

**SUPREME COURT OF ARIZONA**

JIE CAO, et al.,

Plaintiffs/ Appellants,

v.

PFP DORSEY INVESTMENTS, LLC, et al.,

Defendants/ Appellees.

Arizona Supreme Court  
No. \_\_\_\_\_

Court of Appeals  
Division One  
No. 1 CA-CV 21-0275

Maricopa County  
Superior Court  
No. CV2019-055353

**PLAINTIFFS/APPELLANTS  
JIE CAO AND HAINING "FRAZER" XIA'S  
PETITION FOR REVIEW**

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## INTRODUCTION

This case involves the bedrock American principle that one person cannot sell someone else's property. Arizona's takings clause prohibits the government from authorizing that kind of transaction. In [A.R.S. § 33-1228](#), however, the legislature purported to authorize a supermajority of condo owners to sell other people's condominiums against their will.

Misapplying the statute, developers have used this authority to convert condominiums to apartments through a self-dealing scheme that ensures they have nothing to lose and everything to gain. Developers do this over the objections of homeowners who believed they could not be forced from their homes, but who also typically lack the sophistication necessary to challenge the developers' misuse of the statute. Numerous news reports chronicle the vast extent of developers abusing this law to take the homes of people who have missed no payments and done nothing wrong.

In this case, Petitioners Jie Cao and Haining Xia ("Xias") fought back. In an issue of first impression, the court of appeals correctly ruled this statute "unconstitutional on its face" for violating the takings clause. [Opinion ¶ 15](#). Although that should have ended the case, the court of appeals enforced the

unconstitutional statute because the condominium Declaration (condominium CC&Rs) gave the Condominium Association the “rights, powers and duties as are prescribed by” the Condominium Act (including § 33-1228). Opinion ¶¶ 14-17.

Declaring that the Association has the powers “prescribed by” the Act cannot, however, give more powers than the Act *legally* prescribes. By ignoring this, the Opinion subjects most condominiums in Arizona to this unconstitutional statute because most condominium declarations contain a similar phrase. Moreover, the Opinion misinterpreted the statute. The Court should grant review because this unconstitutional law is ruining people’s lives.

### ISSUES

1. Can a statute that is “unconstitutional on its face” nevertheless be enforced because a contract grants the “rights, powers and duties” prescribed by the unconstitutional statute?
2. If a contract gives a condominium *association* the “rights powers and duties” of an unconstitutional statute, does that also authorize individual unit owners to exercise the same unconstitutional powers?

3. Does [A.R.S. § 33-1228\(C\)](#) require selling “all the common elements and units” as part of a condominium termination, or may a majority owner/developer sell just some units to itself without the homeowners’ consent?

### FACTS

The Xias owned Unit 106 of Dorsey Place Condominiums, a residential condominium near ASU. After PFP Dorsey Investments, LLC bought 90 of the 96 remaining units, [Opinion ¶ 5](#), it invoked [A.R.S. § 33-1228\(C\)](#), which purports to allow a supermajority of condominium owners to terminate the condominium and sell “all the common elements and units of the condominium.”

Although the official notice said that Dorsey Investments would sell the entire condominium for over \$22 million, [Opinion ¶ 6](#), Dorsey Investments instead proceeded to sell to itself only the six remaining units it did not already own—at an appraisal price it liked. [Opinion ¶ 7](#). Consequently, by avoiding a public sale, Dorsey Investments faced no risk of losing its property if another developer offered better terms.

Meanwhile, the remaining homeowners wanted to keep their homes, not be forced to move. And if they had to sell, they would rather market and



sell the units to whomever offered the best terms. Bulldozing ahead, Dorsey Investments instead forced the sale of these owners' six units. Dorsey Investments quickly recorded a deed transferring ownership of the Xias' unit to itself, changed the locks, and destroyed the Xias' personal property.

[Opinion ¶ 8.](#)

The Xias sued, arguing principally that A.R.S. § 33-1228(C) is unconstitutional and that the transaction did not comply with § 33-1228.<sup>1</sup>

[Opinion ¶ 9.](#) The superior court dismissed their complaint. [Opinion ¶ 10.](#)

On appeal, the court of appeals ruled that A.R.S. § 33-1228 is “unconstitutional on its face,” but nevertheless enforced it against the Xias because the condominium Declaration gives the Condominium Association the “rights, powers and duties” prescribed by the Condominium Act. [Opinion ¶¶ 14-17.](#) As explained below, the court of appeals also misinterpreted § 33-1228(C) to permit developers to sell to themselves only

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<sup>1</sup> The Opinion correctly found the statute “unconstitutional on its face.” But for purposes of [A.R.S. § 12-1841](#), the Xias brought an as-applied challenge because they sought relief only as to their unit. [IR-40 ([APP042](#)).] See *Merrill v. Merrill*, [238 Ariz. 467, 470, ¶ 15](#) (2015), *vacated on unrelated grounds*, [137 S. Ct. 2156](#) (2017).

the units they do not already own, thereby blessing the developers' self-dealing scheme. [Opinion ¶ 31](#).

The court of appeals further held that the superior court applied the wrong version of § 33-1228 and remanded regarding fiduciary duties. [Opinion ¶ 35](#). The defendants unsuccessfully sought reconsideration. [[APP040](#).]

### REASONS TO GRANT REVIEW

- I. **The Court should clarify that courts cannot enforce an unconstitutional statute merely because a contract grants the “rights, powers and duties” prescribed by that unconstitutional statute.**
  - A. **The court of appeals correctly found A.R.S. § 33-1228(C) unconstitutional because it purports to authorize one person to take another person’s property.**

In contrast to the “considerably less protecti[ve]” federal constitution, *Bailey v. Myers*, [206 Ariz. 224, 229, ¶ 20](#) (App. 2003), Arizona’s Constitution expressly prohibits almost all takings of private property for private use: “Private property shall not be taken for private use except for private ways of necessity, and for drains, flumes, or ditches, on or across the lands of others for mining, agricultural, domestic, or sanitary purposes.” [Ariz. Const. art. 2, § 17](#). Subject to the enumerated exceptions, its plain text bars “taking one person’s property for another person’s private use” – regardless of any

compensation. *Bailey*, 206 Ariz. at 227, ¶ 12. This makes Arizona’s takings clause one of the most protective in the country.

This protection not only guards against classic takings by the government itself, but also prevents the legislature from authorizing private parties from so doing. In the first case interpreting Arizona’s takings clause, this Court recognized that “[t]he Legislature of a state may not take, or authorize the taking of private property, except for public use” and the enumerated exceptions. *Inspiration Consol. Copper Co. v. New Keystone Copper Co.*, 16 Ariz. 257, 262 (1914) (emphasis added; citation omitted); see also *Cedar Point Nursery v. Hassid*, 141 S. Ct. 2063, 2074 (2021) (regulation authorizing private labor organizers to enter farmland); see also *Lorretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 436 (1982) (statute authorizing private cable companies to place wire across private property).

A.R.S. § 33-1228 allows condominium unit owners to vote to sell property – including property not owned by them. A.R.S. § 33-1228(C) (“A termination agreement may provide that all the common elements and units of the condominium shall be sold following termination.”). As the court of appeals correctly held, this statutory authorization to take private property

for private use qualifies as a taking: “Without an exception to the general rule, A.R.S. § 33-1228 is unconstitutional on its face.” [Opinion ¶ 15](#).<sup>2</sup>

**B. The court of appeals erroneously concluded that if a contract grants the powers prescribed by a statute, then courts may enforce otherwise unconstitutional provisions in the statute.**

Despite declaring A.R.S. § 33-1228 “unconstitutional on its face,” [Opinion ¶ 15](#), the court held that in this case it “Is Not Unconstitutional as Applied,” [Opinion at 4, § A](#), because the Xias agreed (via the Dorsey Place Declaration) that “[t]he Association shall have such rights, powers and duties as are prescribed by the Condominium Act...” [IR-51 at 24 ([APP086](#))]; *see also* [Opinion ¶ 23](#) (“a forced termination and sale under the statute is unconstitutional but for an owner’s contractual agreement under the declaration.”). This holding makes no sense for numerous reasons, and if left uncorrected would wreak havoc in the law.

For starters, CC&Rs (including the Declaration) are “special types of contracts.” *Kalway v. Calabria Ranch HOA, LLC*, [252 Ariz. 532, 538, ¶ 14](#) (2022). “[F]undamental restrictions” of property rights in a declaration must

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<sup>2</sup> The legislature recently amended A.R.S. § 33-1228 to require a 95%-majority vote, up from 80%. *See* [Laws 2022, ch. 373, § 2](#). But that amendment did not solve the constitutional issue; anything shy of 100% still unconstitutionally authorizes taking private property for private use.

be “clear and unambiguous,” and must be designed to put purchasers “on notice.” *Wilson v. Playa de Serrano*, 211 Ariz. 511, 514-15, ¶¶ 10, 16 (App. 2005). Moreover, courts must “indulge every reasonable presumption against waiver of fundamental constitutional rights.” *State v. Rickman*, 148 Ariz. 499, 503 (1986). A waiver of the takings clause “must contain clear, unambiguous, unmistakable, and conspicuous language.” *Missouri v. Muslet*, 213 S.W.3d 96, 99 (Mo. Ct. App. 2006).

Here, the Declaration’s plain text shows the owners did not contractually agree to permit the Association to sell their homes without their consent (which perhaps they could have done). Instead, they agreed to grant the Association the powers “prescribed by the Condominium Act”:

**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 the Condominium Act, other applicable laws and regulations and as are set forth in the Condominium Documents together with the 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 written consent or affirmative vote of Unit Owners representing 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, approvals or actions to be given or taken by the Association shall be valid if given or taken by the Board of Directors. The Association has the specific duty to make available to Declarant, Eligible Mortgage Holders, Unit Owners and insurers or guarantors of any First Mortgage during normal business hours, current copies of the Condominium Documents and other books, records and financial statements of the Association as may be requested from time to time by such parties. Such requests shall be in writing, and the Association shall have the right to charge for copying expense.

[IR-51 at 24 ([APP086](#)).]

Given the absence of any relevant “clear, unambiguous, unmistakable, and conspicuous language,” *Muslet*, [213 S.W.3d at 99](#), no one would read § 6.1 of the Declaration as forfeiting the most fundamental property rights – the right to keep one’s own real property – especially with the longstanding rules designed to prevent an unknowing waiver of one’s constitutional rights and property rights. This short phrase cannot bear so much interpretive weight.

Moreover, under ordinary contract interpretation rules, the determinative question is what does the Condominium Act “prescribe”? If

the relevant portion of the Condominium Act lawfully prescribes nothing *because it is unconstitutional*, then there has been no agreement to grant the association anything.

Numerous examples demonstrate this point. Suppose a court ruled A.R.S. § 33-1228(C) unconstitutional in 2006. Would the Declaration (effective in 2007) authorize taking the Xias' unit (purchased in 2018)? No, because "the rights, powers and duties" prescribed by the Condominium Act do not include an unconstitutional power. So once the court of appeals correctly determined that § 33-1228(C) is unconstitutional, then there were no "rights, powers and duties" to prescribe.

Or suppose this Court had previously interpreted the Condominium Act to give associations far narrower powers than the associations previously claimed they had under the Act. When subsequently determining the legal effect of a declaration that grants the association the powers "prescribed by the Act," it would be plain error for lower courts to ignore those previous decisions when determining the powers prescribed by the Act *under the Declaration*. This is because by relying on the Act, instead of directly addressing the same powers, the Declaration's derivative powers

remain subject to judicial interpretation of the Act, including any constitutional limitations. What the Act *legally* prescribes is all that matters.

To hold otherwise wreaks havoc on how judicial interpretation of contractually incorporated statutes works and leads to absurd results. The Condominium Act expressly states that it applies “to all condominiums created within this state.” [A.R.S. § 33-1201](#). In other words, *all* condominium associations already have the powers of the Condominium Act, regardless of whether they so declare. No one would accordingly expect that if an association recites that it has the *same* powers as those “prescribed by the Act,” then the association suddenly gains *more* power than the Act prescribes – merely because it uttered that incantation. Yet according to the Opinion, condominiums whose declarations include that incantation can engage in unconstitutional takings, while all others merely have the powers “prescribed by” the Act.

Consider if the Condominium Act unconstitutionally gave condominium associations the power to seize and destroy all firearms in condos. Under the Opinion, residents could not assert the unconstitutionality of this facially unconstitutional statute so long as the



declaration said the association had the powers “prescribed by” statute – as do most Arizona condominium declarations.

But that is not all. The same sentence of the Declaration also gives the Association the powers from all “other applicable laws and regulations,” apparently invoking every law under the sun. [IR-51 at 24 ([APP086](#)).] Under the Opinion’s logic, this means that any unconstitutional statute can be applied against the contracting parties.

None of this makes sense. “[T]he *Constitution* and laws of the State are [already] a part of every contract.” *Sch. Dist. No. One of Pima Cnty. v. Hastings*, 106 [Ariz.](#) 175, 177 (1970) (emphasis added). Because the Constitution becomes part of the Declaration by operation of law, the Constitutional limitations on statutes necessarily apply to any statutory reference. The Declaration’s reference to the “powers” of the Condominium Act, therefore, means only the “powers” consistent with [article 2, § 17](#) of the Constitution. Although the court of appeals treated § 33-1228 differently because the Declaration referenced the Condominium Act, the automatic incorporation of the Constitution means that the constitutional limitations apply equally to the statute and to the contractual reference to the statute.

As a matter of contract law, then, when the Constitution imposes limits on the power prescribed by a statute, contractually giving someone the power prescribed by the statute necessarily includes the constitutional limitations. This is why even though every contract automatically includes Arizona's statutes, that principle extends only to "valid" statutes, not invalid ones. See *Banner Health v. Med. Sav. Ins. Co.*, [216 Ariz. 146, 150, ¶ 15](#) (App. 2007) ("a *valid* statute is automatically part of any contract affected by it" (emphasis added)).

Instead of holding that if an association declares that it has the powers prescribed by a statute, then it has *more powers* than the statute prescribes, the court of appeals should have viewed the powers prescribed as *derivative*. The Declaration here enumerates many specific powers, but says nothing about forced sales. The Declaration then contains a broad gap-filling provision giving the Association whatever powers associations have under the Condominium Act. Without § 33-1228(C), the Association would have no authority to take private property. The authority necessarily relies on the statute, and it must mirror the statutory power, not become a superpower exempt from ordinary judicial limitations on statutory powers. The

*derivative* power prescribed by a statute cannot be broader than the principal source of power.

Granted, contracting parties sometimes may agree to otherwise unconstitutional things by giving express, direct, contractual authority. Here, if the Declaration had said, “90% of unit owners may vote to sell any person’s unit,” then perhaps the Constitution would play no role. But the Declaration says nothing about forced sales. It instead relies solely on the Condominium Act. Because it relies on a power prescribed by statute, that power cannot be greater than what the statute prescribes, and instead remains subject to any constitutional limits on the power granted by the statute.

Because A.R.S. § 33-1228(C) is “unconstitutional on its face,” it cannot authorize any forced sales, regardless of whether condominium documents refer to the statute.

**C. The effect of referencing unconstitutional statutes in contracts presents an issue of statewide concern because countless Arizona contracts reference A.R.S. § 33-1228 or other unconstitutional statutes.**

Although contractual terms ordinarily may not have statewide importance, this one does. Most condominium declarations in Arizona grant

the associations the “rights, powers and duties” that are “prescribed by law” – often using the same section number (6.1) as the Declaration here. The attached Addendum ([APP123](#)) lists a small sample from across Arizona, from Esplanade Place in Maricopa County to Morning Sun in Yavapai County.

Whether granting powers “prescribed by” law means what the law legally prescribes, or instead is a standalone contract term that does not depend on the law’s interpretation, affects the majority of condominiums in Arizona and has statewide importance. As it stands, the Opinion subjects tens or hundreds of thousands of Arizonans to a law that is “unconstitutional on its face.”

The holding also has far-reaching implications beyond condominiums. For example, a contract with a bank may give the bank all powers “prescribed by” A.R.S. Title 6, or a school enrollment agreement may give school administrators all powers “prescribed by” Title 15. Contracting parties across Arizona would be shocked to learn that these boilerplate phrases render meaningless the judiciary’s role in “say[ing] what the law is.” *Marbury v. Madison*, [5 U.S. 137, 177](#) (1803). The Court should grant review.

**D. Arizonans are losing their homes despite having done nothing wrong.**

The Court should also grant review because forced sales of condominiums have run rampant. A dozen news reports show how Arizonans are losing their fully paid-off homes when they have missed no payments and done nothing wrong. [ABC15](#) reported about a 91-year-old woman in a different condominium who was kicked out of the home she “expected to own [] for the rest of her life,” along with 71 other owners. [ABC15](#) and [Arizona Mirror](#) both reported on Dorsey Place in particular.

**II. The Court should grant review to confirm that the common condominium declaration’s text does not authorize forced sales.**

The Opinion’s as-applied constitutional rationale raises another issue warranting review. Even if giving the Association statutory “rights, powers and duties” includes the unconstitutional aspects of § 33-1228(C), that phrase still does not justify forced sales because it does not empower the right party to authorize forced sales.

