	0.729
128	1	790	0.587%	0.587
129	1	790	0.587%	0.587
130	2	980	0.729%	0.729
131	2	980	0.729%	0.729
132	1	790	0.587%	0.587
133	1	790	0.587%	0.587
134	2	980	0.729%	0.729
135	2	980	0.729%	0.729
136	1	790	0.587%	0.587

# EXHIBIT B (Continued)

Unit No.	Plan 1 or 2	Approximate square footage	Percentage Undivided Interest	Votes
137	1	790	0.587%	0.587
138	2	980	0.729%	0.729
139	2	980	0.729%	0.729
140	1	790	0.587%	0.587
141	1	790	0.587%	0.587
142	2	980	0.729%	0.729
143	2	980	0.729%	0.729
144	1	790	0.587%	0.587
145	1	790	0.587%	0.587
146	2	980	0.729%	0.729
147	2	980	0.729%	0.729
148	1	790	0.587%	0.587
149	1	790	0.587%	0.587
150	2	980	0.729%	0.729
151	2	980	0.729%	0.729
152	1	790	0.587%	0.587
153	1	790	0.587%	0.587
154	2	980	0.729%	0.729
155	2	980	0.729%	0.729
156	1	790	0.587%	0.587
201	1	790	0.587%	0.587
202	2	980	0.729%	0.729
203	2	980	0.729%	0.729
204	1	790	0.587%	0.587
205	1	790	0.587%	0.587
206	2	980	0.729%	0.729
207	2	980	0.729%	0.729
208	1	790	0.587%	0.587
209	1	790	0.587%	0.587
210	2	980	0.729%	0.729
211	2	980	0.729%	0.729
212	1	790	0.587%	0.587
213	1	790	0.587%	0.587
214	2	980	0.729%	0.729
215	2	980	0.729%	0.729
216	1	790	0.587%	0.587
217	1	790	0.587%	0.587
218	2	980	0.729%	0.729
219	2	980	0.729%	0.729
220	1	790	0.587%	0.587

# EXHIBIT B (Continued)

Unit No	Plan 1 or 2	Approximate square footage	Percentage Undivided Interest	Votes
221	1	790	0.587%	0.587
222	2	980	0.729%	0.729
223	2	980	0.729%	0.729
224	1	790	0.587%	0.587
225	1	790	0.587%	0.587
226	2	980	0.729%	0.729
228	1	790	0.587%	0.587
229	1	790	0.587%	0.587
230	2	980	0.729%	0.729
231	2	980	0.729%	0.729
232	1	790	0.587%	0.587
233	1	790	0.587%	0.587
234	2	980	0.729%	0.729
235	2	980	0.729%	0.729
236	1	790	0.587%	0.587
237	1	790	0.587%	0.587
238	2	980	0.729%	0.729
239	2	980	0.729%	0.729
240	1	790	0.587%	0.587
241	1	790	0.587%	0.587
242	2	980	0.729%	0.729
243	2	980	0.729%	0.729
244	1	790	0.587%	0.587
245	1	790	0.587%	0.587
245	2	980	0.729%	0.729
247	2	980	0.729%	0.729
248	1	790	0.587%	0.587
249	1	790	0.587%	0.587
250	2	980	0.729%	0.729
251	2	980	0.729%	0.729
252	1	790	0.587%	0.587
253	1	790	0.587%	0.587
254	2	980	0.729%	0.729
255	2	980	0.729%	0.729
256	1	790	0.587%	0.587
309	1	790	0.587%	0.587
310	2	980	0.729%	0.729
311	2	980	0.729%	0.729
312	1	790	0.587%	0.587
313	1	790	0.587%	0.587

