

**ARTICLE 1**  
**DEFINITIONS**

**1.1 Allocated Interests** means an undivided interest in the common elements, the common expense liability and votes in the association allocated to each Unit.

**1.2 Annual Assessments** means the assessments levied against the Units pursuant to Section 5.1.

**1.3 Assessment** means the Annual Assessments, Enforcement Assessments and Special Assessments, whether or not capitalized, defined and described in the Condominium Documents.

**1.4 Association** means Los Racimos, Inc., an Arizona non-profit corporation, its successors and assigns.

**1.5 Building** means any of the structures containing Units as shown on the Plats and any structure housing an amenity located on the Common Elements.

**1.6 Commercial Vehicle** means any vehicle with over one-ton capacity, a vehicle with a camper shell that exceeds eight (8) feet in height measured from ground level, a vehicle with ladders and a vehicle with equipment affixed to the vehicle that exceeds eight feet measured from ground level.

**1.7 Common Elements** mean all portions of the Condominium other than the Units.

**1.8 Common Expenses** means the actual or estimated costs or expenses incurred or to be incurred by the Association or financial liabilities of the Association.

**1.9 Condominium** means the Property, together with the Buildings and all other Improvements located thereon, together with all Units and other Improvements and all easements, rights and appurtenances thereto.

**1.10 Condominium Documents** means the Declaration, Bylaws, Articles of Incorporation, Rules and Regulations and Architectural or Design Guidelines.

**1.11 Eligible Mortgage Holders** means First Mortgagees who have requested notice of certain matters from the Association in accordance with Section 12.1.

**1.12 Enforcement Assessment** means Assessments levied pursuant to Section 5.7.

**1.13 Family Vehicle** means any domestic or foreign car, station wagon, sport wagon, pick-up truck of less than one-ton capacity with camper shells not exceeding eight

feet in height measured from ground level, mini-van, jeep, sport utility vehicle, motorcycle or similar non-commercial and non-recreational vehicles.

**1.14 First Mortgagee** 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.

**1.15 Guest Parking Spaces** means the area designated for parking of vehicles of non-residents of the Association.

**1.16 Improvement** means any building, fence, wall or other structure or any roadway, parking area, driveway, or any trees, plants, shrubs, grass or other landscaping improvements of every type and kind.

**1.17 Limited Common Element** 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.

**1.18 Member** means any person or entity entitled to membership in the Association as provided in the Declaration.

**1.19 Owner or Unit Owner** means and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Unit which is part of the Property, including the purchaser under a contract or agreement for sale, but excluding those having such interest merely as security for the performance of an obligation.

**1.20 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 corporate entity.

**1.21 Plat** means the condominium plat for Los Racimos for Phase I recorded in Book 213, Page 24, Phase II-A recorded in Book 225, Page 39, Phase II-B recorded in Book 225, Page 38, Phase II-B amended recorded in Book 239, Page 20, Phase II-C recorded in Book 239, Page 20, and II-D recorded in Book 239, Page 20.

**1.22 Property** means the land described in Exhibit A attached hereto, together with all Improvements situated thereon and all easements and rights appurtenant thereto.

**1.23 Recreational Facilities** means the pool, clubhouse and other capital Improvements on Association's Common Elements.

**1.24 Recreational Vehicle** means mobile home, mini motor home, standard size motor home, travel trailer, tent trailer, trailer, all-terrain vehicle, bus, camper shell, detached camper, recreational vehicle, boat, boat trailer or similar vehicle or equipment.

**1.25 Recreational Vehicle Parking Spaces** means the portion of the Common Elements as established and designated by the Board of Directors for parking of recreational vehicles.

**1.26 Restricted Parking Spaces** means the portion of the Common Elements designated for the parking of a single motor vehicle and identified on the Plat as a parking space.

**1.27 Special Assessments** means Assessments levied pursuant to Section 5.5.

**1.28 Unit** means a portion of a Building designated for separate ownership or occupancy.

## ARTICLE 2

### SUBMISSION OF PROPERTY; UNIT BOUNDARIES; ALLOCATION OF INTERESTS

**Section 2.1 Submission of Property.** The Property shall be held and conveyed subject to the terms, covenants, conditions and restrictions set forth in this Declaration. Each Unit is designated for separate ownership and occupancy. All easements, restrictions, conditions and covenants in this Declaration shall run with the Property and shall be binding upon and inure to the benefit of all 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 provisions of the Condominium Documents. This Declaration shall be binding upon and shall be for the benefit of and enforceable by the Association.

**Section 2.2 Identifying Number of Units.** The Property includes a total of 259 Units. The Units submitted to the Condominium are Units 1049 through 3151.

**Section 2.3 Common Elements.** The Common Elements shall include the land on which the Buildings are constructed, the storage rooms, the roof, bearing walls, or other structural components of the Building in which each Unit is located, mechanical rooms, central air conditioning and heating systems, except such portions which service only one Unit, the Restricted Parking Spaces, Guest Parking Spaces, Recreational Parking Spaces, and all other portions of the Property, except the Units.

**Section 2.4 Unit Boundaries.** The boundaries of each Unit are the interior unfinished surfaces of the perimeter walls, floor, ceiling, doors and windows of the Unit, together with any plumbing fixtures and electrical equipment which exclusively serves such Unit. Each Unit shall include the doors and windows within a perimeter wall of the Unit and the outlets of all utility installations in a 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 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 2.4 and the Plat regarding the description of the boundaries of the Unit, this Section shall control.

**2.5 Allocation of Common Element Interest and Common Expense Liabilities.** Each Unit shall have an undivided interest in the Common Elements allocated as a percentage for each Unit as set forth in Exhibit B. The ownership of each Unit shall not be conveyed separate from the fraction of undivided interest in the Common Elements allocated to the Unit.

**2.6 Allocation of Votes in the Association.** The Association shall have one class of voting membership. Each Unit shall be entitled to one vote. When one or more persons holds an interest in a Unit, all such persons shall be members. The voting for each Unit shall be exercised as such persons, among themselves, determine, but in no event shall more than one vote be cast with respect to any Unit. If an Owner or Owners casts a vote representing a certain Unit, it will be conclusively presumed for all purposes that such Owner or Owners were acting with the authority and consent of all other Owners of the same Unit.