The Condominium Act gives *unit owners* the power to vote to terminate and sell a condominium: “a condominium may be terminated only by agreement of unit owners.” [A.R.S. § 33-1228\(A\)](#). Unit owners *authorize* the sale; an association *carries out* the sale.

But this Declaration (like most in Arizona) says, “[t]he *Association* shall have such rights, powers and duties” of the Condominium Act. [IR-51 at 24 (APP086) (emphasis added).] On its terms, this provision applies only to the *Association*. Giving one party statutory powers does not give power to anyone else. See 17A C.J.S. *Contracts* § 419 (“[I]f a written contract refers to another writing for a particularly designated purpose, the other writing becomes a part of the contract only for the purpose specified.”).

The unit owners cannot rely on the statute directly because § 33-1228(C) is “unconstitutional on its face.” And they cannot rely on the Declaration because it only gives the Association power. Meanwhile, the Association cannot rely on the derivative statutory power because § 33-1228(C) gives the forced-sale vote to unit owners, not associations.

These transactions, occurring throughout the state, are simply unconstitutional. Clarifying this standard template wording is an issue of statewide concern because it affects most condominiums in the state.

**III. The Court should grant review to clarify that A.R.S. § 33-1228(C) does not authorize plucking off individual units.**

The Court should also grant review because the Opinion misinterprets a statute of statewide importance and blesses a widespread unlawful

practice. If a condominium terminates, A.R.S. § 33-1228 gives owners two options for dealing with the condominium real estate. First, “[a] termination agreement may provide that *all* the common elements and units of the condominium *shall be sold* following termination.” A.R.S. § 33-1228(C) (emphasis added). This is the only sentence in § 33-1228 that *authorizes* the sale of units. Other provisions govern title and distributing proceeds “[i]f any real estate is to be sold following termination.” A.R.S. § 33-1228(D). Second, “[i]f the real estate constituting the condominium is not to be sold following termination, title to all the real estate in the condominium vests in the unit owners on termination as tenants in common....” A.R.S. § 33-1228(D). So, under the statute’s plain text, owners may terminate and (1) sell all the property, or (2) keep the property for themselves.

In light of this text, the Opinion observed that “nothing in the statute [expressly] *prohibits* the sale of less than the whole condominium.” Opinion ¶ 31 (emphasis added). “As a result,” the court reasoned, “we read the statute to allow a termination agreement to provide for the sale of less than all the units and common elements.” *Id.* But authorization does not follow from the absence of express prohibition. Moreover, the conclusion here gets the background rule backwards: one person cannot sell someone else’s

property absent some legally permissible authorization to do so (like a lien). Here, the only authorization the statute grants is the option (“may provide”) for owners to sell “all the common elements and units.” It does not authorize selling anything less.

So although the statute “permits but does not require a sale to include the entire condominium,” ([Opinion ¶ 31](#)), that simply means that instead of providing “that *all...shall be sold* following termination,” [A.R.S. § 33-1228\(C\)](#), owners may instead convert to tenancy in common. The court of appeals also pointed to the “any real estate” phrase above, but that subsection does not authorize any sales. Only subsection C authorizes sales, and it requires selling everything.

This makes sense, too. Selling everything gives everyone the same incentives and prevents self-dealing. If all owners have property at stake, everyone will seek the highest price. If the statute allowed the supermajority to sell to themselves only other people’s units, then the supermajority would try to *minimize* the price. This anti-textual interpretation invites the mischief and self-dealing exemplified in this case.



## ARCAP 21 NOTICE

The Xias request attorneys' fees under IR-51, ex. 2, § 12; Declaration § 13.15; and [A.R.S. §§ 12-1103, 33-420, 12-341.01](#).

## CONCLUSION

The Court should grant review, reverse, and remand.

RESPECTFULLY SUBMITTED this 23rd day of September, 2022.

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\* The appendix page number matches the electronic PDF page number. Counsel has added emphasis to selected pages in this Appendix using yellow highlighting to assist the Court with its review of the record. Some record items included in the Appendix contain only a limited excerpt. This Appendix complies with the bookmarking requirements of ARCAP 13.1(d)(3).

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION ONE

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JIE CAO, et al., *Plaintiffs/Appellants*,

*v.*

PFP DORSEY INVESTMENTS, LLC, et al., *Defendants/Appellees*.

No. 1 CA-CV 21-0275  
FILED 7-7-2022

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Appeal from the Superior Court in Maricopa County  
No. CV2019-055353  
The Honorable Daniel G. Martin, Judge

**REVERSED AND REMANDED**

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**OPINION**

Presiding Judge Paul J. McMurdie delivered the Court’s opinion, in which Chief Judge Kent E. Cattani and Vice Chief Judge David B. Gass joined.

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**M c M U R D I E**, Judge:

¶1 Jie Cao and Haining Xia (“Xias”) appeal from the superior court’s order upholding the forced sale of their Tempe condominium.<sup>1</sup> The court determined that the sale was permissible under A.R.S. § 33-1228, which allows a supermajority of condominium unit owners to approve the termination of a condominium complex, even over the objection of other condominium unit owners.

¶2 In this opinion, we address A.R.S. § 33-1228 and hold that the statute is constitutional when applied to condominium owners who bought a condominium unit subject to terms that incorporate the statute. We also hold, however, that if there have been substantive post-purchase changes to the statute, the version of the statute in place at the time of purchase controls.

¶3 Here, the superior court applied the August 2018 version of A.R.S. § 33-1228 rather than the version in effect when the Xias bought their condominium unit. As a result, because the previous version of the statute potentially provided greater protections to minority shareowners, we reverse and remand.

**FACTS AND PROCEDURAL BACKGROUND**

¶4 In 2007, a developer completed construction on the Dorsey Place Condominiums (“Dorsey Place”), a condominium complex in Tempe. The developer recorded a condominium declaration (“Declaration”), establishing the property’s terms, covenants, conditions, and restrictions (“CC&Rs”). Anyone who acquired an ownership interest in the condominium complex was subject to the Declaration, which referred to

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<sup>1</sup> The notice of appeal also named Stone Xia as an appellant, but he did not file an opening brief. Thus, he is dismissed as a party to this appeal. See ARCAP 15(a)(1).

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state regulations affecting condominium ownership. In January 2018, the Xias bought a unit at Dorsey Place. Under the warranty deed<sup>2</sup> and the Declaration, the Xias took the unit subject to its CC&Rs.

¶5 In November 2018, PFP Dorsey acquired 90 of the 96 units at Dorsey Place. Other individuals owned the remaining units. Under the Declaration, each unit owner is a member of the Association, and each unit equates to one vote within the Association. Thus, the Xias held one vote, as did the other unit owners, while PFP Dorsey commanded 90 votes within the Association.

¶6 In March 2019, the Association notified its members it would be calling a meeting to discuss terminating the condominium. The notice gave members five appraisal reports and a draft termination agreement proposing to sell the entire condominium to PFP Dorsey for over \$22 million. The appraisal reports listed the appraised values of five unit types, and the Xias' unit type was valued at \$234,000.

¶7 The Association held the meeting on April 4, where it presented its members with a modified termination agreement proposing instead to sell "all portions of and interest in [Dorsey Place] not already owned by PFP [Dorsey], to PFP [Dorsey], upon termination of the Condominium." The agreement described the purchase price as the aggregate fair market value of the six units to be bought. An independent appraisal would determine each unit's fair market value, but the agreement set forth a process for disapproving owners to obtain another appraisal.

¶8 According to the Declaration, the condominium could "be terminated only by the agreement of Unit Owners of Units to which at least ninety percent (90%) of the votes in the Association are allocated." PFP Dorsey was the only member of the Association to sign the termination agreement, but with nearly 94% of the votes, it ratified the termination and sale on April 9. The Association recorded a warranty deed<sup>3</sup> with the Maricopa County Recorder's Office, transferring the title of the Xias' unit to

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<sup>2</sup> We take judicial notice of the Xias' warranty deed, Maricopa County Recording Number 20180103716.

<sup>3</sup> We take judicial notice of PFP Dorsey's warranty deed, Maricopa County Recording Number 20190923560.

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PFP Dorsey. Eventually, PFP Dorsey and the Association changed the locks on the unit and disposed of the Xias' remaining personal property.

¶9 The Xias sued PFP Dorsey and the Association, seeking a declaratory judgment that the transaction violated the Arizona Condominium Act, A.R.S. § 33-1201, *et seq.*, which governs condominium termination. They argued in the alternative that A.R.S. § 33-1228 is unconstitutional as applied. They sought quiet title, ejectment, imposition of a constructive trust, and further alleged civil trespass, conversion, breach of fiduciary duty, unjust enrichment, and wrongful recording, all arising out of an invalid or unconstitutional forced sale of their unit.

¶10 PFP Dorsey and the Association filed separate motions to dismiss under Arizona Rule of Civil Procedure 12(b)(6). Each motion argued that the Xias failed to state a claim upon which relief could be granted because PFP Dorsey and the Association strictly complied with A.R.S. § 33-1228. The superior court granted the motions over the Xias' objection.

¶11 The Xias appealed, and we have jurisdiction under A.R.S. § 12-2101(A)(1).

## DISCUSSION

¶12 When reviewing a dismissal under Rule 12(b)(6), we take the facts alleged in the complaint as true and view them in the light most favorable to the plaintiffs. *Johnson v. McDonald*, 197 Ariz. 155, 157, ¶ 2 (App. 1999).

¶13 On appeal, the Xias argue that (1) A.R.S. § 33-1228 is an unconstitutional taking of private property, and (2) A.R.S. § 33-1228 prohibits PFP Dorsey and the Association from forcing a sale of less than the entire condominium for only the appraised value. Both statutory interpretation and constitutionality issues are questions of law, which we review *de novo*. *Koller v. Ariz. Dep't of Transp.*, 195 Ariz. 343, 345, ¶ 8 (App. 1999) (statutory interpretation); *Gallardo v. State*, 236 Ariz. 84, 87, ¶ 8 (2014) (constitutionality).

### A. Arizona Revised Statutes Section 33-1228 Is Not Unconstitutional as Applied Because the Xias Agreed to Grant the Association the Rights, Powers, and Duties Prescribed by the 1986 Version of the Statute.

¶14 The Xias argue that A.R.S. § 33-1228 is a taking of private property in violation of the Arizona Constitution. Our Constitution states

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that “[p]rivate property shall not be taken for private use,” except for certain exceptions inapplicable here. Ariz. Const. art. 2, § 17. Generally, “[t]aking one person’s property for another person’s private use is plainly prohibited.” *Bailey v. Myers*, 206 Ariz. 224, 227, ¶ 12 (App. 2003).

¶15 A statute that authorizes a private party to take another party’s property constitutes a taking. *See Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 421 (1982) (taking had occurred when, without permission of building owner, media company installed cables on apartment building as authorized by statute). Without an exception to the general rule, A.R.S. § 33-1228 is unconstitutional on its face.

¶16 The Xias argue that A.R.S. § 33-1228 “authorized an impermissible traditional taking” and that without the statute, PFP Dorsey and the Association would have “no authority” to terminate the condominium and force the sale of the Xias’ unit. But PFP Dorsey and the Association contend that the authority arises out of contract, so it is not an unconstitutional taking.

¶17 A condominium may only be created by recording a declaration. A.R.S. § 33-1211. The Declaration here provided that

[b]y acceptance of a deed or by acquiring any ownership interest in any portion of the Condominium, each Person . . . binds himself . . . to all of the provisions, restrictions, covenants, conditions, rules and regulations now or hereafter imposed by the Condominium Documents and any amendments thereof.

So when the Xias bought their unit in January 2018, they agreed to be bound by the Declaration, which grants the Association the “rights, powers and duties as are prescribed by the Condominium Act.” PFP Dorsey and the Association argue that the April 2019 termination and sale was authorized under the Declaration because they strictly followed the provisions of A.R.S. § 33-1228. But PFP Dorsey (and the superior court) applied the current version of the statute, even though it reflects an August 2018 amendment that potentially lessened protections for individual condominium unit owners subject to a forced sale. *See* H.B. 2262, 53d Leg., 2d Reg. Sess. (2018).

¶18 The Xias argue that, under *Kalway v. Calabria Ranch HOA, LLC*, 252 Ariz. 532 (2022), the 2018 amendments to the statute cannot be



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incorporated into the Declaration.<sup>4</sup> They assert that the 1986 version in effect at the time of their purchase is the one that applies here. PFP Dorsey and the Association respond that the Declaration incorporated the 2018 amendments because the Declaration defines the “Condominium Act” as “A.R.S. §33-1201, et seq., as amended from time to time.”

¶19 “Although contracts are generally enforced as written, in special types of contracts, we do not enforce ‘unknown terms which are beyond the range of reasonable expectation.’” *Kalway*, 252 Ariz. at 544, ¶ 14 (citation omitted) (quoting *Darner Motor Sales, Inc. v. Universal Underwriters Ins. Co.*, 140 Ariz. 383, 391 (1984)). CC&Rs, like the Declaration, are subject to this rule. *Id.* at 544, ¶ 14. As a result, we will not “allow[] substantial, unforeseen, and unlimited amendments” to the Declaration, as that “would alter the nature of the covenants to which the homeowners originally agreed.” *Id.* at 544, ¶ 15. We “will not subject a minority of landowners to unlimited and unexpected restrictions on the use of their land merely because the covenant agreement permitted a majority to make changes to existing covenants.” *Id.* (quoting *Boyles v. Hausmann*, 517 N.W.2d 610, 617 (Neb. 1994)).

¶20 For these reasons, although the Declaration incorporates amendments to the Condominium Act, an amendment will be included only if it falls within the Xias’ “reasonable expectations based on the declaration in effect at the time of the purchase.” *See Kalway*, 252 Ariz. at 544, ¶ 15. We look objectively at the Declaration to determine whether it gave sufficient notice of a future amendment. *Id.* at 544–45, ¶ 16. The Declaration need not provide notice of the precise details of the amendment, but “it must give notice that a . . . covenant exists and that the covenant can be amended to refine it, correct an error, fill in a gap, or change it in a particular way.” *Id.* at 545, ¶ 17. Future amendments, however, “cannot be ‘entirely new and different in character,’” otherwise they would

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<sup>4</sup> Although the Xias did not raise this argument before the superior court or in their opening brief, they have not waived the argument. Waiver “is procedural, not substantive, . . . and may be suspended at an appellate court’s discretion.” *Dombey v. Phx. Newspapers, Inc.*, 150 Ariz. 476, 482 (1986). We will consider the Xias’ argument because it is founded on *Kalway*, which was issued after all parties had filed their initial briefs, and all parties were later “afford[ed] a full opportunity to brief and argue the issue.” *See Jimenez v. Sears, Roebuck & Co.*, 183 Ariz. 399, 406, n.9 (1995).

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exceed the reasonable expectations of the owners. *Id.* (quoting *Lakeland Prop. Owners Ass'n v. Larson*, 459 N.E.2d 1164, 1167 (Ill. 1984)).

¶21 When the Xias took ownership of their unit in January 2018, the 1986 version was in effect, and A.R.S. § 33-1228(G)(1) provided that

the respective interests of unit owners are the fair market values of their units, limited common elements and common element interests immediately before the termination, as determined by an independent appraiser selected by the association. The determination of the independent appraiser shall be distributed to the unit owners and becomes final unless disapproved within thirty days after distribution by unit owners of units to which fifty percent of the votes in the association are allocated. The proportion of any unit owner's interest to that of all unit owners is determined by dividing the fair market value of that unit owner's unit and common element interest by the total fair market values of all the units and common elements.

After the 2018 amendments and at the time of the proposed termination of the condominium, A.R.S. § 33-1228(G)(1) provided that

the respective interests of unit owners are the fair market values of their units, limited common elements and common element interests immediately before the termination and an additional five percent of that total amount for relocation costs for owner-occupied units. An independent appraiser selected by the association shall determine the total fair market values. The determination of the independent appraiser shall be distributed to the unit owners and becomes final unless disapproved within sixty days after distribution to the unit owner. Any unit owner may obtain a second independent appraisal at the unit owner's expense and, if the unit owner's independent appraisal amount differs from the association's independent appraisal amount by five percent or less, the higher appraisal is final. If the total amount of compensation owed as determined by the second appraiser is more than five percent higher than the amount determined by the association's appraiser, the unit owner shall submit to arbitration at the association's expense and the arbitration amount is the final sale amount. An additional five percent of

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the final sale amount shall be added for relocation costs for owner-occupied units.

Thus, the 1986 version used the fair market value of an owner's unit to calculate the proportion of that owner's interest relative to the entire condominium. But the 2018 version appears to set the fair market value of the unit alone as "the final sale amount" to which the owner is entitled, rather than calculating the owner's proportionate share of the sale price of the condominium as a whole.