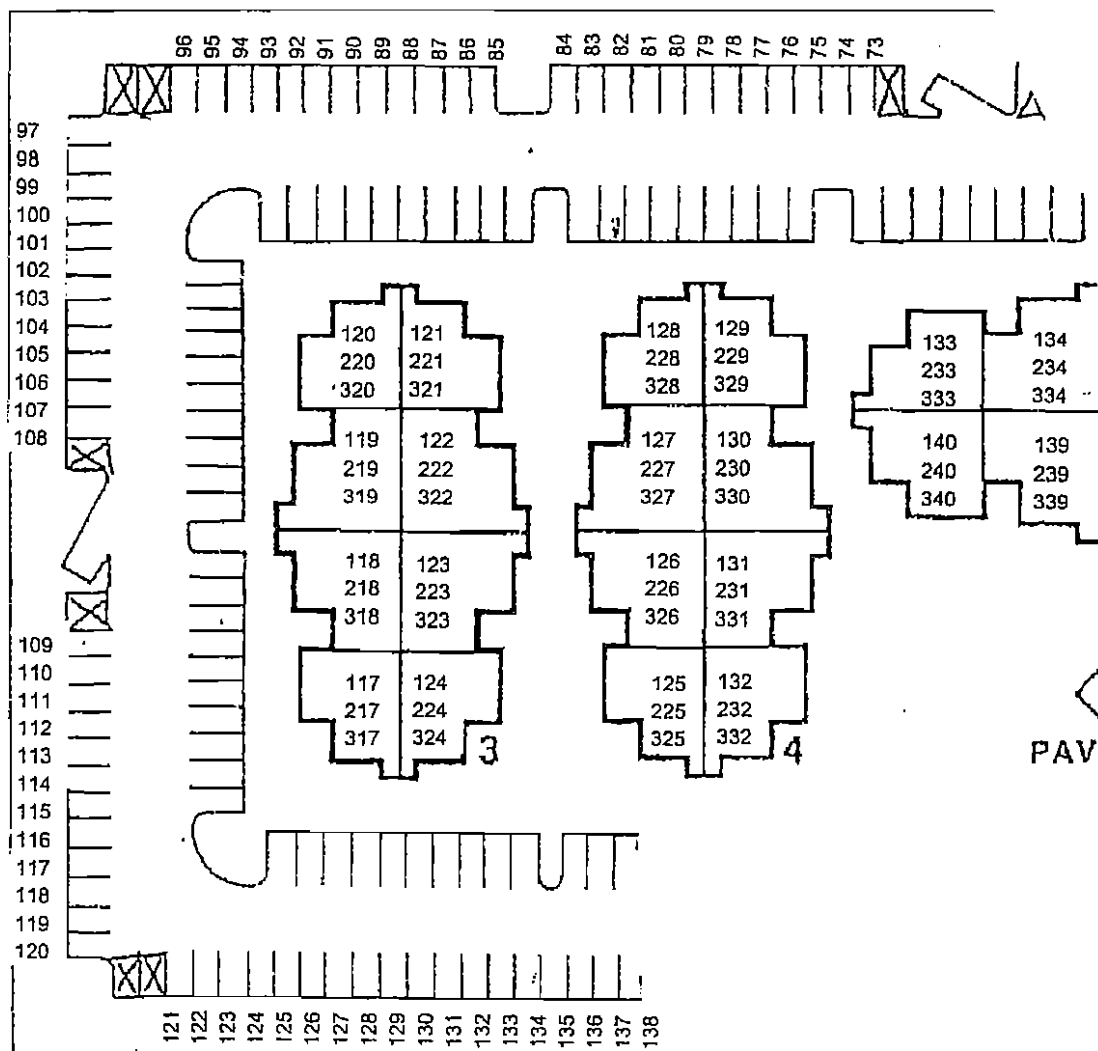
# EXHIBIT B (Continued)

Unit No.	Plan 1 or 2	Approximate square footage	Percentage Undivided Interest	Votes
314	2	980	0.729%	0.729
315	2	980	0.729%	0.729
316	1	790	0.587%	0.587
317	1	790	0.587%	0.587
318	2	980	0.729%	0.729
319	2	980	0.729%	0.729
320	1	790	0.587%	0.587
321	1	790	0.587%	0.587
322	2	980	0.729%	0.729
323	2	980	0.729%	0.729
324	1	790	0.587%	0.587
325	1	790	0.587%	0.587
326	2	980	0.729%	0.729
327	2	980	0.729%	0.729
328	1	790	0.587%	0.587
329	1	790	0.587%	0.587
330	2	980	0.729%	0.729
331	2	980	0.729%	0.729
332	1	790	0.587%	0.587
333	1	790	0.587%	0.587
334	2	980	0.729%	0.729
335	2	980	0.729%	0.729
336	1	790	0.587%	0.587
337	1	790	0.587%	0.587
338	2	980	0.729%	0.729
339	2	980	0.729%	0.729
340	1	790	0.587%	0.587
341	1	790	0.587%	0.587
342	2	980	0.729%	0.729
343	2	980	0.729%	0.729
344	1	790	0.587%	0.587
345	1	790	0.587%	0.587
346	2	980	0.729%	0.729
347	2	980	0.729%	0.729
348	1	790	0.587%	0.587