**2.7 Allocation of Limited Common Elements.**

2.7.1 The following portions of the Common Elements are Limited Common Elements that are allocated to the exclusive use of one Unit:

A. Any pipe, flue, chute, wires, conduits, ducts, flues, shafts or fixtures (including but not limited to, heating and air conditioning units and related equipment, water and sewer lines, pipes or meters) situated outside of the boundaries of a Unit, which serves only one Unit are a Limited Common Element allocated solely to the Unit served;

B. If a pipe, flue, chute, wires, conduits, ducts, flues, shafts or fixtures (including but not limited to, heating and air conditioning units and related equipment, water and sewer lines, pipes or meters) lies partially within and partially outside the designated boundaries of a Unit, the portion outside the Unit which serve only the Unit is a Limited Common Element, the use of which is limited to the Unit served;

C. Each Unit is allocated the use of a patio or balcony as shown on the Plat Map;

D. Each Unit is allocated a covered Parking Space and one uncovered Parking Space listed opposite the Unit on Exhibit C attached to this Declaration;

E. Each Unit is allocated the storage room adjoining the Unit as shown on the Plat.

2.7.2 All Limited Common Elements must be used in accordance with the Declaration and Rules.

### **ARTICLE 3 ASSOCIATION**

**3.1 Rights, Powers and Duties of the Association.** The Association is a nonprofit Arizona Corporation. The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint, in accordance with the Articles and the Bylaws, as same may be amended from time to time. All Directors must be Members of the Association in good standing, which includes being current in the payment of Assessments and other fees or charges imposed pursuant to the Condominium Documents and in compliance with the Condominium Documents. The Association shall have such rights, powers and duties as are prescribed by law and as

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.

**3.2 Rules and Regulations.** By a majority vote of the Board, the Association may, from time to time, and subject to the provisions of this Declaration, adopt, amend and repeal rules and regulations. The Association Rules may restrict and govern the use of the Common Area, the Recreational Facilities and any other area within the Association including conduct upon the Units. The Association Rules may not discriminate among Owners and shall not be inconsistent with this Declaration, the Articles or Bylaws. A copy of the Association Rules as they may from time to time be adopted, amended or repealed shall be mailed or otherwise delivered to each Owner. Upon such mailing or delivery, said Association Rules shall have the same force and effect as if they were set forth in and were a part of this Declaration.

**3.3 Limitation of Liability of Board Member.** No member of the Board, member of any committee of the Association, or any officer of the Association, shall be personally liable to any Owner, or to any other party, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of the Association, or any other representative or employees of the Association, or the Architectural and Planning Board, or any other committee, or any officer of the Association, provided that such Member has, upon the basis of such information as may be possessed by him, acted in good faith without willful or intentional misconduct.

**3.4 Identify of Members.** Each Owner shall be a Member of the Association. 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.

## **ARTICLE 4**

### **Easements and Property Rights**

**4.1 Utility Easement.** There is hereby granted and created an easement upon, across 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 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 to install and maintain facilities and equipment on the Property and affix and maintain wires, circuits and conduits on, in and under the roofs and exterior walls of the Buildings; provided, that no such utility and service line or system may be installed or replaced on said Property except as initially installed or as approved by the Board.

**4.2 Owners Easements of Enjoyment.** Every Owner shall have a right and easement of enjoyment in and to the Common Elements which 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 rules and regulations governing the use of the Condominium;

B. The right of the Association to suspend the voting rights and right to use any Recreational Facilities situated upon the Common Elements by an Owner for any period during which any Assessment against the Owner's Unit remains unpaid and for any infraction of the Condominium Documents;

C. The right of Association to dedicate or transfer all or any part of the Common Elements to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Owners. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3rds) of the Owners is executed and such dedication or transfer has been recorded;

D. 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 easements is necessary for the development or maintenances of the Common Elements or beneficial to the Owners;

E. 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 the description in the instrument of conveyance, transfer, alienation or encumbrance may not refer to such right and easement.

F. The right of the Association by a majority vote of the Board of Directors to construct new Improvements or additions to the Common Elements or demolish existing Improvements provided that no Unit shall be altered or damaged by such demolition or construction without the consent of the Owner effected and so long as the percentage of the Owners' undivided interest in the Common Elements remains unchanged.

**4.3 Delegation of Use.** Any Owner may delegate his right of enjoyment of the Common Area and Recreational Facilities to the member of his family, his tenants, or contract purchasers who reside on the property.

**4.4 Easements for Ingress and Egress.** There is hereby created and granted an easement for ingress and egress for pedestrian traffic over, through and across sidewalks, paths, walks and lanes that from time to time exist on the Common Elements. There is also granted and created an easement for ingress and egress for pedestrian and vehicular traffic over, through and across roadways and 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.

**4.5 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 Limited Common Elements, and each Unit, and the Common Element 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 Element and Limited Common Element.

**4.6 Common Element Easements in Favor of Unit Owners.** The Common Elements are subject to the following easements in favor of the Units benefitted:

A. For installation, repair, maintenance, use, removal and 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 performance of a Unit Owner's obligation to maintain, repair, replace and restore those portions of the Limited Common Elements that the Unit Owner is obligated to maintain under Section 6.2 of this Declaration.

**4.7 Easements in Favor of the Association.** The Units (including the interior of the Units unless otherwise indicated herein) and the Limited Common Elements are hereby made subject to the following easements in favor of the Association and its directors, officers, agents, employees and independent contractors:

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

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

C. For correction of emergency conditions in one or more Units or Limited Common Elements, which have damaged or if left uncorrected could damage the Common Elements, the Limited Common Elements or other Units.

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

E. For inspection of Units and the Limited Common Elements, with five (5) calendar days written notice, in order to verify that the provisions of the Condominium Documents are being complied with by the Owner, lessee or occupant of the Unit.

Except in case of an 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 any emergency, the Association may enter the 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.

**4.8 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 initial conduct of gross negligence of an Owner, a valid easement for encroachment, and for the maintenance thereof, is hereby created and granted.