¶22 The Declaration did not provide sufficient notice of such a substantive amendment. It defined the Condominium Act as the condominium statutes "as amended from time to time." This provision only provides notice that the Condominium Act could be amended by the legislature, which cannot provide "fair notice of any enacted amendment." See *Kalway*, 252 Ariz. at 545, ¶ 19 (provision gave insufficient notice when it only stated that the "Declaration may be amended at any time by an instrument executed and acknowledged by the Majority Vote of the Owners"). And the statutory amendments did not merely refine the statutes, correct errors, or fill in gaps, but substantively altered owners' property rights beyond the "owners' expectations of the scope of the covenants." See *Kalway*, 252 Ariz. at 545, ¶ 17. Allowing this provision to amend the Declaration would "allow[] substantial, unforeseen, and unlimited amendments [that] would alter the nature" of the agreement. See *Kalway*, 252 Ariz. at 544, ¶ 15. We conclude, therefore, that the Declaration did not incorporate the 2018 amendments to A.R.S. § 33-1228, and the Xias purchase agreement only granted the Association the rights, powers, and duties prescribed by the 1986 version of the statute.

¶23 But PFP Dorsey and the Association claim that the Xias could not contract around the 2018 amendments to subsection (G)(1). They cite A.R.S. § 33-1228(K), which states that "[b]eginning on the effective date of this amendment to this section, [August 3, 2018,] any provisions in the declaration that conflict with subsection G, paragraph 1 of this section are void as a matter of public policy." They maintain that the 2018 version must apply here because the legislature "intended the 2018 version to apply to all condominiums, regardless of the language in their declarations." As discussed, a forced termination and sale under the statute is unconstitutional but for an owner's contractual agreement under the declaration. And we cannot read A.R.S. § 33-1228(K) to affect agreements already in place because "no . . . law impairing the obligation of a contract[] shall ever be enacted." Ariz. Const. art. 2, § 25; see also *Hayes v. Cont'l Ins. Co.*, 178 Ariz. 264, 273 (1994) ("[I]f possible this court construes statutes to

avoid rendering them unconstitutional.”). *But see Phelps Dodge Corp. v. Arizona Elec. Power Co-op., Inc.*, 207 Ariz. 95, 119, ¶ 101 (App. 2004), *as amended on denial of reconsideration* (Mar. 15, 2004) (“Although the language in the contract clauses of the federal and state constitutions is seemingly absolute, the State can impair contract obligations in the exercise of its inherent police power to safeguard vital public interests.”).

¶24 The Xias took ownership of their unit in January 2018 subject to the Declaration, which incorporated the Condominium Act. And substantive amendments to the Condominium Act cannot later be incorporated into the agreement without renewed consent. Thus, the 1986 version of A.R.S. § 33-1228 applies.

**B. The Authority Granted to the Association Must Be Analyzed Under the 1986 Version of A.R.S. § 33-1228.**

¶25 The Xias also argue that A.R.S. § 33-1228 does not authorize the Association to sell the contested unit to PFP Dorsey because, under their interpretation, the statute requires that (1) any sale of condominium property must include the entire condominium, and (2) the Association must sell the property on the most favorable terms and distribute the sale’s proceeds in proportion to their interests as determined by appraisals.

¶26 The primary goal of statutory interpretation is to “find and give effect to legislative intent.” *Secure Ventures, LLC v. Gerlach*, 249 Ariz. 97, 99, ¶ 5 (App. 2020). We start with the statute’s plain language and give its words their ordinary meaning. *Id.* In doing so, we read the statute’s words in context. *See J.D. v. Hegyi*, 236 Ariz. 39, 40–41, ¶ 6 (2014). “If the statute is subject to only one reasonable interpretation, we apply it without further analysis.” *Glazer v. State*, 237 Ariz. 160, 163, ¶ 12 (2015). But if the statute is ambiguous, we may consider many different factors, including “the context of the statute, the language used, the subject matter, its historical background, its effects and consequences, and its spirit and purpose.” *Wyatt v. Wehmueller*, 167 Ariz. 281, 284 (1991).

¶27 In 1985, the Arizona Legislature adopted a version of the Uniform Condominium Act. *See* 1985 Ariz. Sess. Laws, ch. 192, § 3. When a statute is based on a uniform act, we may infer that the legislature “intended to adopt the construction placed on the act by its drafters.” *UNUM Life Ins. Co. of Am. v. Craig*, 200 Ariz. 327, 332, ¶ 25 (2001) (quoting *State v. Sanchez*, 174 Ariz. 44, 47 (App. 1993)). We note, however, that our legislature declined to adopt certain provisions of the uniform act, which likewise guides our interpretation.

**1. Arizona Revised Statutes Section 33-1228(C) Allows a Termination Agreement to Include a Provision for the Sale of Any Portion of the Condominium.**

¶28 The Xias argue that A.R.S. § 33-1228(C) prohibits the sale of less than the entire condominium. Although the Xias originally made this argument under the 2018 version of the statute, the legislature did not substantively amend the subsections referenced in this argument. As a result, we will address the argument here.

¶29 Section 33-1228(C) reads:

A termination agreement may provide that all the common elements and units of the condominium shall be sold following termination. If, pursuant to the agreement, any real estate in the condominium is to be sold following termination, the termination agreement shall set forth the minimum terms of the sale.

The plain language of the first sentence allows a termination agreement to provide for the sale of all the common elements and units. In the context of A.R.S. § 33-1228, this sentence gives an association, via a termination agreement, the power to contract for the sale of the entire property, including the property of unit owners who object to the termination and sale. *See* A.R.S. § 33-1228(A), (B) (contemplating a termination agreement approved by less than all unit owners); A.R.S. § 33-1228(D) (contract for sale binds owners of the property to be sold upon approval under subsections A and B); *see also* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 167–69 (2012) (“Context is a primary determinant of meaning,” and all of a statute “provides the context for each of its parts.”).

¶30 The Xias argue that A.R.S. § 33-1228(C) requires that “[i]f . . . any real estate is to be sold, it must all be sold.” But the subsection’s first sentence does not require anything; the language is permissive. *See* A.R.S. § 33-1228(C) (“A termination agreement *may* provide that all the common elements and units of the condominium shall be sold.”) (emphasis added); *see also* Scalia & Garner, *supra*, at 112 (“May” is a permissive word and “permissive words grant discretion.”). In the second sentence, the legislature contemplated an agreement under which “*any* real estate in the condominium is to be sold.” A.R.S. § 33-1228(C) (emphasis added). And the only requirement imposed is that “the termination agreement shall set forth the minimum terms of the sale.” *Id.*; *see also* Scalia & Garner, *supra*, at 112

(Used correctly, “shall” is mandatory, and “[m]andatory words impose a duty.”).

¶31 The statute thus permits but does not require a sale to include the entire condominium. And nothing in the statute prohibits the sale of less than the whole condominium. As a result, we read the statute to allow a termination agreement to provide for the sale of less than all the units and common elements.

**2. The Superior Court Dismissed the Xias’ Complaint Based on an Inapplicable Version of A.R.S. § 33-1228.**

¶32 The Xias also argue that the Association owed them a fiduciary duty to act in their best interests and sell the property on the best terms possible. They argue that A.R.S. § 33-1228(D) creates a fiduciary relationship by vesting title to their property in the Association as trustee.

¶33 Under A.R.S. § 33-1228(D), “[i]f any real estate in the condominium is to be sold following termination, title to that real estate on termination vests in the association as trustee for the holders of all interest in the units.” The statute vests title to the real estate in the association so that “the association has all powers necessary and appropriate to effect the sale.” A.R.S. § 33-1228(D); *see also* A.R.S. § 33-1259 (Third parties may assume an association is acting properly within its capacity as trustee.). As trustee, an association must carry out a sale in good faith, with loyalty, and in the interests of the unit owners. *See Lane Title & Tr. Co. v. Brannan*, 103 Ariz. 272, 278 (1968) (“[T]he trustee owes the beneficiary a duty of undivided loyalty.”); A.R.S. § 14-10801 (“[T]he trustee shall administer the trust in good faith, in accordance with its terms and purposes and in the interests of the beneficiaries.”); A.R.S. § 14-10802 (trustee owes a duty of loyalty); A.R.S. § 14-10803 (trustee owes a duty of impartiality); *see also* A.R.S. § 14-10815(B) (describing such duties as “fiduciary duties.”).

¶34 The Association concedes that it became a trustee to facilitate the sale, but it argues that A.R.S. § 33-1228 only requires the trustee to “carry out the sale that the members of the Association agreed to when they agreed to terminate the condominium.” We disagree. By assuming the role of trustee, the Association owed a fiduciary duty to all unit owners. The Association argues that if it owed the unit owners a fiduciary duty, it did not breach the duty because it strictly complied with the requirements of A.R.S. § 33-1228 by including the sale price and protective measures required by A.R.S. § 33-1228(G). The Association thus argues that it properly terminated and sold the condominium.

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¶35 The Association relies, however, on the requirements imposed by the 2018 version of the statute. Likewise, the superior court dismissed the Xias' complaint "for the reasons advanced by [PFP Dorsey and the Association]," which included arguments relying on the 2018 version. But as discussed, the Xias only agreed to the 1986 version of the statute. As a result, we vacate and remand to the superior court to apply the 1986 version of A.R.S. § 33-1228 to determine whether the Association breached its fiduciary obligations. Thus, we need not address whether the sale at issue would have fulfilled the Association's fiduciary duty under the 2018 version.

**ATTORNEY'S FEES**

¶36 The Xias seek attorney's fees on appeal. Contractual attorney's fees provisions are enforced according to their terms. *Chase Bank of Ariz. v. Acosta*, 179 Ariz. 563, 575 (App. 1994). The Declaration provides that if any unit owner employs attorneys to enforce compliance with the Declaration, the prevailing party has a right to recover its reasonable attorney's fees. Because the Xias are the prevailing party, we award them their reasonable attorney's fees and costs after complying with Arizona Rule of Civil Appellate Procedure 21.

**CONCLUSION**

¶37 We reverse and remand the superior court's dismissal of the Xias' complaint.



AMY M. WOOD • Clerk of the Court  
FILED: AA

IN THE  
COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE



DIVISION ONE  
FILED: 09/14/2022  
AMY M. WOOD,  
CLERK  
BY: KLE

JIE CAO, et al., )  
 ) Court of Appeals  
 ) Division One  
 Plaintiffs/Appellants, ) No. 1 CA-CV 21-0275  
 )  
 v. ) Maricopa County  
 ) Superior Court  
 PFP DORSEY INVESTMENTS, LLC, et ) No. CV2019-055353  
 al., )  
 )  
 Defendants/Appellees. )  
 \_\_\_\_\_ )

**ORDER DENYING MOTION FOR RECONSIDERATION, GRANTING ATTORNEY'S FEES AND COSTS**

The court, Presiding Judge Paul J. McMurdie, Chief Judge Kent E. Cattani, and Vice Chief Judge David B. Gass, has received and considered Plaintiffs/Appellants' application for attorney's fees and costs, Defendants/Appellees' objection and motion for reconsideration, and Plaintiffs/Appellants' reply. After deliberation,

**IT IS ORDERED** denying Defendants/Appellees' motion for reconsideration.

**IT IS FURTHER ORDERED** granting Plaintiffs/Appellants' unopposed motion for extension of time.

**IT IS FURTHER ORDERED** granting Plaintiffs/Appellants' reasonable fees and costs in the amount of \$230,000.

/s/ \_\_\_\_\_  
PAUL J. McMURDIE, Presiding Judge



A copy of the foregoing  
was sent to:

Eric M Fraser  
John S. Bullock  
Shawna M Woner  
Stephanie Kwan Gintert  
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*Attorneys for Plaintiffs*

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

**IN AND FOR THE COUNTY OF MARICOPA**

**JIE CAO and HAINING “FRAZER” XIA,  
a married couple; STONE XIA, an  
individual,**

**Plaintiffs;**

**vs.**

**PFP DORSEY INVESTMENTS, LLC, a  
Delaware limited liability company;  
DORSEY PLACE CONDOMINIUM  
ASSOCIATION, an Arizona nonprofit  
corporation;**

**Defendants.**

**Case No.: CV2019-055353**

**SECOND AMENDED COMPLAINT**

**(Assigned to the Honorable Daniel Martin)**

**(Tier II Case)**

**(Jury Trial Requested)**

Plaintiffs Jie Cao, Haining “Frazer” Xia, and Stone Xia (collectively “Plaintiffs”) hereby file their Second Amended Complaint against Defendants PFP Dorsey Investments, LLC and Dorsey Place Condominium Association (collectively “Defendants”).

**PARTIES, JURISDICTION AND VENUE**

1. Plaintiffs Jie Cao (“J. Cao”) and Haining “Frazer” Xia (“Xia”) are a married couple residing in Maricopa County, Arizona at all relevant times.



1           10.    In or around 2007, Dorsey Place was completed at a cost of approximately twenty-  
2 three million dollars (\$23,000,000). At least six condominiums were sold by the developer for  
3 prices in excess of four hundred thousand dollars (\$400,000).

4           11.    On or around December 15, 2006, the Board of the Condo Association adopted  
5 bylaws (“Bylaws”).

6           12.    The Bylaws discuss the Annual Member Meeting under Section 3.3, stating, “The  
7 annual meeting of the Members shall be held in the month of March each year, beginning in  
8 March, 2006, with the exact date to be determined each year by the Board, provided that the Board  
9 may elect to delay the annual meeting past March in any given year (but in no event later than  
10 May 31) if necessary to permit preparation of financial statements or budgets, or for such other  
11 reason as may be determined by the Board, in its good faith discretion. At each annual meeting  
12 the Members shall elect the Board and transact such other business as may properly be brought  
13 before the meeting.”

14           13.    The Bylaws discuss Special Meetings of the Members under Section 3.4, stating  
15 “Unless otherwise prescribed by Arizona statute or by the Articles, special meetings of the  
16 Members, for any purpose or purposes, may be called by: (a) the president; (b) a majority of the  
17 directors; or (c) after the Declaration is recorded, Members having at least ten percent (10%) of  
18 all votes in the Association (as determined in accordance with the Declaration).”

19           14.    The Bylaws also discuss the requirements of Notice of Members Meetings under  
20 Section 3.5, stating “Not less than ten (10) nor more than fifty (50) days before the date of any  
21 annual or special meeting of the Members, either the secretary or any other officer of the  
22 Association shall cause written notice stating the place, date and time of the meeting (and, in the  
23 case of a special meeting, the items on the agenda, including, but not limited to, the general nature  
24 of any proposed amended to the Declaration, Articles or Bylaws, any budget changes and any  
25 proposal to remove a director or officer) to be hand-delivered or sent prepaid by United States  
26

1 mail to the last known mailing address of each Member, as shown in the Association records, or to  
2 the mailing address of such Member's Unit). If mailed, such notice shall be deemed to be delivered  
3 when mailed. Business transacted at any special meeting of Members shall be limited to the items  
4 stated in the notice unless determined otherwise by a unanimous vote of the Members present at  
5 such meeting."

6 15. The Bylaws provide that directors are to be elected at the Annual Meeting: "The  
7 business and affairs of the Association shall be managed, conducted and controlled by the Board.  
8 The directors shall be appointed or elected as provided in the Declaration, and for the term(s)  
9 specified therein. Except as provided in the Declaration, each director shall be elected at the annual  
10 meeting of Members concurrent with the expiration of the term of the director he or she is to  
11 succeed, and, except as otherwise provided in these Bylaws or in the Articles or the Declaration,  
12 shall hold office until his or her successor is elected and qualified." Section 4.1, Bylaws.

13 16. On or around August 15, 2017, Dorsey Place recorded a Declaration of  
14 Condominium for Dorsey Place with the Maricopa County Recorder's Office, bearing recording  
15 number 2007-0921387 ("Declaration").

16 17. The Declaration was amended with a first amendment on July 31, 2009, and  
17 recorded with the Maricopa County Recorder's Office, bearing recording number 2009-0825688  
18 ("First Amendment to Declaration").

19 18. The Declaration and First Amendment to Declaration were amended with a second  
20 amendment on August 15, 2011, and recorded with the Maricopa County Recorder's Office,  
21 bearing recording number 2012-0168217 ("Second Amendment to Declaration").

22 19. The Declaration, First Amended to Declaration, and Second Amendment to  
23 Declaration were amended with a third amendment on February 9, 2018, and recorded with the  
24 Maricopa County Recorder's Office, bearing recording number 2018-0161234 ("Third  
25 Amendment to Declaration") (the Declaration, First Amendment to Declaration, Second  
26

1 Amendment to Declaration, and Third Amendment to Declaration shall be referred to herein as  
2 the “Declaration with Amendments”).

3         20. Under Section 6.4 of the Declaration with Amendments, each “Unit Owner shall be  
4 a Member of the Association. The membership of the Association shall, at all times, consist  
5 exclusively of the Unit Owners.”

6         21. Under Section 6.7 of the Declaration with Amendments provided each Unit Owner  
7 with one vote for each Unit owned by the Unit Owner on “any Association matter which is put to  
8 a vote of the membership in accordance with this Declaration, the Articles and/or Bylaws.”