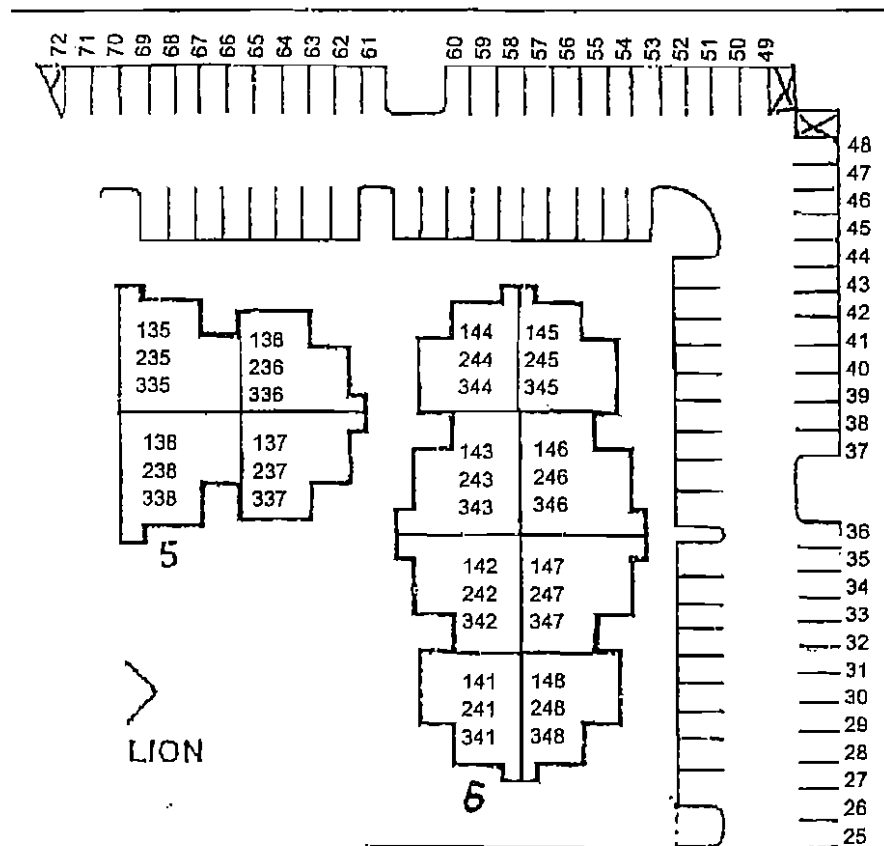
EXHIBIT C					
ALLOCATION OF PARKING SPACES					
Unit #	Parking Space #	Unit #	Parking Space #	Unit #	Parking Space #
101	152	201	143	309	134
102	150	202	149	310	141
103	147	203	148	311	23
104	146	204	145	312	32
105	143	205	140	313	22
106	142	206	151	314	129
107	156	207	155	315	138
108	154	208	153	316	131
109	132	209	133	317	114
110	144	210	139	318	107
111	14	211	15	319	104
112	30	212	16	320	95
113	24	213	27	321	90
114	25	214	31	322	127
115	29	215	21	323	116
116	135	216	130	324	113
117	117	217	109	325	123
118	105	218	106	326	118
119	108	219	103	327	99
120	89	220	100	328	101
121	98	221	97	329	86
122	93	222	87	330	69
123	111	223	115	331	128
124	126	224	112	332	121
125	137	225	88	333	74
126	122	226	120	334	84
127	94	227	125	335	68
128	84	228	91	336	65
129	82	229	85	337	59
130	81	230	83	338	76
131	75	231	136	339	77
132	119	232	124	340	80
133	71	233	73	341	26
134	72	234	70	342	43
135	66	235	67	343	55
136	63	236	46	344	53
137	57	237	40	345	50
138	58	238	61	346	48
139	78	239	62	347	39
140	92	240	79	348	41
141	28	241	37		
142	60	242	56		
143	54	243	45		
144	51	244	52		
145	47	245	49		
146	34	246	38		
147	42	247	36		
148	35	248	33		
149	7	249	1		
150	5	250	6		
151	19	251	4		
152	20	252	18		
153	10	253	17		
154	12	254	13		
155	11	255	8		
156	9	256	2		