## **ARTICLE 5**

### **COVENANT FOR MAINTENANCE AND ASSESSMENTS**

**5.1 Creation of the Lien and Personal Obligation of Assessments.** Each Owner of any Unit by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: 1) Annual Assessments, 2) Special Assessments, 3) Enforcement Assessments, and 4) individual special assessments levied against individual Unit Owners to reimburse the Association for extra costs for maintenance or repairs caused by willful or negligent acts of the individual Owner that are not caused by ordinary wear and tear. Such assessments are established and collected as hereinafter provided. The Annual Assessments, Special Assessments and Enforcement Assessments, together with interest, costs, late fees, collection costs, monetary penalties and all attorney fees, whether or not a lawsuit or other legal action is initiated, shall be a charge on the land and shall be a continuing lien upon the Unit against which each such Assessment is made. Each such Assessment, together with interest, costs, late fees, costs of collections, charges for monetary penalties and all attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Unit at the time when the Assessment became due. The personal obligation for the delinquent Assessments shall not pass to his successor in title unless expressly assumed by them.

**5.2 Purpose of Assessments.** The Annual Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the Association and for the improvement, maintenance and replacement of the Common Area and Recreational Facilities thereon, and any other purposes permitted by statutes or the Declaration, Bylaws or Articles.

**5.3 Assessments and Budget.**

5.3.1 The Annual Assessment applicable to each Unit shall be set forth in the annual budget for the Association, which may be payable in installments as set by the Board of Directors. 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.

5.3.2 The Board shall adopt the budget for the Association at least thirty (30) calendar days prior to the beginning of each fiscal year. The budget shall include an estimate of the total funds required to pay all expenses during the coming fiscal year of the Association.

5.3.3 At least ten (10) calendar days prior to the start of each fiscal year, the Board shall send each Unit Owner a summary of the budget and a statement of the Annual Assessment for the Unit. If, for any reason, an annual budget is not made by the Board, a payment in the amount required by the last prior Assessment shall be due upon each Annual Assessment due date until changed by a new Assessment. The failure or delay of the Board of Directors to prepare for any fiscal year shall not constitute waiver or release in any manner of a Unit Owner's obligation to pay his allocable share of the expenses.

5.3.4 If any expense is caused by the misconduct or negligence of an Owner, family member, guest, tenant or invitee of the Owner, the Association shall assess the expense against the Owner.

5.3.5 Both Annual Assessments and Special Assessments for capital improvements must be fixed at a uniform rate for all Units and shall be collected on an annual or other basis as determined in the discretion of the Board of Directors.

5.3.6 The Annual Assessments shall commence on the first day of each calendar year. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the Assessments on a specified Unit have been paid. A properly executed certificate of the Association as to the status of Assessments on a Unit is binding upon the Association as of the date of issuance.

#### **5.4 Maximum Annual Assessments.**

5.4.1 As of January 1, 2017, the maximum annual assessment shall be as follows: \$1,502.28 for 1x1 Units, \$1,980.00 for 2x1 Units, \$2,344.56 for 2x2 Units, and \$2,834.76 for 3x2 Units.

5.4.2 The maximum annual assessment may be increased each year by not more than 20% above the maximum assessment for the previous year without a vote of Members.

5.4.3 The maximum annual assessment may be increased above 20% only by two-thirds (2/3) of the Members voting to approve such increase at a meeting duly called for this purpose.

5.4.4 The Board may fix the Annual Assessment at an amount not in excess of the maximum annual assessment.

**5.5 Special Assessment.** In addition to the Annual Assessments authorized above, the Association may levy, in any assessment year, a Special Assessment, applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area and Recreational Facilities or replacement of damaged or destroyed common elements, or for any other lawful purpose not exceed five percent (5%) of the operating budget for the fiscal year without a vote of the Members and any such assessment which exceeds five percent (5%) of the operating budget for the fiscal year shall be approved by two-thirds (2/3rds) of the votes of the Members at a meeting duly called for this purpose.

**5.6 Notice and Quorum for Action Authorized under Sections 5.4 and 5.5.** Written notice of any meeting called for the purpose of taking any action authorized under Article IV, Sections 4 and 5 shall be sent to all Members not less than fifteen (15) days nor more than fifty (50) days in advance of the meeting. At the first such meeting called, the presence of Members in-person or by absentee ballot, of Units entitled to cast at least fifty (50%) of all the votes of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

**5.7 Enforcement Assessments.** The Association may assess against an 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 lessee, occupants or invitees, (c) any monetary penalties assessed against the Owner, or (d) any amounts (other than regular assessments or special 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.

**5.8 Effect of Nonpayment of Assessments: Remedies of the Association.**

5.8.1 Any Assessment not paid within thirty (30) days after the due date shall be deemed late and shall bear interest at the rate of twelve (12%) per annum plus a late fee of \$15.00 per month.

5.8.2 The Association may bring a suit at law against each Owner or Owners personally obligated to pay the same, or foreclose the lien against the Unit. The Association shall have a lien on each Unit for all Assessments levied, interest, collection costs, late fees, monetary penalties, attorneys' fees, court costs, any payment made on a prior lien including a mortgage, deed of trust or taxes on a Unit and any other charges or fees imposed by the Association against a Unit or Owner pursuant to this Declaration. The recording of the Declaration constitutes record notice and perfection of the assessment lien and no further recordation of any claim of lien shall be required.

5.8.3 The assessment lien shall have priority over all liens, other interests and encumbrances except for: (a) liens and encumbrances recorded before the recording of the original Declaration, (b) liens for real estate taxes or other governmental assessments or charges against the Unit; and (c) the lien of any first mortgage, first deed of trust or a seller's interest in a first contract for sale recorded prior to the assessment lien.

**5.9 No Offsets.** All Assessments shall be payable in the amount specified herein, and no offsets against such amount shall be permitted for any reason, including, without limitation, a claim that the Association is not properly exercising its duties of maintenance of all or any portion of the Common Elements, non-use of the Common Elements, abandonment of his Unit, or failure to receive notice of the Assessment.

**5.10 Working Capital Fee.** Each purchaser of a Unit shall pay to the Association immediately upon becoming an Owner of a Unit, the sum equal to five hundred dollars (\$500.00) for each Unit. Such amounts shall be non-refundable and shall not be

considered as an advance payment of any Assessment levied by the Association pursuant to this Declaration.

## **ARTICLE 6 MAINTENANCE**

**6.1 Maintenance By Association.** The Association shall maintain, repair and replace the Common Elements and Recreational Facilities, except for the Limited Common Elements which the Owners are obligated to maintain, repair and replace pursuant to Section 2.7. The cost of such maintenance, repairs and replacement shall be a common expense and shall be paid for by the Association. The Association shall do all such other and further acts which the Board deems necessary to preserve and protect the Common Elements and the appearance thereof, in accordance with the general purposes specified in this Declaration. The Board shall be the sole judge as to the appropriate maintenance of all grounds and landscaping within the Common Elements. 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 and replace.