9         22. Under Section 13.4 of the Declaration with Amendments, “the Condominium may  
10 be terminated only by the agreement of Unit Owners of Units to which at least ninety percent  
11 (90%) of the votes in the Association are allocated. An agreement to terminate the Condominium  
12 must be evidenced by the execution or ratifications of a termination agreement, in the same  
13 manner as a deed by the requisite number of Unit Owners.”

14         23. Under Section 2.4 of the Third Amendment to Declaration, there were ninety-six  
15 (96) units in the Condo Association consisting of Units 101 through 121, Units 201 through 225,  
16 Units 301 through 325, and Units 401 through 425.

17         24. In or around 2011, Pathfinder Partners LLC, a California limited liability company,  
18 acquired Dorsey Place from the original developer for approximately eleven million three hundred  
19 thousand dollars (\$11,300,000). The six additional units stayed with their current owners and were  
20 not part of this transaction by Pathfinders Partners, LLC.

21         25. On information and belief, at some time Dorsey Place was transferred from  
22 Pathfinder Partners LLC, to the Condo Association, PFP Dorsey, PFP LP, and/or PFP LLC.

23         26. In or around March 2019, a 2019 Annual Meeting Notice was noticed, to be held on  
24 April 4, 2019 (“Notice”). The letter notifying the members of the meeting listed seven items on  
25 the agenda, as follows:

1. Call to Order and Verification of Quorum
2. Introduction of Board Members and Management Company Representatives
3. Presentation of the Affidavit of Mailing
4. Financial Review
5. Status of the Community
6. Discussion on proposed termination of condominium
  - a. Motion to adopt appraisal and terminate the condominium
    - i. Vote to adopt the independent appraisal\* procured to determine the fair market value of the Condominium;
    - ii. Vote to ratify a termination agreement\* whereby the condominium will be terminated and sold in accordance with the Arizona Condominium Act (A.R.S. § 33-1228 *et seq.*)
7. Adjournment

\*For your convenience and in preparation of the Annual Meeting as scheduled herein, the following documents are enclosed: 1) Official Ballot for matters to be voted upon; 2) Appraisal of Property; and 3) Proposed Condominium Termination Agreement.

27. This Notice did not include a notice to elect directors, consistent with the requirement of Annual Meetings under Section 4.1 of the Bylaws.

28. Therefore, this Notice was for a Special Meeting, rather than an Annual Meeting of the Members.

29. Along with the Notice, a draft Condominium Termination Agreement was sent to the members (“Draft Condominium Termination Agreement”); five appraisal reports prepared by K & T Appraisals dated February 5, 2019; and an incomplete and misleading copy of A.R.S. § 33-1228.

30. The Draft Condominium Termination Agreement stated that the Condo Association was agreeing to sell all ninety units to PFP Dorsey for twenty-two million six hundred forty-six thousand dollars (\$22,646,000).

31. The Draft Condominium Termination Agreement stated that at least ninety (90%) percent of the Unit Owners voted to approve the Draft Condominium Termination Agreement.

32. Further, the Draft Condominium Termination Agreement provided that the distribution of the sale shall be allocated to unit owners of five different types of property: Owners

1 of a Type A Unit will receive \$234,000 and their proportional interest in the Common Elements;  
2 Owners of a Type B Unit will receive \$236,000 and their proportional interests in the Common  
3 Elements; Owners of a Type C Unit will receive \$224,000 and their proportional interests in the  
4 Common Elements; Owners of a Type D Unit will receive \$244,000 and their proportional  
5 interests in the Common Elements; and Owners of a Type E Unit will receive \$244,000 and their  
6 proportional interests in the Common Elements.

7 33. The Xia Condo was determined to be a Type A Unit.

8 34. Plaintiffs were present at the April 4, 2019 Special Meeting (“Special Meeting”).

9 35. At the Special Meeting, the members were provided with a modified Condominium  
10 Termination Agreement (“Modified Condominium Termination Agreement”). The Modified  
11 Condominium Termination Agreement provided that the Condo Association were agreeing to sell  
12 all interests of Dorsey Place that were not already owned by PFP Dorsey.

13 36. Under Section 3.5 of the Condo Association’s bylaws, “business transacted at any  
14 special meeting of Members shall be limited to the items stated in the notice unless determined  
15 otherwise by a unanimous vote of the Members present at such meeting.”

16 37. The members of the Condo Association did not take a vote at the Special Meeting  
17 to introduce the Modified Condominium Termination Agreement.

18 38. Had a vote of the Members been taken at the Special Meeting, the Plaintiffs would  
19 have objected to introducing the Modified Condominium Termination Agreement, thereby  
20 preventing the business to be transacted as indicated in Section 3.5 of the Bylaws.

21 39. Plaintiffs informed the Defendants that they were only obligated to sell the Xia  
22 Condo if following the termination of the condominium, the entire project would be sold, similar  
23 to a drag-along clause by the super majority.

24 40. On or around January 2, 2020, Plaintiffs learned that the Defendants changed the  
25 locks on the Xia Condo; and destroyed and/or disposed of personal property in the Xia Condo.



1 41. On May 6, 2020, Plaintiffs provided notice to PFP Dorsey of its wrongful recording  
2 under A.R.S. § 33-420.

3 42. To date, PFP Dorsey has not corrected or released its wrongful recording.

4 **COUNT I**

5 **Declaratory Judgment**

6 43. Plaintiffs incorporate all preceding paragraphs as if fully set forth herein.

7 44. There exists a real and justiciable controversy regarding whether Defendant Dorsey  
8 Condo Association validly terminated the condominium and validly transferred title of the  
9 Plaintiffs' real property to PFP Dorsey.

10 45. Under A.R.S. § 33-1228(A), "a condominium may be terminated only by agreement  
11 of unit owners of units to which at least eighty percent of the votes in the association are allocated,  
12 or any larger percentage the declaration specifies."

13 46. In the event the termination is not completed in accordance with the Condo  
14 Association's bylaws and requirements, any termination agreement that is recorded is invalid and  
15 void. 6

16 47. Under the Condo Association bylaws, a special meeting may only be held to conduct  
17 business as demonstrated in the notice for special meeting.

18 48. The special meeting may conduct business that is outside of the special meeting  
19 notice only if the members present at the special meeting unanimously vote to amend the special  
20 meeting notice.

21 49. The Condo Association called for a special meeting to be held on April 4, 2019.

22 50. The Condo Association stated that the members would vote on the Draft  
23 Condominium Termination Agreement.

24 51. On April 4, 2019, at the Special Meeting ("Special Meeting"), the members voted  
25 on the Condominium Termination Agreement.

1           52.    At the Special Meeting, the members did not unanimously vote to amend the special  
2 meeting notice.

3           53.    The Condo Association did not notice a separate board meeting or special meeting  
4 to vote on the Condominium Termination Agreement.

5           54.    On November 15, 2019, the Condo Association recorded a Warranty Deed with the  
6 Maricopa County Recorder’s Office, bearing recording number 2019-0923560, granting the Xia  
7 Condo to PFP Dorsey.

8           55.    Plaintiffs contend that this conduct violated the bylaws, rendering the proceedings  
9 of the Condo Association board, and the subsequent purported transfer of title, invalid.

10          56.    Under A.R.S. § 33-1228(D), “If any real estate in the condominium is to be sold  
11 following termination, title to that real estate on termination vests in the association as trustee for  
12 the holders of all interest in the units.”

13          57.    Under A.R.S. § 33-1228(E), “If the real estate constituting the condominium is not  
14 to be sold following termination, title to all the real estate in the condominium vests in the unit  
15 owners on termination as tenants in common in proportion to their respective interests...”

16          58.    A.R.S. § 33-1228 provides only for the sale of “all the common elements and units  
17 of the condominium,” together; and as trustee, the condo association’s fiduciary duties require  
18 that the entire real estate be sold for the highest possible price.

19          59.    Plaintiffs contend that the Defendant Condo Association violated A.R.S. § 33-1228,  
20 and breached its fiduciary duties to Plaintiffs, by forcibly selling the Plaintiffs’ unit to PFP Dorsey,  
21 at a price determined by the Condo Association; rather than offering the entire “real estate  
22 constituting the condominium” for sale, and selling for the highest price.

23          60.    To the extent that A.R.S. § 33-1228 could be construed as giving Defendants the  
24 power to compel Plaintiffs to transfer their real property to PFP Dorsey, it is tantamount to an  
25 unconstitutional taking that lacks a public purpose and the statute is therefore  
26

1 invalid/unenforceable. Because Plaintiffs do not allege a facial challenge to the statute, but rather  
2 an “as-applied” challenge, A.R.S. § 12-1841 does not apply.

3 **COUNT II**

4 **Quiet Title**

5 61. Plaintiffs incorporate all preceding paragraphs as if fully set forth herein.

6 62. The Plaintiffs are credibly informed and believe Defendants have made claims  
7 adverse to the Plaintiffs’ interests in the Xia Condo.

8 63. The Plaintiffs requests that the Court order that Plaintiffs are the lawful owners of  
9 the Xia Condo (and/or, of an undivided interest in the real estate formerly constituting the  
10 condominium).

11 64. The Plaintiffs request that the Defendant be barred and forever estopped from  
12 having or claiming any right or title to the Xia Condo adverse to Plaintiffs.

13 65. The Plaintiffs request an award of their attorneys’ fees and costs pursuant to A.R.S.  
14 § 12-1103.

15 **COUNT III**

16 **Civil Trespass, Conversion**

17 66. Plaintiffs incorporate all preceding paragraphs as if fully set forth herein.

18 67. On January 30, 2018, Plaintiffs acquired title to the Xia Condo.

19 68. On April 9, 2019, the Defendants recorded the Condominium Termination  
20 Agreement with the Maricopa County Recorder’s Office, bearing recording number 2019-  
21 0248170.

22 69. The Condominium Termination Agreement was not adopted by the Condo  
23 Association consistent with the Declaration with Amendments or the Bylaws and Arizona statute,  
24 and therefore invalid.

25 70. As of April 9, 2019, the Plaintiffs still held title to the Xia Condo.  
26

1 71. On or before January 2, 2020, Defendants caused the locks on the Xia Condo to be  
2 changed.

3 72. On or before January 2, 2020, Defendants destroyed personal property and  
4 belongings, which were in the Xia Condo and belonged to Plaintiffs.

5 73. According to a representative of PFP Dorsey, the personal property and belongings  
6 were either thrown away or donated.

7 74. The Defendants took these actions, because they knew that the Plaintiffs were  
8 disputing the Condominium Termination Agreement, and because a Complaint had been filed in  
9 this action in November 2019.

10 75. The Defendants took these actions with malice, fraud, oppression, and with a  
11 conscious and wanton disregard for the rights and interests of Plaintiffs because they disputed the  
12 Condominium Termination Agreement and because the Complaint had been filed in this Action.  
13 Therefore, Plaintiffs are entitled to an award of punitive and exemplary damages.

14 **Count IV**

15 **Breach of Fiduciary Duty**

16 76. Plaintiffs incorporate all preceding paragraphs as if fully set forth herein.

17 77. Plaintiffs were minority members of the Condo Association, a nonprofit  
18 corporation.

19 78. As a majority member of the Condo Association, PFP Dorsey owed fiduciary duties  
20 to the Plaintiffs.

21 79. If the condominium were validly terminated, and any real estate in the condominium  
22 were to be legally sold following termination, then the Condo Association became a “trustee for  
23 the holders of all interest in the units,” including Plaintiffs, by which it owed them a fiduciary  
24 duty.

1 80. Defendants breached their fiduciary duties by forcing Plaintiffs to involuntarily sell  
2 their condo to PFP Dorsey, at a price that it determined, and without publicly offering the entire  
3 real estate constituting the condominium for sale, in order to obtain the best price.

4 81. Defendants breached their fiduciary duties by deliberately conducting invalid condo  
5 association meeting(s) over Plaintiffs' objection.

6 82. Defendants breached their fiduciary duties by destroying and/or otherwise disposing  
7 of the Plaintiffs' personal property.

8 83. Plaintiffs are therefore entitled to a constructive trust over the Xia Condo (and/or  
9 the real estate formerly constituting the condominium), and damages in an amount to be  
10 determined at trial.

11 84. The Defendants took these actions with malice, fraud, oppression, and with a  
12 conscious and wanton disregard for the rights and interests of Plaintiffs because they disputed the  
13 Condominium Termination Agreement and because the Complaint had been filed in this Action.  
14 Therefore, Plaintiffs are entitled to an award of punitive and exemplary damages.

15 **COUNT V**

16 **Unjust Enrichment**

17 85. Plaintiffs incorporate all preceding paragraphs as if fully set forth herein.

18 86. Defendant PFP Dorsey, by its actions, has been unjustly enriched.

19 **COUNT VI**

20 **Ejectment, Constructive Trust**

21 87. Plaintiffs incorporate all preceding paragraphs as if fully set forth herein.

22 88. Plaintiffs have a valid subsisting interest in the Xia Condo and a right to immediate  
23 possession thereof. They are therefore entitled to recover possession from Defendants.

1 89. Defendants have obtained, or sought to obtain title to the Xia Condo through actual  
2 fraud, misrepresentation, concealment, undue influence, duress and other means which render it  
3 unconscionable for Defendants to continue to retain and enjoy its beneficial interest.

4 90. Plaintiffs therefore seek an order of ejectment and the imposition of a constructive  
5 trust over the Xia Condo.

6 **COUNT VII**

7 **Wrongful Recording**

8 91. Plaintiffs incorporate all preceding paragraphs as if fully set forth herein.

9 92. PFP Dorsey purports to claim an interest in, or a lien or encumbrance against, the  
10 Xia Condo (and/or real estate formerly constituting the condominium), and caused a document  
11 asserting that claim to be recorded in the office of the county recorder, knowing or having reason  
12 to know that the document is forged, groundless, or contains a material misstatement or false  
13 claim.

14 93. Plaintiffs provided notice to PFP Dorsey on May 6, 2020 pursuant to A.R.S. § 33-  
15 420, with regard to the wrongful recording.

16 94. PFP Dorsey has not corrected the recording which is forged, groundless, or contains  
17 a material misstatement or false claim.

18 95. PFP Dorsey is therefore liable to Plaintiffs, as the owner or beneficial title holder of  
19 the real property, for the sum of not less than five thousand dollars, or for treble the actual damages  
20 caused by the recording, whichever is greater, and reasonable attorney fees and costs of the action.

21 **GENERAL PRAYER FOR RELIEF**

22 **WHEREFORE**, Plaintiffs respectfully seek a judgment against Defendants that:

23 A. Quiets title to the Xia Condo in their favor (and/or their undivided interest of the  
24 real estate formerly constituting the condominium); declares that the termination of  
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the condominium was invalid; and/or imposes a constructive trust over the Xia Condo (or real estate formerly constituting the same);

- B. Declares that, to the extent A.R.S. § 33-1228 could be construed as giving Defendants the power to compel Plaintiffs to transfer their real property to PFP Dorsey, it is tantamount to an unconstitutional taking that lacks a public purpose and the statute is therefore invalid/unenforceable;
- C. Provides that Plaintiffs are entitled to recover possession of the Xia Condo, and/or imposes a constructive trust over the Xia Condo;
- D. For damages in an amount to be determined at trial, including punitive damages;
- E. For attorneys’ fees and costs under any applicable authority, including A.R.S. §§ 12-1103, 12-341, 33-420, and 12-341.01;
- F. For such other relief as the Court deems appropriate.

**RESPECTFULLY SUBMITTED** July 6, 2020.

**WILENCHIK & BARTNESS, P.C.**

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...

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3 the Court via AZTurboCourt.com  
4 to the Honorable Daniel Martin

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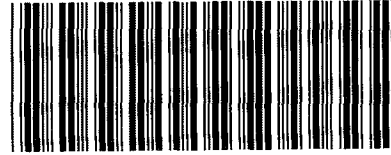
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By /s/ Christine M. Ferreira



# EXHIBIT 1

**WHEN RECORDED, MAIL TO:**

D. Randall Stokes  
Lewis and Roca LLP  
40 North Central Avenue  
Phoenix, Arizona 85004



OFFICIAL RECORDS OF  
MARICOPA COUNTY RECORDER  
HELEN PURCELL  
2007-0921387 08/15/07 04:38 PM  
1 OF 1

FLORESC

**DECLARATION OF CONDOMINIUM  
FOR  
DORSEY PLACE CONDOMINIUMS**

1705841.9

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**DECLARATION OF CONDOMINIUM  
FOR  
DORSEY PLACE CONDOMINIUMS**

This Declaration of Condominium for Dorsey Place Condominiums is made this 15<sup>th</sup> day of August, 2007, by Dorsey Place Condominiums, L.L.C., an Arizona limited liability company.

**ARTICLE 1  
DEFINITIONS**

1.1 **General Definitions.** Capitalized terms 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.

1.2 **Defined Terms.** The following capitalized terms shall have the general meanings described in the Condominium Act and for purposes of this Declaration shall have the specific meanings set forth below:

1.2.1 **“Architectural Committee”** means the Architectural Committee established pursuant to Section 6.12 of this Declaration.