N ==>

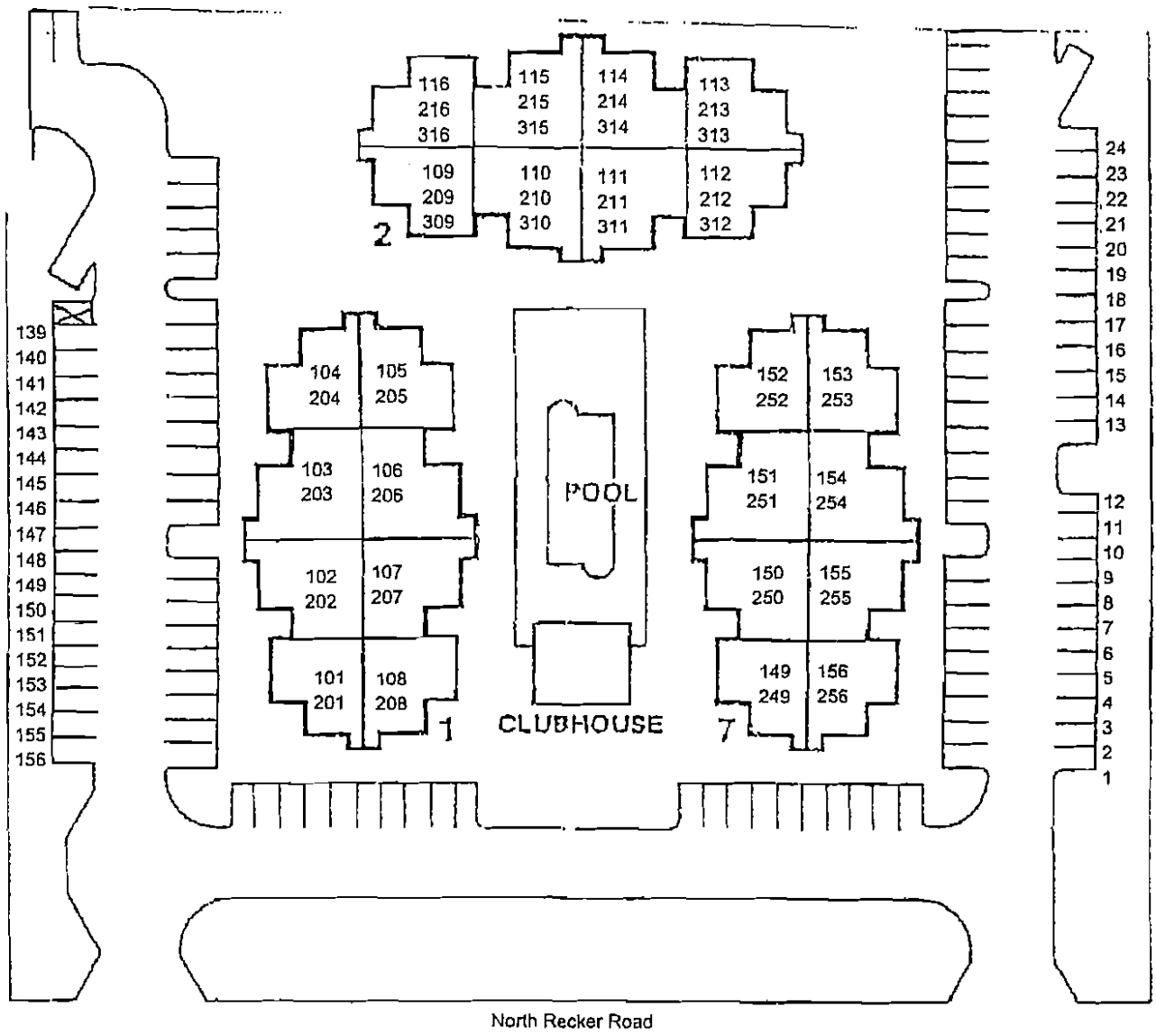


C-2

N ==>



N ==>



C-4