**6.2 Maintenance By Owner.** Each Owner of a Unit, at his expense, shall be responsible for the maintaining, repairing or replacing his Unit and all Improvements thereto, including the interior of the Unit, the Limited Commons Elements set forth in Section 2.7. Each Owner shall maintain, repair and replace his Unit in a good, clean and sanitary condition. Interior and exterior electrical meters, boxes and breakers are the sole responsibility of the Unit Owner. In the event that an exterior electric box is deemed faulty or needs replacement, the Unit Owners sharing the electrical box will share equally in the cost of the repair or replacement unless the reason for the repair or replacement is due to the intentional act of a Unit Owner, his invitees, tenants, family members or residents, in which case such Unit Owner shall be solely liable for the cost of the repair or replacement.

**6.3 Repair or Restoration Caused by Negligent or Wrongful Acts.** Each Owner shall be liable to the Association for any damage to the Common Area, Recreational Facilities or the Improvements which results from the negligence or willful misconduct or omission of the Owner or that Owner's lessees, invitees, guests, agents,

members of his family or occupants or family pets. The Owner shall then reimburse the Association cost of such repairs, maintenance or replacement required as a result of such acts and the costs shall be secured by a lien against the Owner's Unit and shall bear interest at the rate of twelve percent (12%) per annum. The costs owed by said Owner shall be a debt and shall be collectible, together with attorneys' fees and court costs, by any lawful procedure allowed by the laws of the State of Arizona including foreclosing the lien.

**6.4 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, then the Association shall have the right, but not the obligation, to perform the required maintenance, repair or replacement. The cost of such maintenance, repair or replacement shall be assessed against the nonperforming unit Owner pursuant to Section 5.1.

**6.5 Mold Remediation.**

6.5.1 The Owner of the Unit is responsible for all remediation of mold that occurs within a Unit. The Owner is also responsible for remediating any mold to the Common Elements or any Units if the damage is caused to either the Common Element or Units by the act of neglect of an Owner or his invitee, or guest or other authorized occupant or visitor of such Owner, or due to the Owner's failure to comply with any provisions in the Condominium Documents. If the Owner is responsible for remediating any mold as set forth in this paragraph, the Owner must provide the Association with certification that the mold has been properly remediated. Furthermore, the Owner is responsible for remediating any mold on any items contained within the Unit, including, but not limited to, costs of cleaning contaminated furniture, clothing or floor coverings. Additionally, the Owner is responsible for any other costs that may be associated with mold within the Unit, including but not limited to, the cost of alternate lodging or storage until the mold is remediated.

6.5.2 In the event that an Owner refuses to remediate the mold in the Common Elements or any Units which was caused by the act of neglect of an Owner or his invitee, or guest or other authorized occupant or visitor of such Owner, the Board, an

authorized contractor of the Association shall be entitled to reasonable access to each of the Units as may be required in connection with the mold remediation and shall have the authority to remediate such mold and to do whatever may be necessary for such purchase and all expenses in connection therewith shall be charged to and assessed against the defaulting Owner's Unit and may be collected in the same manner as assessments.

6.5.3 In the event that the Board, the manager or managing agent, receives information of possible mold infestation, the Board has the right, but not the obligation, to enter the Unit upon reasonable notice to the occupants and conduct tests of the questioned areas. If mold is discovered and is the result of the act of negligence of an Owner or his/her invitee, or guest or other authorized occupant or visitor of such Owner, all expenses to the Association, including but not limited to, the cost of the testing shall be charged and assessed against such Owner and such assessment shall constitute a lien against the Owner's Unit and may be collected in the same manner as assessments as set forth in Article 5 above. Also, if mold is discovered as a result of this testing, its remediation is subject to paragraph 6.5.1 or 6.5.2 above.

## **ARTICLE 7 USE RESTRICTIONS**

**7.1 Single Family Residential Use.** No building shall be erected, constructed, altered or maintained on any Unit other than a residence for a Single Family. All Units shall be used, improved and devoted exclusively to residential use by a Single Family.

**7.2 Animals.** No farm animals, livestock or poultry of any kind other than a maximum of two (2) dogs, cats or birds per Lot, shall be raised or kept on any Lot, and then only if such animals are kept or raised thereon solely as domestic pets and not for commercial purposes. All animals must be registered as required by state and county laws and ordinances. No animal shall be allowed to make an unreasonable amount of noise, or to become a nuisance. Owners, residents and tenants shall keep all animals on a leash of not more than six (6) feet in length when the animal is not confined in the Unit or in the yard. Owners, residents and tenants must pick up any waste from their animal(s). Owners, residents and tenants are prohibited from leaving any animal unattended on a balcony or patio. Owners are prohibited from feeding any animal outside of a Unit, except that a reasonable amount of food shall be allowed a patio, balcony or other area as approved by the Board of Directors.



**7.3 Signs.** No signs whatsoever shall be erected or maintained on any Unit within Association, except those signs set forth in A.R.S. §33-1261 and as amended, which includes political signs, caution signs, “for sale” signs, “for rent” or “for lease” signs. Also, an Owner may erect or maintain on any Unit the following: (1) such signs as may be required by legal proceedings; (2) a residence identification name place; (3) a “no solicitation” sign at the front door no larger than 2 inches by 4 inches, and (4) such signs, the nature, number and location of which have been approved in writing in advance by the Board.

**7.4 Nuisances.** No rubbish or debris or any kind shall be placed or permitted to accumulate upon or adjacent to any Unit, and no odors shall be permitted to arise there from so as to render any such Unit or any portion thereof unsanitary, unsightly, offensive or detrimental to any other Unit in the vicinity thereof or to its occupants. No nuisance shall be permitted to exist or operate upon any such Unit so as to be offensive or detrimental to any other Unit in the vicinity thereof or to its occupants. The Board in its sole discretion shall have the right to determine the existence of any such nuisance. No owner, tenant, resident, invitee or their guest shall conduct any sale, including but not limited to yard sales, sidewalk sales and parking lot sale, in the Common Elements of the Association.