1.2.2 **“Articles”** means the Articles of Incorporation of the Association as amended from time to time.

1.2.3 **“Assessments”** means the Common Expense Assessments and Special Assessments levied and assessed against each Unit pursuant to Article 7 of this Declaration.

1.2.4 **“Assessment Lien”** means the lien granted to the Association by the Condominium Act to secure the payment of Assessments.

1.2.5 **“Association”** means Dorsey Place Condominium Association, an Arizona nonprofit corporation, its successors and assigns.

1.2.6 **“Board of Directors”** means the Board of Directors of the Association.

1.2.7 **“Buildings”** means the structures which are hereafter constructed on the Property to the extent such buildings are designated or shown as buildings on the Condominium Plat.

1.2.8 **“Bylaws”** means the Bylaws of the Association, as amended from time to time.

1.2.9 **“Commercial Unit”** shall mean Unit 1, as shown on the Condominium Plat, as may be further subdivided by the Declarant.

1.2.10 **“Common Elements”** means all portions of the Condominium other than the Units.

1.2.11 **“Common Expenses”** means expenditures made by or financial liabilities of the Association, together with any allocations for reserves.

1.2.12 **“Common Expense Assessment”** means the assessment levied against the Units pursuant to Section 7.2 of this Declaration.

1.2.13 **“Common Expense Liability”** means the liability for Common Expenses allocated to each Unit by this Declaration.

1.2.14 **“Condominium”** means the Property together with all Buildings and other Improvements located thereon.

1.2.15 **“Condominium Act”** means the Arizona Condominium Act, A.R.S. §33-1201, et seq., as amended from time to time.

1.2.16 **“Condominium Documents”** means this Declaration and the Articles, Bylaws and the Rules.

1.2.17 **“Condominium Plat”** means the condominium plat for Dorsey Place Condominiums, recorded in Book 938 of Maps, Page 7, in the Official Records of the Maricopa County Recorder, Maricopa County, Arizona, and any replats, amendments, supplements and corrections thereto.

1.2.18 **“Declarant”** means Dorsey Place Condominiums, L.L.C., an Arizona limited liability company, and its successors and any person or entity to whom either such party may transfer any Special Declarant Rights. For purpose of Article 12 only, any contractor(s) which are affiliated with Declarant and which construct a Unit or any Common Elements shall also be deemed to be a Declarant.

1.2.19 **“Declaration”** means this Condominium Declaration, as amended from time to time.

1.2.20 **“Development Rights”** means any right or combination of rights reserved by or granted to the Declarant in this Declaration to do any of the following: (i) add real estate to the Condominium; (ii) create easements, licenses, Units, Common Elements or Limited Common Elements within the Condominium; (iii) subdivide and re-subdivide Units; (iv) convert Units into Common Elements or convert Common Elements into Units; (v) withdraw real estate from the Condominium and this Declaration; (vi) amend the Declaration during the Period of Declarant Control to comply with the Condominium Act or any other applicable law or to correct any error or inconsistency in the Declaration provided such amendment does not adversely affect the rights of any Unit Owner; (vii) amend the Declaration during the Period of Declarant Control to comply with the rules or guidelines in effect from time to time of any governmental or quasi-governmental entity or federal corporation guaranteeing or insuring mortgage loans or governing transactions involving mortgage instruments, including, without limitation, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration or the Veterans Administration; and (viii) make the Condominium part of a larger condominium.



1.2.21 **"Eligible Insurer or Guarantor"** means an insurer or governmental guarantor of a First Mortgage who has requested notice of certain matters in accordance with Section 11.1 of this Declaration.

1.2.22 **"Eligible Mortgage Holder"** means a First Mortgagee who has requested notice of certain matters from the Association in accordance with Section 11.1 of this Declaration.

1.2.23 **"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.

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

1.2.25 **"Garage"** shall mean the underground parking garage constructed as part of the Condominium, as depicted on the Condominium Plat.

1.2.26 **"Improvement"** means any physical structure, fixture, facility or improvement existing or constructed, placed, erected or installed on the land included in the Condominium, including, but not limited to, Buildings, roadways, driveways, parking areas, sidewalks, paving, fences, walls, recreational amenities, lighting fixtures, sprinkler and irrigation systems, hedges, plants, trees, shrubs and landscaping of every type and kind.

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

1.2.28 **"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.

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

1.2.30 **"Period of Declarant Control"** means the time period commencing on the date this Declaration is recorded with the County Recorder of Maricopa County, Arizona, and ending on the earlier of: (i) Ninety (90) days after the conveyance to Unit Owners other than a Declarant of seventy-five percent (75%) of the Units which may be created, or (ii) five (5) years after the date of the Recording of this Declaration.

1.2.31 **"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.

1.2.32 **"Property"** means the real property described on Exhibit "A" attached to this Declaration together with all Improvements situated thereon and all easements and rights appurtenant thereto.

1.2.33 **“Purchaser”** means any Person, other than a Declarant or any affiliate of a Declarant, who by means of a voluntary transfer becomes a Unit Owner, except any Person who purchases a Unit and then leases it to a Declarant for use as a model in connection with the sale of other Units, and except any Person who, in addition to purchasing a Unit, is assigned any Special Declarant Rights.

1.2.34 **“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.

1.2.35 **“Resident”** means any person, other than a Declarant and any Unit Owners, who resides in a Unit for a period of thirty (30) days or more in a twelve (12) month period, or who occupies or is in possession of a Unit, whether as a Lessee, guest or otherwise.

1.2.36 **“Residential Dwelling”** means the dwelling structure (including, without limitation, a garage) and all related Improvements located on or consisting of a Unit and which is intended for use and occupancy as a residence.

1.2.37 **“Rules”** means the rules and regulations adopted by the Association, as amended from time to time.

1.2.38 **“Service and Amenity Common Area”** means the area or areas as depicted on the Condominium Plat which shall be for the use of the Unit Owners and Residents and shall (i) be a Common Element, (ii) contain the mailbox for each Unit, and (iii) contain such other amenities for the sole use of the Unit Owners and the Residents as determined by the Board of Directors.

1.2.39 **“Single Family”** means a group of one or more persons each related to the other by blood, marriage or legal adoption, or a group of not more than five (5) persons not all so related, who maintain a common household in a Unit.

1.2.40 **“Special Declarant Rights”** means any right or combination of rights reserved by or granted to the Declarant in this Declaration or by the Condominium Act to do any of the following: (i) construct Improvements provided for in this Declaration or shown on the Condominium Plat; (ii) exercise any Development Right; (iii) maintain sales offices, management offices, models and signs advertising the Condominium; (iv) use easements through the Common Elements for the purpose of making Improvements within the Condominium; and (v) appoint and remove any officer of the Association or any member of the Board of Directors during the Period of Declarant Control.

1.2.41 **“Unit”** means the portions of the Condominium as described in this Declaration and as designated on the Condominium Plat as Units and which are designated for separate ownership and occupancy, the boundaries of which are more thoroughly described in Section 2.5 of this Declaration.

1.2.42 **“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 or an agreement for sale 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 any similar executory contract which is 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.

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

2.1 **Creation of Condominium.** Declarant hereby submits the Property and all easements, rights and appurtenances thereto, 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 Property shall be held and conveyed subject to the terms, covenants, conditions and restrictions set forth in this Declaration. By acceptance of a deed or by acquiring any ownership interest in any portion of the Condominium, each Person, for himself, his heirs, personal representatives, successors, transferees and assigns, binds himself, his heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, rules and regulations now or hereafter imposed by the Condominium Documents and any amendments thereof. In addition, each such Person, by accepting a deed or by acquiring any ownership interest in any portion of the Condominium, thereby acknowledges that the Condominium Documents set forth a general scheme for the improvement and development of the Condominium and hereby evidences his intent that all the restrictions, conditions, covenants, rules and regulations contained in the Condominium Documents shall run with the land and be binding on all subsequent and future Unit Owners, grantees, purchasers, assignees and transferees thereof. Furthermore, each such Person fully understands and acknowledges that the Condominium Documents shall be mutually beneficial, prohibitive and enforceable by the Association and the various subsequent and future Unit Owners. Declarant and its respective successors, assigns and grantees, covenant and agree that the Units and the membership in the Association and the other rights created by the Condominium Documents which are appurtenant to a Unit shall not be separated or separately conveyed, and each shall be deemed to be conveyed or encumbered with its respective Unit even though the description in the instrument of conveyance or encumbrance may refer only to the Unit.

2.2 **Name of Condominium.** The name of the Condominium created by this Declaration is Dorsey Place Condominiums.

2.3 **Name of Association.** The name of the Association is Dorsey Place Condominium Association.

2.4 **Identifying Numbers of Units.** The identifying numbers of the Units within the Property as of the date of this Declaration are Units 101 through 115, inclusive, Units 201 through 225, inclusive, Units 301 through 325, inclusive, Units 401 through 425, inclusive, as shown on the Condominium Plat.

2.5 **Unit Boundaries and Description.**

2.5.1 The lower horizontal boundary of each story or level of living space of each Unit is the top of the unfinished floors thereof.

2.5.2 The upper horizontal boundary of each story or level of living space of each Unit is the bottom of the finished ceilings thereof.

2.5.3 The lateral boundaries of each the attached Units, though appearing to share a single common wall, are actually separated by an approximately one-inch airspace between two parallel vertical walls. The vertical boundaries between such attached Units shall consist of a vertical plane bisecting that airspace, such that the entire wall on a Unit's side of that vertical plane is within and a part of that Unit (as are any and all pipes, wires, conduits and other utility or other systems within that wall). All other vertical boundaries of a Unit shall consist of a plane defined by the unfinished exterior surface of the exterior walls of such Unit, including any exterior plywood sheathing and studs, but excluding exterior styrofoam or other exterior insulation materials, lath, stucco and exterior paint; thus, such plywood sheathing and studs (and any and all pipes, wires, conduits and other utility or other systems within such exterior walls) are a part of the Unit, while such exterior styrofoam or other exterior insulation materials, lath, stucco and exterior paint are a part of the Common Elements. The lateral boundary of an unattached Units are the unfinished interior surfaces of the perimeter walls, windows and doors thereof and vertical planes coincidental with the unfinished interior surfaces of the perimeter walls thereof extended upwards and downwards to intersect the upper and lower horizontal boundaries.

2.5.4 Each Unit includes the surfaces so described and the airspace contained within said boundaries. All furring, drywall, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the finished surfaces of the walls, floor and ceiling are part of the Unit. Each Unit shall also include the range, garbage disposal units, dishwasher, microwave, water heaters, elevator, if any, and other facilities, systems and other appliances lying within the boundaries of the Unit.

2.5.5 Unless otherwise indicated, all airspace boundary lines intersect at approximately right angles.

2.5.6 The following are not part of a Unit but rather are Common Elements: structural parts of the Building of which the Unit is a part, bearing walls, columns, vertical supports, roofs, floors, foundations, slabs, all waste, water and gas pipes, fire sprinkler system, tubing for delivery of insecticide, ducts, flues, chimneys, conduits, wires and other utility and installation lines wherever located, except the lines, outlets and traps thereof when located within the Unit. Air conditioning and heating units located on a Common Element or a Limited Common Element and not within a Unit are owned by and shall be maintained, repaired and

replaced by the Unit Owner served by same. The existing physical boundaries of a Unit constructed or reconstructed in substantial accordance with the original plans thereof shall be conclusively presumed to be its boundaries rather than the description expressed in any deed, plat, plan or declaration, regardless of settling or lateral movement of the Building, and regardless of minor variances between the boundaries as shown on same and those of the Unit.

2.5.7 Declarant reserves the right to relocate the boundaries of Units owned by a 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. Section 33-1222 of the Condominium Act as it may be amended.

**2.6 Description and Allocation of Common Element Interests and Common Expense Liabilities.** The Common Elements shall include all portions of the Condominium other than the Units, including, without limitation, the land upon which the Buildings are located, the structural part of Buildings, all bearing walls, columns, vertical supports, roofs, space above the upper horizontal boundaries of Units (except as provided below), floors, foundations, slabs, all waste, water and gas pipes, ducts, flues, chimneys, (except those within the boundaries of a Unit) conduits and wires, fire sprinkler system, swimming pool and pool equipment, recreation buildings, cabanas, landscaping, exterior lighting (including lights attached to the Buildings although the electricity for such lighting will be the responsibility of the applicable Unit Owner), fences, walkways, streets, private drives, guest parking spaces, utility meters, outdoor cooking facilities, patios and all other devices and premises not situated within a Unit; provided, however, air conditioning and heating units not located within a Unit but serving only the Unit are owned by the Unit Owner. The space between the bottom of the unfinished ceiling of living space on a lower floor and the top of the unfinished floor of an upper story of living space is not part of a Unit but rather are Common Elements. The undivided interests in the Common Elements and in the Common Expenses of the Association shall be allocated equally among the Units. Accordingly, the fraction of undivided interest in the Common Elements and in the Common Expenses of the Association for each Unit shall be 1/97<sup>th</sup>.

**2.7 Allocation of Votes in the Association.** The total votes in the Association shall be equal to the number of Units. The votes in the Association shall be allocated equally among all the Units with each Unit having one (1) vote. Notwithstanding the foregoing, during the Period of Declarant Control, Declarant shall be entitled to three (3) votes for each Unit owned by Declarant.

**2.8 Allocation of Limited Common Elements.**

2.8.1 The following portions of the Common Elements are Limited Common Elements and are allocated to the exclusive use of one Unit as follows, except that the Commercial Unit(s) shall only have use of the Limited Common Elements that are located outside of the fenced area for the Residential Dwellings:

(i) Any entryways, doorsteps, patios, decks, stoops, porches and balconies, and any other fixtures and facilities designed to exclusively serve or benefit a single Unit, if and to the extent located outside the boundary of the Unit, are Limited Common Elements allocated exclusively to the Unit and their use is limited to that Unit.

(ii) Any chute, flue, pipe, duct, wire, conduit or other fixtures (including, but not limited to, gas, cable television, water and electric pipes, lines or meters) which lie outside the designated boundaries of a Unit and which serve only the Unit is a Limited Common Element allocated solely to the Unit.

(iii) The mailbox designated with the corresponding Unit number located in the Service and Amenities Common Area.

(iv) Space within the Common Elements of a size and location adequate to install, operate and maintain air conditioning and heating units and appurtenant facilities, said areas to be as originally designed, designated and installed by or on behalf of Declarant or as subsequently approved by the Board of Directors. The air conditioning and heating units and appurtenant facilities shall be owned and maintained by the Unit Owner.

(v) The utility meter serving the Unit as originally designed, designated and installed by or on behalf of Declarant and as may thereafter be modified with the approval of the Architectural Committee.

(vi) Any light(s) attached to a Building shall be for the exclusive use of the Units in that Building.

(vii) Any parking space allocated to a designated Unit located in the garage. Declarant, during the Period of Declarant Control, and thereafter the Board, shall allocate each Unit Owner one (1) designated parking space in the garage. Additional parking spaces may be assigned by Declarant during the Period of Declarant Control, and thereafter the Board, on a first-come, first serve basis at a monthly rental amount and payment terms as determined by Declarant, during the Period of Declarant Control, and thereafter the Board. Such additional parking spaces shall not be deemed "Limited Common Elements," but each Owner to whom such an additional parking space is assigned shall have the same maintenance and other obligations with respect thereto as if such space were a Limited Common Element allocated to such Owner's Unit. Storage of items, materials, or non-working vehicles by any Unit Owner, Resident, family or guests thereof is not permitted on any allocated, assigned or unassigned parking space located in the garage at any time.

2.8.2 A Limited Common Element may be reallocated by an amendment to this Declaration made in accordance with the provisions of A.R.S. § 33-1218(B) of the Condominium Act, except that a parking space allocated as Limited Common Elements pursuant to Section 2.8.1(vii) may be reallocated (with the consent of each Owner to whom such space was allocated or is being reallocated) by Declarant, during the Period of Declarant Control, and thereafter the Board.

2.8.3 The Board of Directors shall have the right, without a vote of the Members, to allocate as a Limited Common Element any portion of the Common Elements not previously allocated as a Limited Common Element. Any such allocation by the Board of

Directors shall be made by an amendment to this Declaration and an amendment to the Condominium Plat if required by the Condominium Act.

**2.9 As-Built Conditions.** Various engineering and architectural plans pertaining to the Condominium, including, but not limited to, the Condominium Plat, subdivision maps, grading plans, plot plans, improvement plans and building plans (collectively, the "Plans"), contain dimensions regarding certain aspects of the Common Elements, the Units and other parts of the Condominium. By accepting a deed to a Unit, each Unit Owner shall be deemed to have acknowledged and agreed that (a) if there is a discrepancy between the Plans and the actual as-built conditions of any Unit, Residential Dwelling, Common Element or any other Improvement within the Condominium, the as-built conditions will control and be deemed to be accepted as-is by the Unit Owner; (b) the usable or buildable area, location and configuration of the Units, Common Elements and any other Improvements located within the Condominium may deviate from the Plans or from any other display or configuration related thereto; (c) the location, size, height and composition of all walls and fences to be constructed on or as part of a Unit or adjacent thereto shall be determined by Declarant in its sole and absolute discretion. Despite the Plans or any other materials that may exist, Declarant shall be deemed to have made no representations, warranties or assurances with respect to any such matters or with respect to the size, height, location or composition of any wall or fence to be constructed on or adjacent to any Units; and (d) each Unit Owner waives the right to make any demands of or claims against Declarant as a result of any discrepancies between the Plans and any actual as-built conditions of any Unit.