**7.5 Motor Vehicles.** No vehicle may be constructed, reconstructed or repaired, on any Unit or street within the Association Property; provided, however that the provisions of this paragraph shall not apply to minor vehicle repairs, such tire change and window replacement. Vehicles must be legally registered with current tags displayed on the vehicle. An inoperable vehicle must be removed from the Property within forty-eight (48) hours. Commercial Vehicles and Recreational Vehicles are prohibited from being parked, kept, stored or maintained within the Condominium except in any Recreational Vehicle Parking Space.

**7.6 Parking.** Each Unit is assigned one covered and one uncovered Restricted Parking Space for the exclusive use of that Unit for the parking of a Family Vehicle, subject to the Association’s rights to maintain and operate the Common Elements. Guest Parking Spaces and Recreational Vehicle Parking Spaces are Common Elements that the Board of Directors has express authority to adopt rules and regulations regarding to the use of such Guest Parking Spaces and Recreational Vehicle Parking Spaces by any

Owner, guest, tenant, invitee or resident. Recreational Vehicle Parking Spaces shall be rented to Owners as available and subject to such terms and conditions as set by the Board of Directors.

**7.7 Towing.** The Board of Directors shall have the right to have any vehicle of any type or kind that is 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.

**7.8 Patio and Balcony.** Furniture, furnishings, wall décor and plants kept or maintained on any Patio or Balcony shall be maintained in a new like condition, free of rips, tears, fading, cracking or peeling paint. Bicycles may be store on the Patio or Balcony provided the bicycle is not hung from the ceiling. No more than two (2) items, including hummingbird feeds, windchimes and plants not exceeding 12” in diameter may be hung from the ceiling of the Patio or Balcony. No items of any type or kind by be placed on the ledge of the Patio or Balcony. No barbecues of any kind are permitted on the Patio or Balcony.

**7.9 Holiday Decorations.** Residents are permitted holiday decorations on their windows, doors, patios and balconies starting no sooner than October 1 and must be removed no later than January 10. However, such decorations shall not be placed on the bushes, trees, walkways, walkway ceiling, roof, eaves, stairwells or railing of any Building. Extension cords must be weatherproof and shall not be across any walkway, stairwell or on the Common Elements. Decorations shall not be offensive or placed upon the Common Elements of the Association. The Board of Directors, shall in its sole and absolute discretion, determine if a decoration is offensive. The Board shall have right to remove any decoration that is placed on the Common Elements or that presents a hazard to the residents or the Association without prior notice. The Association is not responsible for any stolen or damaged decorations.

**7.10 Window Coverings.** All draperies which are visible from the exterior of any building shall be lined with white, gray, tan, beige or natural wood color. No individual window treatments, blinds, shades or other similar items affecting the exterior appearance

of a Unit shall be constructed or installed without the prior written consent of the Board of Directors.

**7.11 Rental of a Unit.** No Unit shall be leased for a term of less than six (6) months. No Owner may lease less than his entire Unit. All leases must be in writing and provide that lease is subject to the provisions of the Condominium Documents. Within ten (10) business days of commencement of a lease term, the Owner shall provide the Association with the following information: a) the name of each adult tenant occupying the Unit, b) the beginning and ending dates of the lease, and c) the make, model and plate number of the tenant's vehicles.

**7.12 Access to Roofs.** Owners shall notify in writing the Association before any contractor enters upon the roof for satellite dish or air-conditioning repairs or installation. Owners, tenants, guests, and/or invitees are prohibited from entering the roof of a Building unless such person is a licensed, bonded and insured contractor. Owners shall be responsible for any damage to the roof caused by accessing the roof for any reason.

**7.12 Sex Offenders.** Registered sexual or violent offenders who are classified as Level Two or Level Three offenders ("Registrants") under A.R.S. §13-3821 are strictly prohibited from ever occupying, whether permanently or temporarily, a Unit within the Association.

**7.13 Diseases and Insects.** No Owner shall permit anything or any condition to exist upon any Unit which shall induce, breed or harbor infectious plant diseases or noxious insects.

**7.14 Hazardous Materials.** No Owner, Lessee, Occupant or invitee shall use or keep in a Unit or any limited Common Element to the Unit any kerosene, gasoline, or inflammable or combustible fluid or material or other hazardous materials.

**7.15 Violations of Law.** No Owner shall permit anything to be done or kept in his Unit which would be in violation of any law. Any violation of any laws, zoning ordinances or regulations shall be a violation of this Declaration.

**7.16 Variances.** By unanimous vote, the Board may authorize a variance from compliance with any provision of this Declaration, including this Article 7, from time to time, when circumstances such as hardship, aesthetic or environmental considerations may require. A variance must be evidenced in writing and, to be deemed valid, must bear the signature of at least a majority of the Board of Directors then serving at the time the

variance request is decided. If such variance is granted, no violation of the covenants, conditions and restrictions contained in this Declaration shall be deemed to have occurred with respect to the specific matter for which the variance is granted. The granting of such variance shall not operate to waive any of the terms or provisions of this Declaration for any purpose except as to the particular provision hereof covered by the variance, and only for so long as the special circumstances warranting the variance exist, nor shall it affect in any way the Unit Owner's obligation to comply with all governmental laws and regulations affecting the use of his Unit. The Board shall have the right to condition the granting of a variance as it may determine in the Board's sole discretion, including, without limitation; making a variance temporary or permanent; or requiring the removal or replacement of a non-permeant or semi-permanent structure upon the sale or other conveyance of a Unit. Moreover, because of the unique facts and circumstances surrounding each variance request, the granting of a variance in one instance or under certain terms and conditions does not mandate granting the variance under similar or related circumstances, terms or conditions if the experiences of the Association and the Condominium as a whole or the differences in circumstances (however slight) of a variance request from a previously approved variance by the Board, in good faith, to disapprove a variance request in such instance. In no event, may the Board grant any variance that would create or cause the Association to be in violation of any insurance policy limitations or restrictions issued in favor of the Association or its Members.

## **ARTICLE 8 INSURANCE**

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

A. A special form policy of property insurance insuring the Common Elements. The Board of Directors, in its discretion, may elect to have the property insurance also cover the Units, except for: (i) additions, alterations and improvements supplied or installed by the Unit Owners that were not part of the original construction; and (ii) furniture, furnishings or other personal property of the Unit Owners. Such property insurance shall cover the interests of the Association, the Board of Directors and all Unit Owners and their mortgagees, as their interests may appear (subject, however, to the

loss payment adjustment provisions in favor of an Insurance Trustee), in an amount equal to one hundred percent (100%) of the then current replacement cost of the insured property (exclusive of the land, excavations, foundations and other items normally excluded from such coverage), without deduction for depreciation. The replacement cost shall be reviewed annually by the Board of Directors with the assistance of the insurance company affording such coverage. The Board of Directors shall also obtain and maintain such coverage on all personal property owned by the Association.