### ARTICLE 3 EASEMENTS AND DEVELOPMENT RIGHTS

**3.1 Utility Easement.** There is hereby created an easement upon, across, over and under the Common Elements for reasonable ingress, egress, installation, replacing, repairing or maintaining of all utilities, including, but not limited to, gas, water, sewer, telephone, cable, television and electricity. By virtue of this easement, it shall be expressly permissible for the providing utility company to erect and maintain the necessary equipment on the Common Elements and the Units, but no sewers, electrical lines, water lines or other utility or service lines may be installed or located on the Common Elements and the Units except as initially designed, approved and constructed by the Declarant or as approved by the Board of Directors. This easement shall in no way affect any other Recorded easements on the Common Elements.

**3.2 Easements for Ingress and Egress.** There is hereby created easements for ingress and egress for pedestrian traffic over, through and across streets, driveways, sidewalks, paths, walks and lanes that from time to time may exist upon the Common Elements. There is also created an easement for ingress and egress for pedestrian and vehicular traffic over, through and across such driveways and parking areas as from time to time may be paved and intended for such purposes provided that such easements shall be subject to all other restrictions and provisions contained in this Declaration, and provided further 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 Unit Owners and Residents and their guests, families, tenants and invitees and in favor of Declarant.

### 3.3 Unit Owners' Easements of Enjoyment.

3.3.1 Every Unit Owner 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:

(i) The right of the Association to adopt reasonable rules and regulations governing the use of the Common Elements to the extent consistent with applicable laws including, without limitation, the right to suspend or deny access to certain recreational Common Elements by any Unit Owner (including any Lessee or Resident of such Unit Owner's Unit) who fails to timely pay any Assessments or who otherwise is in breach of any covenants, restrictions or obligations under this Declaration;

(ii) The right of the Association to convey the Common Elements or subject the Common Elements to a mortgage, deed of trust or other security interest in the manner and subject to the limitations set forth in the Condominium Act, but in no event, without the vote or written assent of those Unit Owners representing at least eighty percent (80%) of the votes in the Association and of Declarant during the Period of Declarant Control and, in all events, subject to a Unit Owner's easement for ingress and egress if access to such Unit Owner's Residential Dwelling is through the Common Elements to be so conveyed or mortgaged.

(iii) All rights and easements set forth in this Declaration including, but not limited to, the rights and easements granted to the Declarant by Sections 3.4 and 3.5 of this Declaration;

(iv) The right of the Association to suspend the right of a Unit Owner and any Resident or Lessee to use the Common Elements for any period during which the Unit Owner, a Resident or Lessee is in violation of any provision of the Condominium Documents.

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

3.3.3 The guests and invitees of a Unit Owner, Lessee or Resident entitled to use the Common Elements pursuant to Subsection 3.3.1 of this Declaration may use the Common Elements provided they are accompanied by a Member, Lessee or Resident entitled to use the Common Elements pursuant to Subsection 3.3.1 or 3.3.2 of this Declaration.

3.3.4 A Unit Owner's right and easement of enjoyment in and to the Common Elements shall not be conveyed, transferred, alienated or encumbered separate and apart from a Unit. Such right and easement of enjoyment in and to the Common Elements shall be deemed to be conveyed, transferred, alienated or encumbered upon the sale, transfer or encumbrance of any



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

3.3.5 Any lease by a Unit Owner of a Unit shall be in writing and shall expressly state that the lease is subject to the requirements of this Declaration, the Association's Articles and Bylaws, the Condominium Plat and all Rules promulgated by the Board of Directors, and that all such tenants will comply with all requirements of the foregoing.

#### **3.4 Declarant's Rights and Easements for Sales and Leasing Purposes.**

3.4.1 Declarant shall have the right and an easement to maintain sales or leasing offices, management offices and models throughout the Condominium and to maintain advertising signs on the Common Elements while a Declarant is marketing Units in the Condominium. Declarant reserves the right to place models and sales offices in any Units owned by the Declarant and on any portion of the Common Elements in such number, of such size and in such locations as the Declarant deems appropriate.

3.4.2 Declarant may from time to time relocate models, sales offices and management offices to different locations within the Condominium. Upon the relocation of a model, management office or sales office constituting a Common Element, Declarant may remove all personal property and fixtures therefrom.

3.4.3 So long as the Declarant is marketing Units in the Condominium, Declarant shall have the right to restrict the use of the parking spaces within the Condominium. Such right shall include reserving such spaces for use by prospective Unit purchasers, employees of the Declarant and others engaged in sales, maintenance, construction or management activities.

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

3.4.5 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.

#### **3.5 Declarant's Development Rights and Easements.**

3.5.1 Declarant shall have the right and an easement on and over the Condominium to construct the Common Elements and the Units shown on the Condominium Plat and all other Improvements the Declarant may deem necessary, and to use the Common Elements and any Units owned by a 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.

3.5.2 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.

3.5.3 Declarant shall have an easement through the Units for any access necessary to complete any renovations, warranty work or modifications to be performed by a Declarant.

3.5.4 Declarant shall have the right and an easement on, over and through the Common Elements as may be reasonably necessary for the purpose of discharging their obligations and exercising Special Declarant Rights whether arising under the Condominium Act or reserved in this Declaration.

3.5.5 Declarant reserves the right to exercise any Development Rights and Special Declarant Rights and to exercise the rights of the Declarant as provided for in this Declaration and to subdivide Units pursuant to A.R.S. Section 33-1223, relocate boundaries between adjoining Units pursuant to A.R.S. Section 33-1222, and to convert Units into Common Elements and Common Elements into Units subject to any further restrictions set forth in this Declaration, the Condominium Act and by applicable City of Tempe zoning ordinances.

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

3.5.7 To the extent not expressly reserved by or granted to Declarant by other provisions of this Declaration, Declarant reserves all Development Rights and Special Declarant Rights.

3.5.8 In the event of any conflict or inconsistency between this Section 3.5 and any other provision of the Condominium Documents, this Section 3.5 shall control and prevail over such other provisions.

**3.6 Declarant's Use of Recreational Facilities.** So long as a Declarant is marketing Units for sale, such Declarant shall have the right to the exclusive use, without charge, of any portion of the recreational facilities, if any, within the Common Elements on a short-term basis for employee meetings, administrative purposes, special events or any other purpose, subject to the following: (i) the availability of the facilities at the time a request is submitted by such Declarant to the Association; (ii) the Declarant using such facilities shall indemnify the Association against any loss or damage resulting from such Declarant's use thereof; and (iii) the Declarant using such facilities shall return the facilities to the Association in the same condition as existed prior to such Declarant's use thereof. The rights of the Declarant set forth in this Section 3.6 shall be enforceable by injunction, by any other remedy in law or in equity and/or by any other means provided in this Declaration. In the event of any conflict or inconsistency between this Section 3.6 and any other provision of the Condominium Documents, the provisions of this Section 3.6 shall control and prevail over other such provisions.

3.7 **Easement for Support.** To the extent necessary, each Unit shall have an easement for structural support over every other Unit in the same Building as the Unit, and over the Common Elements and the Limited Common Elements, and each Unit and the Common Elements shall be subject to an easement for structural support in favor of every other Unit in the Building, if any, the Common Elements and the Limited Common Elements.

3.8 **Common Elements Easement in Favor of the Association.**

3.8.1 The Common Elements and the Units shall be subject to an easement in favor of the Association and the agents, employees and independent contractors of the Association for the purpose of the inspection, upkeep, maintenance, repair and replacement of the Common Elements and for those components of the Units which the Association is obligated to maintain pursuant to this Declaration and for the purpose of exercising all rights of the Association and discharging all obligations of the Association.

3.8.2 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.

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

3.9.1 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.

3.9.2 For the installation, repair, maintenance, use, removal or replacement of lighting fixtures, electrical receptacles, panel boards and other electrical installations which are a part of or serve any Unit but which are situated within or encroach onto any 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 any Building or Unit or impair or structurally weaken any Building or Unit.

3.9.3 For the performance of the Unit Owners' obligation to maintain, repair, replace and restore those portions of the Units and the Limited Common Elements that the Unit Owners are obligated to maintain under Section 5.2 of this Declaration.

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

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

3.10.2 For inspection, maintenance, repair and replacement of the Common Elements or the Limited Common Elements situated in, on, under or above or which is accessible from such Units or Limited Common Elements;

3.10.3 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.

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

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

3.11 **Easement for Unintended Encroachments.** To the extent that any Unit or Common Element encroaches on any other Unit or Common Element as a result of original construction, shifting or settling or alteration or restoration authorized by this Declaration or any reason other than the intentional encroachment on the Common Elements or any Unit by a Unit Owner, a valid easement for the encroachment, and for the maintenance thereof, exists.

#### **ARTICLE 4 USE AND OCCUPANCY RESTRICTIONS**

The following covenants, conditions and restrictions shall apply to the Property and to the Unit Owners, Residents and Lessees thereof.

4.1 **Residential Use.** All Units shall be used, improved and devoted exclusively to residential use by a Single Family. No trade or business may be conducted on any Unit or in or from any Unit, except that a Unit Owner or other Resident may conduct a business activity within a Unit so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Residential Dwelling; (ii) the business activity conforms to all applicable zoning ordinances and requirements for the Condominium; (iii) the business activity does not involve more than one (1) employee working on or from such Unit who is not a Resident thereof; (iv) the volume of vehicular or pedestrian traffic or parking generated by such trade or business does not result in congestion or parking violations; (v) the business activity does not involve persons coming onto the Unit or the door-to-door-solicitation of Unit Owners or other Residents in the Condominium; and (vi) 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 **Antennae.** Declarant has or shall enter into one or more agreements with providers of television, broadcast satellite, cable and internet services (the "Master Technology Agreements") pursuant to which the provider(s) identified in the Master Technology Agreements shall have the exclusive right to (a) provide for the Condominium television, cable, satellite and internet services and any other services involving the providing of television service, broadcast satellite service, video programming service, multitechnical multipoint distribution service and internet service (the "Technology Services") and (b) install any cable, antenna, satellite dish or television dish and equipment other devices and improvements for the providing of such Technology Services. The Master Technology Agreements may, subject to the terms and provisions contained therein, be modified and/or replaced as the Board of Directors may deem appropriate. As the Units do not include any exterior components of any Buildings, Unit Owners are prohibited from installing or locating or causing to be installed or located on any Building, Common Element or Limited Common Element, any cable, antenna, dish, or other device, equipment or improvement for the providing of Technology Services.

4.3 **Utility Service.** Except for lines, wires and devices existing on the Condominium as of the date of this Declaration or hereafter constructed by Declarant and except for maintenance and replacement of the same, no lines, wires or other devices for the communication or transmission of electric current or power, including telephone, television and radio signals, shall be erected, placed or maintained anywhere in or upon the Condominium unless they are installed and maintained underground or concealed in, under or on Improvements or other structures permitted under this Declaration. No provision hereof shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of Improvements by Declarant or structures approved by the Architectural Committee.

#### 4.4 **Maintenance, Improvements and Alterations.**

4.4.1 Any Unit Owner may make nonstructural additions, alterations and improvements within his Unit without the prior written approval of the Architectural Committee, but such Unit Owner shall, to the extent permitted under Arizona law, be responsible for any damage to other Units and to the Common Elements which results from any such alterations, additions or improvements. No Unit Owner shall make any structural additions, alterations or improvements within a Unit, unless prior to the commencement of each addition, alteration or improvement, the Unit Owner receives the prior written approval of the Architectural Committee and unless an architect or engineer, licensed in Arizona, certifies that such addition, alteration or improvement will not impair the structural integrity of the Building and Unit within which such addition, alteration or improvement is to be made. The Unit Owner shall, to the extent permitted by Arizona law, be responsible for any damage to other Units and to the Common Elements which results from any such additions, alterations or improvements. Notwithstanding the

foregoing, no addition, alteration or improvement to any Unit, whether structural or not, which would be visible from the exterior of the Unit, shall be made without the prior written approval of the Architectural Committee, which approval may be granted only if the Architectural Committee affirmatively finds that the proposed addition, alteration or improvement is aesthetically pleasing and in harmony with the surrounding Improvements. Each Unit Owner shall maintain his or her Unit in good condition and repair. Except for a Unit Owner's obligation to maintain his or her Unit and any Limited Common Element for his Unit, no Unit Owner shall make any addition, alteration or improvement to the Common Elements without the prior written approval of the Architectural Committee. No exterior components of any of the Buildings are part of any Units but rather are part of the Common Elements. Accordingly, no Unit Owner shall have any right or obligation to repair, improve, paint, refinish or modify in any way any exterior components of the Buildings. All windows, exterior doors, garage doors, roof materials and other exterior surfaces and finishes of any Buildings may only be replaced by the Association and any such replacement shall be with materials of the same design, appearance, color and quality unless the Architectural Committee approves different materials and finishes.

4.4.2 The Architectural Committee shall consider and act upon any and all plans and specifications submitted for its approval under this Declaration and perform such other duties as from time to time shall be assigned to it by the Board of Directors, including the inspection of construction in progress to assure its conformance with plans approved by the Architectural Committee. No construction, alteration, location, relocation, repainting, demolishing, addition, installation, modification, decoration, redecoration or reconstruction of an Improvement, which is subject to the Architectural Committee's review as provided in this Section, shall be commenced or maintained until the plans and specifications therefor showing the nature, kind, shape, height, width, color, materials and location of the same have been submitted to the Architectural Committee and approved by the Architectural Committee. It shall be the responsibility of the Unit Owner to submit the written plans and specifications to an authorized agent of the Architectural Committee. Until changed by the Board of Directors, the address for the submission of such plans and specifications shall be the principal office of the Association. The Architectural Committee may condition its approval of proposals or plans and specifications for any Improvement (i) upon the Unit Owner's furnishing the Association with security acceptable to the Association against any mechanics' liens or other encumbrance which may be Recorded against the Condominium as a result of such work; (ii) on such changes therein as it deems appropriate; (iii) upon the Unit Owner's agreement to complete the proposed work within a stated period of time; or (iv) any or all of the above, and may require submission of additional plans and specifications or other information prior to approving or disapproving material submitted.

4.4.3 The Architectural Committee may issue Architectural Committee Rules setting forth procedures for the submission of plans for approval. The Architectural Committee shall impose a reasonable fee for the review of any submitted plans and shall require that such fee accompany each application for approval. The Architectural Committee shall also be entitled to impose additional requirements and state additional factors which it will take into consideration in reviewing submissions.

4.4.4 Notwithstanding the foregoing provisions of this Section, Improvements within a Unit which are damaged or destroyed may be fully repaired, restored, replaced and/or

reconstructed in conformance with previously approved plans, specifications and materials without the necessity of submitting additional plans and specifications to the Architectural Committee or obtaining the Committee's approval.

4.4.5 Until receipt by the Architectural Committee of any required plans and specifications, the Architectural Committee may postpone review of any plans submitted for approval. Decisions of the Architectural Committee and the reasons therefore shall be transmitted by the Architectural Committee to the Unit Owner at the address set forth in the application for approval within forty-five (45) days after receipt by the Architectural Committee of all materials required by the Architectural Committee. Any application submitted pursuant to this Section shall be deemed disapproved unless written approval thereof has been transmitted by the Architectural Committee to the Unit Owner within forty-five (45) days after date of receipt by the Architectural Committee of all required materials. If any Unit Owner resubmits an application which was deemed disapproved pursuant to the preceding sentence, and in the event the Architectural Committee fails to approve or disapprove in writing such resubmitted application within thirty (30) days after the receipt by the President of the Association and any management company retained by the Association of a complete resubmitted application, duly prepared in accordance with the rules promulgated by the Declarant or the Board of Directors, as the case may be, the application shall be deemed approved by the Architectural Committee, provided such improvement, addition or alteration described in the resubmitted application is carried out in precise conformity with such application.

4.4.6 The approval of the Architectural Committee of any proposals or plans and specifications or drawings for any work done or proposed or in connection with any other matter requiring the approval and consent of the Architectural Committee shall not be deemed to constitute a waiver of any right to withhold approval or consent to any similar proposals, plans and specifications, drawings or matters subsequently or additionally submitted for approval or consent. The approval by the Architectural Committee of any construction, installation, addition, alteration, repair, change or other work pursuant to this Section shall not be deemed a warranty or representation by the Architectural Committee as to the quality of such construction, installation, addition, alteration, repair, change or other work or that such construction, installation, addition, alteration, repair, change or other work conforms to any applicable building codes or other federal, state or local law, statute, ordinance, rule or regulation.