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

C. Workmen's compensation insurance to the extent necessary to meet the requirements of the laws of Arizona and, if the Association has any employees, a policy of employer's liability insurance with coverage limits determined by the Board of Directors.

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

E. Blanket fidelity bond coverage 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, without limitation, the management agent, whether or not the management agent receives compensation for its services. The total amount of the fidelity bond maintained by the Association shall be based on the best business judgment of the Board, but shall not be less than fifty (50%) of the annual budget of the common expenses. Fidelity bonds obtained by the Association shall name the Association as its obligee, shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of Persons serving without compensation from the definition of "employees" or similar terms or expressions; shall provide that they may not be cancelled or substantially modified without at least ten (10) days' prior notice to the Association and

each First Mortgagee named in the bond. Any contract with the management agent shall require the management agent to maintain the fidelity bond required of the Association pursuant to this Section.

F. Such other insurance as the Association shall determine from time to time to be appropriate to protect the Association, the members of the Board of Directors, the members of any committee or the Board of Directors or the Unit Owners, including, without limitation, umbrella general liability insurance which would provide general liability coverage in excess of the coverage provided by the policy to be obtained pursuant to Subsection 8.1(B).

G. 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.

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 an Owner because of the negligent acts of the Association or other Owners.

vi. The Association shall be the insured for the benefit of the individual Owners.

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 thirty (30) business 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.

**8.2 Payment of Premiums/Deductible/Annual Review.** Premiums for all insurance obtained by the Association pursuant to this section and the deductible thereunder shall be a Common Expense and shall be paid for by the Association, except as set forth in Article 9. The Board of Directors may select deductibles applicable to the insurance coverage to be maintained by the Association pursuant to Section 8.1 in order to reduce the premiums payable for such insurance. The Board shall determine annually whether the amounts and types of insurance the Association has obtained provide adequate coverage in light of increased construction costs, inflation, the custom in the area in the additional policies or coverage amounts are necessary or desirable to protect the interest of the Owners, first mortgagees and/or the Association. 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 the 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 Assessment needed to pay the insurance premiums.

**8.3 Insurance by Owners.** Each Owner is free to obtain any such additional or other insurance as may be necessary or desirable, including, but not limited to, property insurance on his Unit, coverage for furnishings, fixtures, appliances, personal property of the Owner located in the Unit, additions, alterations or improvements, and any comprehensive general liability insurance covering the Unit. For the purposes of this section "additions, alterations or improvements" shall mean any property attached to the Unit, including without limitation, carpeting, flooring, wall coverings, paint, paneling.

**8.4 Payment of Insurance Proceeds.** 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. Any settlement made in good faith shall be binding on all Owners and mortgagees. Any loss covered by property insurance obtained by the Association in accordance with this Article shall be adjusted with the Association and the insurance proceeds shall be payable to the Association and not to any mortgagee or beneficiary under a deed of trust. The Association shall hold any

insurance proceeds in trust for Owners and lienholders as their interests may appear, and the proceeds shall be disbursed and applied as provided for in the Condominium Act.

## **ARTICLE 9**

### **WATER INTRUSION**

#### **9.1 Costs of Damage.**

9.1.1 If damage occurs solely to one Unit, the Owner of the Unit shall be responsible for full payment of the cost for repair, replacement or restoration thereof, unless the damage was caused by another Unit Owner's willful or negligent act.

9.1.2 If damage occurs to more than one Unit, each respective Unit Owner shall be responsible for full payment of the cost of the repair, replacement or restoration thereof, unless the damage was caused by another Unit Owner's willful or negligent act.

9.1.3 If damage occurs to one or more Units and to the Common Elements, the costs of repair, replacement or restoration thereof shall be prorated based on the percentage of damage caused to each Unit and the damage caused to the Common Elements, and each respective Unit Owner shall be responsible for full payment of his or her pro rata share and the damage caused to the Common Elements, unless the damage was caused by another Unit Owner's willful or negligent act.

9.1.4 If damage occurs solely to the Common Elements, the Association shall be responsible for the costs of repair, replacement or restoration thereof, unless the damage was caused by another Unit Owner's willful or negligent act.

9.1.5 Notwithstanding the foregoing paragraph 9.1.4, if damage occurs solely to a Common Element(s) or Limited Common Element(s) that benefit fewer than all of the Units that is less than the Association's insurance deductible, the owner of the Unit(s) to which such Common Element(s) or Limited Common Element(s) are allocated shall be responsible for full payment of the cost for repair, replacement or restoration thereof, unless the damage was caused by another Unit Owner's willful or negligent act.

9.1.6 If a willful or negligent act of a Unit Owner (or the Owner's residents, tenants, guests or agents) causes damage, the Unit Owner shall be responsible for the full costs of repair, replacement or restoration thereof.

9.1.7 The Board of Directors shall determine the costs to be paid by each party if the amount of damage is less than the Association's insurance deductible. Any amount determined to be the payment obligation of a Unit Owner to repair the Common



Elements or any Unit other than the Owner's Unit shall be charged to the Owner and collectible in the same manner as a regular assessment.

9.1.8 If damage is cause to the Common Elements that is not covered by insurance, and if such damage was caused by the willful or negligent act of an Owner, or an Owner's lessees, occupants or invitees, the Association shall charge the cost to repair such damage to the Owner, which is collectible in the same manner as a regular assessment.

9.1.9 Each Owner should be aware of the amount of the Association's insurance deductible so that the Owner carries proper insurance coverage to meet any gaps in insurance coverage.

## **9.2 Payment of Insurance Deductible**

9.2.1 In the event that loss or damage covered by the Association's insurance policy is caused by a willful or negligent act of a Unit Owner, the Owner's lessees, occupants or invitees, or from unknown causes within the Unit without any negligence being attributable, the Association shall pay the deductible as a Common Expense, and shall assess said Common Expense deductible to the Unit Owner.

9.2.2 In the event that more than one Unit is involved in any insured loss, and the cause of the damage cannot be attributable to any one Unit or Owner, the deductible will be proportionately distributed among all Units who have experienced the loss.

9.2.3 In the event that the cause of the insured loss is directly attributable to a failure in operation of a Common Element, the Association shall pay the deductible.

## **9.3 Insurance Claim Procedures**

9.3.1 In the event a Unit Owner or resident is insured for any loss to the condominium Unit or their property, the Association shall be entitled to require the Unit Owner or resident to claim any loss under such Owner or resident's insurance policy.

9.3.2 Unit Owners must file all claims with the Association's managing agent, not with the Association's insurance agent. The managing agent will not refer the claim to the Association's insurance agent until the Unit Owner provides proof that the claim exceeds the applicable insurance deductible.

9.3.3 The Association shall disburse insurance proceeds pursuant to the requirements of the Declaration and/or A.R.S 33-1253(E).

#### **9.4 Maintaining Units to Prevent Water Leaks**

9.4.1 Each Owner must provide the name of the Owner's insurance company, agent name, address and telephone number to the Association within forty-five (45) days from the date that the Association requests this information.

9.4.2 Each Owner shall install steel-braided toilet tank fill hoses with steel connectors and ball valve shutoffs at the wall. These will replace the fill hoses with plastic connectors at the toilet tank and screw-type shutoff valves. This provision is not applicable if the Owner has installed braided fill hoses with steel connectors and ball valve shutoffs.

9.4.3 Each Owner shall install steel-braided washer hoses to replace plain rubber hoses provided at purchase. This provision is not applicable if the Owner has installed steel-braided hoses.

9.4.4 Each Owner shall install copper, steel-braided, or nylon mesh tubing on ice maker refrigerators to replace plain plastic tubing. This provision is not applicable if the Owner has already installed authorized tubing as described above.

9.4.5 Each Owner shall install steel-braided hoses with steel connectors and ball valve shutoffs at the wall connecting any and all bathroom or kitchen sink(s) to its water supply.

9.4.6 Each Owner shall install copper or steel-braided hoses with steel connectors on any and all dishwasher water connections.

9.4.7 Each Owner shall install copper or steel-braided hoses with steel connectors on any and all water heater connections. Each Owner shall also install water heater catch pans and water drainage lines where installation of the water drainage lines is feasible.

9.4.8 If an Owner leaves a Unit vacant for more than seven (7) days, the Owner shall shut off the water to the Unit. If the Owner is on a common water line and cannot shut off all of the water to the Unit, then the Owner shall shut off all water valves inside of the Unit to shut off water to the Unit to the greatest extent possible. Furthermore, if an Owner leaves a Unit vacant for more than two (2) weeks, the Owner shall have a person perform weekly inspections of the Unit to ensure that no water leaks or other damage has occurred to the Unit.

9.4.9 Each Owner shall provide the Association with an emergency contact person with appropriate contact information, including telephone number.

## ARTICLE 10

### DESTRUCTION, CONDEMNATION AND RESTORATION

#### 10.1 Automatic Reconstruction.

10.1.1 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 Elements which will not be rebuilt, vote not to rebuild.

10.1.2 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 5.5.

**10.2 Determination Not to Reconstruct Without Termination.** If 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, 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 the undivided interest in the Common Elements of all 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. 33-1206(A), and the Association shall prepare and execute and record an amendment to this Declaration reflecting the reallocation.

**10.3 Distribution of Insurance Proceeds in the Event of Termination of the Condominium.** Notwithstanding any provision of this Article 10 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 termination of the Condominium.

**10.4 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 lienholders. The Association shall hold any proceeds in trust for the Unit Owners and lienholders as their interests may appear. Except as otherwise provided in Section 10.1 and 10.2, 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.

**10.5 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.

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

## **ARTICLE 11**

### **EMINENT DOMAIN**

**11.1 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 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 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 Elements.

**11.2 Partial Taking of a Unit.** Except as provided in Section 11.1, 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 allocated interests immediately before the taking, with the partially acquired Unit participating in the reallocation on the basis of its reduced size.

**11.3 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.

**11.4 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.

**11.5 Priority and Power of Attorney.** Nothing contained in this Article 11 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 purposes of negotiations and settlement with the condemning authority for the acquisition of the Common Elements, and 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 12**  
**RIGHTS OF FIRST MORTGAGEES**

**12.1 Notification of First Mortgagees.** Upon receipt by the Association of a written request from a First Mortgagee or insurer or governmental guarantor of a First Mortgager 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 liable 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 by the Association under Section 33-1206 or 33-1216(D) of the Condominium Act, or by certain Unit Owners under Section 33-1218(B), Section 33-1222, Section 33-1223 or Section 33-1228(B) of the Condominium Act, the approval of Eligible Mortgage Holders that represent at least fifty-one percent (51%) of the votes in the Association allocated to Units that are subject to First Mortgages held by Eligible Mortgage Holders shall be required to add or amend any material provisions of the Declaration, Articles or Bylaws which establish, provide for, govern or regulate any of the following:

A. Voting rights;

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

- C. Reductions in reserves for maintenance, repair and replacement of Common Elements;
- D. Hazard or fidelity insurance requirements;
- E. Responsibility for maintenance and repairs;
- F. Expansion or contraction of the Condominium, or the addition, annexation of property to the Condominium;
- G. Redefinition of any Unit boundaries;
- H. Reallocation of interests in the Common Elements or Limited Common Elements or rights to their use;
- I. Convertibility of Units into Common Elements or of Common Elements into Units;
- J. Imposition of any restrictions on the leasing of Units;
- K. Imposition of any restrictions on a Unit Owner's right to sell or transfer his Unit;
- L. A decision by the Association to establish self management when professional management had been required previously by an Eligible Mortgage Holder;
- M. Restoration or repair of the Condominium (after a hazard damage or partial condemnation) in a manner other than that specified in the Condominium Documents;
- N. Any provisions that expressly benefit mortgage holders, insurers, or guarantors.

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

12.2.3 Any action to terminate the legal status of the Condominium for reasons other than substantial destruction or condemnation of the Condominium must be agreed to by Eligible Mortgage Holders that represent at least sixty-seven percent (67%)

of the votes in the Association allocated to Units subject to First Mortgages held by Eligible Mortgage Holders.

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

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

**12.4 Prior Written Approval of First Mortgagees.** Except as provided by statute in case of condemnation or substantial loss to the Units or the Common Elements or as provided in this Declaration or the Condominium Act, unless at least two-thirds (2/3) of all First Mortgagees (based upon one vote for each First Mortgage owned) or Unit Owners 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.