4.4.7 The Architectural Committee may authorize variances from compliance with any of the architectural provisions of this Declaration when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental considerations may require. Such variances must be evidenced in writing and must be signed by a majority of the members of the Architectural Committee. After the Period of Declarant Control expires, the Board of Directors must approve any variance recommended by the Architectural Committee before any such variance shall become effective. If such variances are granted, no violation of the covenants, conditions and restrictions contained in this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration for any purpose except as to the particular Improvement and provision hereof covered by the variance, 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.

4.4.8 Decisions of the Architectural Committee may be appealed to the Board of Directors. After the Period of Declarant Control expires or is terminated, the Board of Directors may adopt Rules for the appeal of Architectural Committee decisions for reconsideration by the Board of Directors.

4.4.9 Following the approval by the Architectural Committee and/or the Board of Directors of any plans for Improvements, and as a condition of commencement of construction pursuant to such approved plans, the Unit Owner shall pay to the Association a construction deposit (the "Construction Deposit") in an amount equal to the greater of (a) ten percent (10%) of the anticipated cost of the proposed improvements and (b) twelve (12) times the then current monthly Common Expense Assessment. Each Unit Owner shall be fully responsible for any damage to the Condominium and any loss, fees, costs, and expenses that may be incurred as a result of any work performed by, on behalf of, or at the request of such Unit Owner, and in the event that such amounts are not timely paid to the Association, the Association may, in addition to any other remedies the Association may have, deduct such amounts from the Construction Deposit. Upon the completion of construction, any unused portion of the Construction Deposit shall be returned to the Unit Owner.

4.4.10 No Unit Owner, other than Declarant, may subdivide his Unit without the written approval of the Architectural Committee.

4.4.11 Declarant is exempt from the provisions of this Section and need not seek nor obtain the Architectural Committee's approval of any Improvements constructed on the Condominium by Declarant.

**4.5 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 sign leases and/or other agreements to subscribe to trash compaction, pickup and related services for the use and benefit of the Association and all Unit Owners and Residents, and to adopt and promulgate rules and regulations regarding garbage, trash, compaction and recycling, containers, processes and collection. No incinerators shall be kept or maintained in any Unit and all Unit Owners and Residents shall comply with all trash disposal and compaction requirements and all recycling requirements contained in such rules and regulations.

**4.6 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 use, maintenance or construction of buildings, improvements or structures which are within the uses permitted by this Declaration, and except that which a Declarant or the Association may require for the construction, operation and maintenance of the Common Elements.



4.7 **Animals.** No animals, birds, fowl, poultry or livestock shall be maintained or kept in any Units or on any other portion of the Condominium except that no more than two 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 only mean a dog weighing no more than 35 pounds, a cat or a household bird. No Permitted Pet shall be allowed to make an unreasonable amount of noise, cause an odor or become a nuisance. All Permitted Pets shall be kept on a leash not to exceed six (6) feet in length when outside a Unit, and all Permitted Pets shall be directly under the Unit Owner's or Resident's control at all times. If the pet of a Unit Owner or any Lessee or Resident or any pet of any guest of a Unit Owner, Lessee or Resident relieves itself on any portion of the Condominium, the Unit Owner, Lessee, Resident or guest of the Unit Owner shall immediately pick up and properly dispose of such pet waste. No structure for the care, housing, confinement or training of any animal or pet shall be maintained in or on any Unit so as to be visible from any Common Element or any other Unit. Upon the written request of any Unit Owner, the Board of Directors shall determine whether, for the purposes of this Section, a Permitted Pet is a nuisance or is making an unreasonable amount of noise or causing an odor.

4.8 **Temporary Occupancy.** No trailer, tent, shack, garage or other structure on the Condominium and no temporary Improvement of any kind shall be used at any time for a residence, either temporarily or permanently.

4.9 **Clothes Drying Facilities.** Outside clotheslines or other outside facilities for drying or airing clothes shall not be erected, placed or maintained on the Condominium.

4.10 **Mineral Exploration.** No portion of the Condominium shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth or any earth substance of any kind.

4.11 **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 diseases or noxious insects. Each Unit Owner shall perform such pest control activities as may be necessary to prevent insects, rodents and other pests from being present in his Unit.

4.12 **Vehicle and Parking Restrictions.** Except as otherwise provided in this Section, and except as otherwise expressly mandated by applicable state law with respect to certain utility service and/or emergency vehicles, all Vehicles (as defined below) must be parked only in the Garage (or, if applicable, in surface parking spaces within the Condominium, subject to the Rules). For purposes of this Section and Section 4.13 below, the terms "Vehicle" and "Vehicles" include any domestic or foreign car, station wagon, sport wagon, pickup truck of less than one (1) ton capacity with camper shells not exceeding seven (7) feet in height measured from ground level, mini-van, jeep, sport utility vehicle, motorcycle motorbikes, mopeds, mini-bikes, motor scooters, motorhomes, recreational vehicles, trailers, travel trailers, tent trailers, camper shells, detached campers, boats, boat trailers, mobile homes, or other similar machinery or equipment, whether motorized or not and similar non-commercial and non-recreational vehicles that are used by a Unit Owner for family and domestic purposes and which are used on a regular and recurring basis for basic transportation. Except for emergency repairs, no Vehicle shall be repaired, constructed or reconstructed within the Condominium.

**4.13 Towing of Vehicles.** The Board has the right, without notice, to have any Vehicle which 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 must be paid to the Association upon demand by the owner of the Vehicle. If the Vehicle is owned (or leased) by a Unit Owner (or by a resident of a Unit Owner), any amounts payable to the Association will be secured by the Assessment Lien against that Unit Owner's Unit, and the Association may enforce collection of those amounts in the same manner provided for in this Declaration for the collection of Assessments.

**4.14 Parking Spaces.** Except for parking spaces assigned as contemplated by Section 2.8.1(vii), the parking spaces in the Common Elements are unreserved parking spaces to be used for parking by guests and invitees of Unit Owners, Lessees, and Residents, and in no event shall such parking spaces be used by Unit Owners, Lessees, or Residents, as such persons may only park vehicles owned, leased, used, operated or controlled by them in the parking space(s) assigned to the respective Units subject, however, to the other covenants and restrictions contained in this Declaration. Notwithstanding the foregoing, parking by guests and patrons of the Commercial Unit shall only be permitted in marked spaces on non-gated portions of the Common Elements, and the Board of Directors may post signs to designate parking spaces for the Commercial Unit.

**4.15 Signs and Flags.** Except as may otherwise be permitted with respect to the Commercial Unit by this Declaration, the Board, or the Rules, and subject to the requirement of applicable law, no signs, (including, but not limited to, "For Sale" or "For Rent" or "For Lease" signs), stickers, billboards or flags of any kind shall be displayed to the public view on any exterior portion (or interior portion of a Unit if the sign would be visible from the exterior of the Building in which the Unit is located) of the Condominium except for: (i) signs as may be required by legal proceedings; (ii) not more than two (2) signs for each Unit for identification of the address of such Unit with a combined total face area of eighty-four (84) square inches or less; (iii) such signs as may be erected by a Declarant in connection with the development of any Unit or the Condominium or the sale by Declarant of any Unit; (iv) signage for the Condominium at such locations designated or installed by a Declarant; and (v) American flags attached to a Unit and displayed in a manner consistent with the federal flag code, 4 U.S.C. § 4-10, and any other flags an Owner or Occupant is specifically authorized by applicable Arizona law to display; provided, however, that except as otherwise provided by applicable law, the Architectural Committee may adopt reasonable rules and regulations regarding the placement and manner of display of any American or other flag(s) and may regulate the location and size of flagpoles to be attached to any Unit; (vi) not more than two (2) security signs and stickers with maximum dimensions of six (6) inches by six (6) inches for professional security companies which may be retained by Unit Owners to provide security monitoring services; and (vii) such other signs, the nature, number and location of which shall have been approved in advance by the Association. The Board, or the Rules, may designate a "Notice Board" for the use of the Owners or Occupants of a Unit to post a notice that a Unit is available for sale, rent or lease, and the location and installation of such Notice Board shall be determined by the Board. All signs permitted under this Section shall require the approval of the Architectural Committee as to the size, color, design, message content, location, type and hours of display.

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

4.17 **Nuisances and Offensive Activity.** No nuisance shall be permitted to exist or operate upon the Condominium, and no activity shall be conducted upon the Condominium which is offensive or detrimental to any portion of the Condominium or any Unit Owner or other occupant of the Condominium or is an annoyance to any Unit Owner or other Resident. No exterior speakers, horns, whistles, bells or other sound devices, including those for security purposes, shall be located, used or placed on the Condominium except inside of Units.

4.18 **Window Coverings.** The Declarant shall initially install draperies or suitable window treatments on all windows facing the streets and Common Elements adjacent to its Unit. A Unit Owner may replace any such drapery or window treatment with a drapery or window treatment of equal or better quality, subject to further regulation by the Board. Any such replacement window treatment which is visible from neighboring property must be neutral in color. No bed sheets, blankets, bedspreads or other items not designed for use as curtains or other window coverings may be used. No reflective coating, materials or covering may be placed on the interior or exterior of any window of any Unit or other improvement. No external window covering may be placed, or permitted to remain, on any window of any Unit or other improvement without the prior written approval by the Architectural Committee.

4.19 **Limitation on Leasing or Rental of Units.** A Unit Owner may rent or lease the entire Unit, or a portion of a Unit as described below, and if so rented or leased, the occupancy thereof shall be limited to the Lessee under the lease, or leases, and his family and guests. A Unit Owner may lease a portion of a Unit, although the total number of Persons permitted to be Residents of a Unit shall not exceed five (5). Notwithstanding the foregoing, no Unit Owner shall be permitted to lease a Unit for transient or hotel purposes. All lease agreements shall be in writing, shall be for terms of at least six (6) months and shall provide that the terms of the Lease shall be subject in all respects to the provisions of this Declaration and the Condominium Documents and any failure by Lessee to comply with the terms of such documents shall be a default under the lease. For purposes of this Declaration, "lease" shall mean any agreement for the leasing or rental of a Unit. Upon leasing his Unit or a portion of his Unit, a Unit Owner shall promptly notify the Association in writing of the commencement date and termination date of the lease, together with the names of each Lessee or other person who will be occupying the Unit during the term of the lease. The Board reserves the right to modify the permitted number of Residents per Unit.

4.20 **Porches, Balconies, Patios.** Subject to further regulation by the Board, acceptable items to be kept on any porch, balcony or patio include patio furniture, potted plants, and small barbecues, which items must at all times be in good condition and repair and kept in an orderly and uncluttered fashion. The Board of Directors may require that an item be removed from any porch, balcony or patio if such item is deemed to be a hazard to the Condominium, or if such item is a nuisance to other Unit Owners or Residents.

4.21 **Declarant Approval Required.** After the expiration of the Period of Declarant Control and for so long as a 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.

4.22 **Basketball Goals.** No basketball goals of any type (whether portable or permanent) may be installed, placed, situated or kept on any Unit or within the Condominium.

4.23 **Commercial Unit.** As of the date this Declaration is Recorded, the property comprising the Condominium is located within the MU-4 zone ("MU-Zone"), as more particularly described in the City of Tempe Land Use Code. References in this Section 4.23 to the "Code" shall mean the City of Tempe Land Use Code as in effect on the date this Declaration is Recorded, and references in this Section 4.23 to the MU-Zone shall mean such zone, as defined and described in the Code as of the date this Declaration is Recorded. No use of any Unit, including but not limited to the Commercial Unit, shall be permitted if that use (a) is prohibited by the Code within the MU-Zone, or (b) would require a special exception approval procedure under the Code, or (c) violates any conditions or restrictions placed by the City of Tempe on the property comprising the Condominium as a part of any zoning or subdivision approval process or procedure; or (d) is a Secondary Land use in the MU-Zone under the Code. Further, only the following uses, as defined and described in the Code for the MU- Zone, shall be permitted within the Commercial Unit:

- (a) Administrative and Professional;
- (b) Childcare Center; Tutoring and After School Learning Center;
- (c) Financial Services (but not drive through);
- (d) Clinic (medical, dental, veterinary (small animals));
- (e) Religious Use; and
- (f) Services (i.e. Fitness Studio, Barber/Beauty Salon).

Notwithstanding the foregoing, or any other provision of this Declaration, to the contrary, no change in the use of the Commercial Unit shall be made or permitted unless and until: (a) the Owner thereof (or its designee) has provided written notice to the Board of the proposed new use, which notice shall provide a reasonably detailed description of the proposed new use and shall list and describe any new, additional or replacement permits, approvals or requirements imposed or required by the City of Tempe or any other municipal or other governmental agency in connection with the proposed new use; and (b) the Owner thereof (or its designee) has demonstrated, to the reasonable satisfaction of the Board, either: (i) that the proposed new use will not, under applicable codes, ordinances or stipulations, require an increase in parking spaces available for the Commercial Unit and its employees, guests, customers and invitees, and will not otherwise impose any greater adverse impact or use of other parking spaces in the Condominium by the Owners of the other Units and their permitted residents, occupants, tenants, guests and invitees than existed for the use to be supplanted by the proposed new use; or (ii) the

manner in which the Owner will accommodate any such increase in parking requirements (such as, but without limitation, through use of valet services and agreements with owners of property outside the condominium for use of parking facilities on such property). The Board may also impose such reasonable rules and regulations (as a part of the Rules) on the uses and operation of or in the Commercial Unit as the Board reasonably deems necessary for the protection, preservation and general benefit of the Condominium as a whole and all Unit Owners, including, without limitation, reasonable rules and regulations on parking within the parking spaces in the Condominium or other portions of the property comprising the Condominium by employees and customers.

**ARTICLE 5**  
**MAINTENANCE AND REPAIR OF COMMON ELEMENTS AND UNITS**

5.1 **Duties of the Association.** Except as otherwise specifically set forth in this Declaration the Association shall maintain, repair and make necessary improvements to all Common Elements including, without limitation, the exteriors of all Buildings, all windows and exterior doors within the Condominium, all Limited Common Elements, the Private Street, all parking spaces, sidewalks, landscaping, street lights, lighting and light fixtures in the Common Elements, and all other Improvements within the Condominium. All items to be maintained by the Association under this Declaration must be maintained in a first class manner in accordance with applicable requirements of the City of Tempe, and in substantial conformance with the original plans for such Common Elements and all applicable warranty manuals. The cost of all such repairs and maintenance shall be a Common Expense and shall be paid for by the Association. Subject to the foregoing, the Board of Directors shall determine, in its sole discretion, the level and frequency of maintenance of the Common Elements. No Unit Owner, Lessee, Resident or other Person shall construct or install any Improvements on the Common Elements or alter, modify or remove any Common Elements without the written approval of the Board of Directors. No Unit Owner, Lessee, Resident 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. The Association shall be responsible for all costs to water any landscaping on the Common Elements.

5.2 **Duties of Unit Owners.** Each Unit Owner shall (i) maintain his Unit in good condition and repair, (ii) maintain all sewer taps, lines and facilities located within its Unit and all sewer taps, lines and facilities situated outside of its Unit but which serve only its Unit, including, without limitation, the sewer tap, lines and facilities serving its Unit which are located in the Common Elements. In addition to the foregoing, each Unit Owner is responsible for maintaining and repairing and is liable for any expense related to the utility connections within his Unit or which serve his Unit exclusively, the sewer clean-out, the water box and the power meter appurtenant to said Unit, except to the extent the regulated utility maintains the same. Each Unit Owner is responsible for all mold remediation in such Unit Owner's Unit.

5.3 **Repair or Restoration Necessitated by Unit Owner.** Each Unit Owner shall be liable to the Association, to the extent permitted by Arizona law, for any damage or excessive wear and tear to the Common Elements or the Improvements thereon, the Unit Owner's allocable Limited Common Elements, or any other part of the Condominium (including without limitation, windows, and exterior doors) the Association is responsible to maintain, repair, paint

and replace to the extent such damage or excessive wear and tear results from the negligence, neglect, abuse or willful conduct of the Unit Owner or of any Lessee or Resident of a Unit, and any guest or invitee of a Unit Owner. An amount equal to one hundred twenty percent (120%) of the cost to the Association of any repair, painting, maintenance or replacements required by the act of a Unit Owner, or a Lessee, family member, guest or invitee of a Unit Owner or of any other occupant of a Unit Owner's Unit shall be paid by the Unit Owner, upon demand, to the Association. The Association may enforce collection of any such amounts in the same manner and to the same extent as provided for in this Declaration for the collection of Assessments.

5.4 **Unit Owner's Failure to Maintain.** If a Unit Owner fails to maintain in good condition and repair his Unit or any Limited Common Element or any other portion of the Condominium 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 Unit Owner by the Association, the Association shall have the right, but not the obligation, to perform the required maintenance, repair or replacement. An amount equal to one hundred twenty percent (120%) of the cost of any such maintenance, repair or replacement shall be assessed against the nonperforming Unit Owner pursuant to Subsection 7.2.4 of this Declaration.