## ARTICLE 13

### GENERAL PROVISIONS

**13.1 Enforcement.** These covenants, conditions, restrictions, reservations and conditions contained herein shall run with the land and shall be binding upon all persons purchasing, leasing, subleasing, occupying, owning or otherwise having an interest in any Unit within the Association, their heirs, executors, successors, grantees and assigns.

A. The Association may enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, lien and charges now or hereafter imposed by the provisions of this Declaration or Condominium Documents, by the following:

i. Impose reasonable monetary penalties, after notice and opportunity to be heard is given to the Owner or other violator. An Owner shall be responsible for the payment of any monetary penalty levied or imposed against a leasee or resident of the Owner's Unit or by any guests or invitees of the Owner or any leasee or resident.

ii. Suspend an Owner's right to vote.

iii. Suspend an Owner, leasee or resident's right to use any Recreational Facilities within the Common Elements.

iv. Suspend any services provided by the Association to an Owner or the Owner's Unit when the Owner is more than thirty (30) days delinquent in paying any Assessment or other charge owed to the Association.

v. File a suit at law or in equity to enjoin a violation of the Declaration, to compel compliance with the Declaration, to recover any monetary penalties or other money damages or to obtain such other relief as to which the Association may be entitled.

vi. Exercise self-help or take action to abate any violation of the Condominium Documents.

vii. Require an Owner, at the 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 the 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 violations and restore the property to substantially the same condition as previously existed and any such action shall not be deemed a trespass.

viii. Without liability to any person, prohibit 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.

ix. Tow vehicles which are parked in violation of this Declaration or the Rules.

B. Any Owner shall also have the right to enforce the Condominium Documents. The failure by the Association or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver or the right to do so thereafter.

C. All rights and remedies of the Association in 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.

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

E. The failure of the Association or 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.

F. If the Association retains or consults with an attorney with respect to any violation of the Condominium Documents by the Owner of a Unit, the lessee of the Owner or a resident of an Owner's Unit, all attorneys' fees incurred by the Association shall be assessed against the Owner, whether or not a lawsuit is filed by the Association, and all such attorney fees shall be paid by the Owner to the Association on demand and shall be secured by the assessment lien as set forth in Section 5.1 of this Declaration.

G. If the Association or an Owner files a lawsuit to enforce provisions of the Declaration or in any other manner arising out of the Declaration, Articles, Bylaws or Association Rules, the prevailing party in such action shall be entitled to recover from the other party all attorney's fees and costs incurred by the prevailing party in such action.

**13.2 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.

**13.3. Duration.** This Declaration, which may be amended pursuant to Section 7 below, shall run with the land and bind the Unit and be in full force and effect in perpetuity unless terminated as provided in Section 13.4.

**13.4 Termination.** This Declaration may be terminated at any time, if such termination is approved by the affirmative vote or written consent, or any combination thereof, of the Owners holding eighty percent (80%) or more of the votes in the Association. If the necessary votes and consents are obtained, the Board shall cause to be recorded a Certificate of Termination, duly signed by the President or Vice President and attested by the Secretary of the Association, with their signatures acknowledged. Following the recording of a Certificate of Termination, this Declaration shall have no further force and effect, and the Association shall be dissolved pursuant to the terms set forth in its Articles of Incorporation.

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

**13.6. Interpretation.** Except for judicial construction, the Board of Directors shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Board's construction or interpretation of the provisions of this Declaration shall be final,

conclusive and binding as to all persons and property that are bound by this Declaration. In the event of any conflict between this Declaration and the Articles, Bylaws or Association Rules, this Declaration shall control. In the event of any conflict between Articles and Bylaws, the Articles shall control. In the event of any conflict between the Bylaws and the Association Rules, the Bylaws shall control.

**13.7 Amendment.** This Declaration may be amended at any time by the affirmative vote of Owners of not less than sixty-seven percent (67%) of all the Units. Any amendment approved by the Owners shall be signed by the President or Vice President of the Association and attested by the Secretary with their signatures acknowledged and shall be recorded. Unless a later effective date is provided for in the amendment, any amendment of this Declaration shall be effective upon the recording of the amendment.

**13.8 Notices.** All notices, demands, statements or communications required to be given or served on an Owner under this Declaration shall be in writing and deemed to have been duly given and served if delivered personally, sent by United States mail, postage pre-paid, or by electronic mail, addressed to the Owner at the address which the 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. Each Owner shall file his correct mailing address with the Association, and shall promptly notify the Association, in writing, of any subsequent change of address.

**13.9 Captions and Titles.** All captions, titles or headings of the articles and sections in this Declaration are for the purpose of reference and convenience only and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof or to be used in determining the intent or context thereof.

**13.10 Violation of Law.** Any violation of any state, municipal or local law, ordinance or regulation, including zoning laws, pertaining to the ownership, occupation or use of any Unit within the Unit is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth in said Declaration.

**13.11 Declaration.** By acceptance of a deed or by acquiring any ownership interest in any of the real property included within this Declaration, each person or entity, for himself or itself, his heirs, personal representatives, successors, transferees and assigns, binds himself, his heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, rules and regulations

now or hereafter imposed by this Declaration and any amendments thereof. In addition, each such person by so doing thereby acknowledges that this Declaration sets forth a general scheme for the improvement and development of the real property covered thereby and hereby evidences his interest that all the restrictions, conditions, covenants, rules and regulations contained herein shall run with the land and be binding in all subsequent and future Owners, grantees, purchasers, assignees and transferees thereof. Furthermore, each such person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the various subsequent and future Owners.

**13.12. Reference to this Declaration in Deeds.** Deeds to and instruments affecting any Unit may contain the covenants, conditions and restrictions set forth herein by reference to this Declaration; but regardless of whether any such reference is made in any deed or instrument, each and all of the provisions of this Declaration shall be binding upon the grantee-Owner or any other person claiming through any instrument and his heirs, executors, administrators, successors and assignees.

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

**13.14 Number of Days.** In computing days for the purposes of any provision in the Condominium Documents, all days shall be counted including Saturdays, Sundays and holidays, except as other specified herein. If the final days falls on a Saturday, Sunday or holiday, the next day shall be deemed the next day which is not a Saturday, Sunday or holiday.