## ARTICLE 6 THE ASSOCIATION; RIGHTS AND DUTIES, MEMBERSHIP

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 the Condominium Act, other applicable laws and regulations and as are set forth in the Condominium Documents together with the 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 written consent or affirmative vote of Unit Owners representing 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, approvals or actions to be given or taken by the Association shall be valid if given or taken by the Board of Directors. The Association has the specific duty to make available to Declarant, Eligible Mortgage Holders, Unit Owners and insurers or guarantors of any First Mortgage during normal business hours, current copies of the Condominium Documents and other books, records and financial statements of the Association as may be requested from time to time by such parties. Such requests shall be in writing, and the Association shall have the right to charge for copying expense.

## 6.2 **Directors and Officers.**

6.2.1 During the Period of Declarant Control, the Declarant shall have the right to appoint and remove the members of the Board of Directors and the officers of the Association who do not have to be Unit Owners.

6.2.2 Upon the termination of the Period of Declarant Control, the Unit Owners shall elect the Board of Directors, which must consist of at least five (5) members, at least a majority of whom must be Unit Owners. Of the five members of the Board, one (1) shall be elected by a majority vote of the Owners of the Commercial Unit, and the remainder shall be elected by a majority vote of the remaining owners. If, after termination of the Period of Declarant Control any seat on the Board becomes vacant due to the death, removal or resignation of a director, the replacement for that director will be selected in the following manner: if the vacant seat was held by a director elected by the Unit Owners of the Commercial Unit, the replacement for such director shall be selected by the vote or written consent of the Unit Owners of a majority of the Commercial Unit, and if the vacant seat was held by a director elected by the Unit Owners of the other Units, the replacement for such director shall be selected by the vote or written consent of the Unit Owners of a majority of the Units excluding the Commercial Unit. In any such case, the replacement director shall serve for the remainder of the term of the director he or she was selected to replace (but shall not be disqualified from being elected to a new term upon the completion of the remainder of his or her predecessor's term). The Board of Directors elected by the Unit Owners shall then elect the officers of the Association. The terms of the Directors shall be staggered as set forth in the Bylaws.

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

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

6.4 **Composition of Members.** Each Unit Owner shall be a Member of the Association. The membership of the Association shall, at all times, consist exclusively of the Unit Owners. Membership in the Association is mandatory, and the allocated interests thereof are appurtenant thereto, and may not be separated from, ownership of the Unit; provided, however, the allocated interests of Units from time to time may be modified or changed as expressly permitted in this Declaration and authorized under the Condominium Act. No Unit

Owner, during his ownership of a Unit, shall have the right to relinquish or terminate his membership in the Association.

**6.5 Personal Liability.** Neither Declarant nor any member of the Board of Directors, the Architectural Committee or of any other committee of the Association, any officer of the Association nor any manager or other employee of the Association shall be personally liable to any Member or to any other Persons, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of Declarant, the Association, the Board of Directors, the managing agent, any representative or employee of the Association or any committee, committee member or officer of the Association; provided, however, the limitations set forth in this Section 6.5 shall not apply to any Person who has failed to act in good faith or has engaged in willful or intentional misconduct.

**6.6 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.

**6.7 Voting Rights.** Subject to Section 6.8, and except as may be otherwise provided in this Declaration, each Unit Owner of a Unit, including the Declarant, shall be entitled to cast one (1) vote for each Unit owned by such Unit Owner, on any Association matter which is put to a vote of the membership in accordance with this Declaration, the Articles and/or Bylaws.

**6.8 Voting Procedures.** No change in the ownership of a Unit shall be effective for voting purposes unless and until the Board is given actual written notice of such change and is provided satisfactory proof thereof. The vote for each such Unit must be cast as a unit, and fractional votes shall not be allowed. In the event that a Unit is owned by more than one (1) Person and such Persons are unable to agree among themselves as to how the vote for their Unit shall be cast, they shall lose their right to vote on the matter in question. If any Member casts a vote representing a certain Unit, it will thereafter be conclusively presumed for all purposes that such Unit Owner was acting with the authority and consent of all other Unit Owners of the same Unit unless objection thereto is made at the time the vote is cast. In the event more than one (1) vote is cast by a Member for a particular Unit, none of the votes shall be counted and all of the votes shall be deemed void.

**6.9 Transfer of Membership.** The rights and obligations of any Member other than the Declarant shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership of a Unit Owner's Unit, and then only to the transferee of ownership of the Unit. A transfer of ownership of a Unit may be effected by deed, intestate succession, testamentary disposition, foreclosure of a mortgage or deed of trust of record, or such other legal process as now in effect or as may hereafter be established under or pursuant to the laws of the State of Arizona. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership of a Unit shall operate to transfer the membership appurtenant to said Unit to the new Unit Owner thereof. Each Purchaser of a Unit shall notify the Association of its purchase within ten (10) days after becoming the Unit Owner of a Unit.



**6.10 Suspension of Voting Rights.** If any Unit Owner fails to pay any Assessments or other amounts due to the Association under the Condominium Documents within fifteen (15) days after such payment is due or if any Unit Owner violates any other provision of the Condominium Documents and such violation is not cured within fifteen (15) days after the Association notifies the Unit Owner of the violation, the Board shall have the right to suspend such Unit Owner's right to vote until such time as all payments, including interest and attorneys' fees, are brought current, and until any other infractions or violations of the Condominium Documents are corrected.

**6.11 Conveyance or Encumbrance of Common Elements.** The Common Elements shall not be conveyed or subjected to a mortgage, deed of trust or security interest without the prior written consent or affirmative vote of Unit Owners representing at least eighty percent (80%) of the votes allocated to Unit Owners other than the Declarant. In addition, any conveyance, encumbrance, judicial sale or other transfer (whether voluntary or involuntary) of an individual interest in the Common Elements shall be void unless the Unit to which that interest is allocated also is transferred.

**6.12 Architectural Committee.** The Board of Directors shall establish an Architectural Committee consisting of not less than three (3) members appointed by the Board of Directors to regulate the external design, appearance, use and maintenance of the Condominium and to perform such other functions and duties as are imposed upon it by the Condominium Documents or the Board of Directors. Plans submitted to the Committee may be approved with the consent of a majority of Committee members. Subject to the right and power of the Board of Directors to remove and replace, at any time, any member of the Architectural Committee, Committee members shall serve one (1) year terms. If the Board of Directors does not appoint an Architectural Committee at any time, then the Board of Directors members shall serve as the Architectural Committee. Notwithstanding any provision contained in this Declaration, Declarant shall, as long as it owns any Unit or any Annexable Property, have the exclusive right to appoint the members of the Architectural Committee and such persons need not be Unit Owners.

**6.13 Management and Maintenance Contracts.** The Association shall enter into a management agreement with a professional management company to manage the operation and affairs of the Association, and in no event shall the Association be self-managed unless a self-management agreement program is approved by at least two-thirds (2/3) of the Unit Owners. The management company must (a) have significant experience in managing communities such as the Condominium; (b) be bonded and maintain insurance in amounts acceptable to the Association, which at a minimum shall include general liability insurance with coverage equal to or exceeding \$1,000,000 per occurrence and \$2,000,000 in the aggregate; (c) require its financial accounting services be completed by a degreed accountant and be reviewed at year end by a Certified Public Accountant; and (d) possess such qualifications as deemed necessary and appropriate by the Association. The Association shall also enter into a landscaping agreement with a professional landscape company to provide all landscaping services for the Common Elements. The landscape company must (a) be a licensed Arizona contractor, and (b) must maintain insurance acceptable to the Association; (c) employ an Arizona Certified Landscape Professional and an Arborist certified by the International Society of Arboriculture; and (d) shall possess such other qualifications and certifications as the Association shall deem necessary and

appropriate. Any agreement for professional management of the Association or any other Association contract or lease executed by a Declarant or any member, agent or representative of Declarant during the Period of Declarant Control must allow for termination by either party without cause and without payment of a termination fee upon thirty (30) days or less written notice.

## **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: (i) the amount required to pay the cost of maintenance, management, operation, repair and replacement of the Common Elements, Limited Common Elements and those parts of the Units, if any, which the Association has the responsibility of maintaining, repairing and replacing; (ii) the cost of wages, materials, insurance premiums, services, supplies and other expenses required for the administration, operation, maintenance and repair of the Condominium; (iii) the amount required to render to the Unit Owners all services required to be rendered by the Association under the Condominium Documents; and (iv) such amounts as may be necessary to provide general operating reserves and reserves for contingencies, major repairs and replacements, including for the Common Elements and Limited Common Elements. The amount budgeted for reserves shall be established in accordance with Section 7.13 of this Declaration. The budget shall separately reflect any Common Expenses to be assessed against less than all of the Units pursuant to Subsection 7.2.4 or 7.2.5 of this Declaration and must include an adequate allocation to reserves as part of the Common Expense Assessment.

7.1.2 Upon the adoption of a budget, the Board of Directors shall make available to each Unit Owner a summary of the budget and a statement of the amount of the Common Expense Assessment assessed against the Unit of the Unit Owner in accordance with Section 7.2 of this Declaration. The failure or delay of the Board of Directors to prepare or adopt a budget for any fiscal year shall not constitute a waiver or release in any manner of a Unit Owner's obligation to pay his allocable share of the Common Expenses as provided in Section 7.2 of this Declaration, and each Unit Owner shall continue to pay the Common Expense Assessment against his Unit as established for the previous fiscal year until a notice of the Common Expense Assessment for the new fiscal year has been established 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 by the Unit Owners shall be required.

### **7.2 Common Expense 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 Subsections 7.2.4 and 7.2.5 of this Declaration) shall be assessed against each Unit based upon the type of each Unit in proportion to the Unit's Common Expense Liability as set forth in Section 2.11 of this Declaration. The amount of the Common Expense Assessment assessed pursuant to this Subsection 7.2.1 shall be in the sole discretion of the Board of Directors; provided, however, the Common Expense Assessment for each Unit shall be during each year following the year of the conveyance of the first Unit to a Purchaser be increased in accordance with Section 7.2.2 of this Declaration. If the Board of Directors determines during any fiscal year that its funds budgeted or available for that fiscal year are, or will become, inadequate to meet all Common Expenses for any reason, including, without limitation, nonpayment of Assessments by Members, it may increase the Common Expense Assessment for that fiscal year and the revised Common Expense Assessment shall commence on the date designated by the Board of Directors.

7.2.2 The Common Expense Assessments shall commence as to all Units on the first day of the month following the conveyance of the first Unit to a Purchaser; provided, however, the Common Expense Assessment for any Unit which has not been conveyed to an initial Purchaser shall be an amount equal to twenty-five percent (25%) of the Common Expense Assessments for Units. So long as any Unit owned by the Declarant qualifies for the reduced Common Expense Assessment provided for in this Subsection 7.2.2, Declarant shall be obligated to pay to the Association any deficiency in the monies of the Association due to the Declarant having paid a reduced Common Expense Assessment and necessary for the Association to be able to timely pay all Common Expenses. The first Common Expense Assessment shall be adjusted according to the number of months remaining in the fiscal year of the Association. Declarant shall receive a credit toward any obligation of Declarant to pay Assessments or any subsidy for the amount of any Common Expenses advanced or paid by Declarant, but Declarant shall have no obligation whatsoever to make any such advances or payments. Declarant shall also receive a credit toward any assessment or subsidy for any "in-kind" contributions by Declarant of goods or services, which shall be valued at the fair market value of the goods and services contributed. The Board of Directors may require that the Common Expense Assessments or Special Assessments be paid in monthly, quarterly, semi-annual or annual installments. Upon commencement of the first fiscal year of the Association immediately following the conveyance of the first Unit to a Purchaser, the maximum monthly assessment payment for the Common Expense Assessment payable by each Unit Owner shall be in such amount as determined by the Board of Directors prior to such first conveyance. Upon the commencement of the first fiscal year of the Association immediately following the conveyance of the first Unit to a Unit Owner and at the commencement of each and every fiscal year thereafter, the Board of Directors may increase the maximum Common Expense Assessments payable by each Unit Owner by any amount determined by the Board of Directors to be appropriate in order to maintain the Condominium and operate the Association subject to any limits imposed by applicable law.

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 of this Declaration.

7.2.4 If any Common Expense is caused by the negligence, omission or misconduct of any Unit Owner, the Association shall assess that Common Expense exclusively against his Unit.

7.2.5 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.

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

7.2.7 Any funds in the Association's operating account at the end of such fiscal year which are not needed to pay Common Expenses payable within thirty (30) days shall be deposited into the Association's Working Capital Account to be established pursuant to Section 7.10 below.

7.3 **Special Assessments.** In addition to Common Expense Assessments, the Association may levy in any fiscal year of the Association a special assessment applicable to that fiscal year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement of the Common Elements, including landscaping, fixtures and personal property related thereto, or for any other lawful Association purpose; provided that any Special Assessment (other than a Special Assessment levied pursuant to Article 9 of this Declaration as a result of the damage or destruction of all or part of the Common Elements) shall have first been approved by Unit 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 purposes. Special Assessments shall be allocated among the Units in accordance with the Units' respective shares of Common Expense Assessments. Unless otherwise specified by the Board of Directors, Special Assessments shall be due thirty (30) days after they are levied by the Association and notice of the Special Assessment is given to the Unit Owners.

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

7.4.1 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 highest rate which the Association is entitled to charge or at such lower rate of interest as may be established from time to time by the Board of Directors. In addition to or in lieu of interest, the Board of Directors may establish a reasonable late fee for delinquent assessments to be charged to a Unit Owner and assessed against his Unit as part of the Assessment Lien for each installment of an Assessment not paid within fifteen (15) days of its due date.

7.4.2 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.

7.4.3 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: (i) 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; (ii) bringing an action to foreclose its Assessment Lien against the Unit in the manner provided by law for the foreclosure of a realty mortgage; and (iii) suspending voting and recreational amenities use rights as provided in the Bylaws. 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.

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

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

7.7 **Certificate of Payment.** The Association, upon written request, shall furnish or cause the Association's management company to 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 management company, as the case may be, may charge a reasonable fee in an amount established or approved by the Board of Directors for each such statement.

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

7.9 **Working Capital Assessments.** To insure that the Association shall have adequate funds to meet its expenses and to purchase necessary materials and services and to meet unforeseen expenditures, each Unit Owner who purchases a Unit from Declarant (an "Initial Purchaser") shall pay to the Association, immediately upon becoming the Unit Owner, a sum equal to one-sixth (1/6) of the then current annual Common Expense Assessment for the Unit. With respect to conveyances of a Unit following the conveyance of the Unit to the Initial Purchaser, each such subsequent Purchaser of a Unit shall pay to the Association at the closing of its purchase of the Unit a Working Capital Assessment in such amount as is established from time to time by the Board of Directors but which Working Capital Assessment shall not exceed one-sixth (1/6) of the then current annual Common Expense Assessment for the Unit. The Working Capital Assessment described in the immediately preceding sentence of this Section, shall not be payable with respect to (a) the transfer or conveyance of a Unit by device 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 of Directors determines, in its sole discretion, that a material purpose of the transfer or conveyance was to avoid payment of any Assessments or a Working Capital Assessment; (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. All Working Capital Assessments 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 Association shall establish a separate working capital account (the "Working Capital Account") into which all working capital assessments shall be deposited. The Board of Directors may use the Working Capital Assessments deposited in the Working Capital Account for any lawful purpose.

7.10 **Monetary Penalties.** In accordance with the procedures set forth in the Bylaws, the Board of Directors shall have the right to levy reasonable monetary penalties against a Unit Owner for violations of the Condominium Documents.

7.11 **Transfer Fee.** Each Unit Owner other than Declarant shall pay to the Association immediately upon becoming the Unit Owner a transfer fee in an amount determined by the Board of Directors to cover administrative costs incurred by the Association in connection with such transfer. The transfer fee provided for above shall be in addition to, and shall not be offset against or considered as an advance payment of any Assessment levied by the Association pursuant to this Declaration.

7.12 **Utility Charges.** Each Unit Owner shall be responsible for separately paying all utility bills for his or her Unit, and the Association shall have no involvement with the providing of and billing for utility services.

7.13 **Reserves.** The Assessments shall include reasonable amounts as determined by the Board of Directors to be collected as reserves for the future periodic maintenance, repair or replacement of all or a portion of the Common Elements, or any other purpose as determined by the Board of Directors. All amounts collected as reserves, whether pursuant to this Section or otherwise, shall be deposited by the Board of Directors in a separate bank account to be held in trust for the purposes for which they are collected and which are to be segregated from and not commingled with any other funds of the Association. Such reserves shall be deemed a contribution to the capital account of the Association by the Members. The Board of Directors shall not expend funds designated as reserve funds for any purpose other than those purposes for which they were collected and except as authorized in a Resolution of the Board of Directors. The Board of Directors shall obtain a reserve study at least once every three (3) years following the expiration of the Period of Declarant Control, which study shall be prepared by an independent company experienced and qualified to prepare such studies and which study shall, at a minimum, include (a) reserves of the major components of the Common Elements identified on Exhibit B to this Declaration which the Association is obligated to repair, replace, restore or maintain; (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. The Board of Directors shall modify the budget in accordance with the findings of the reserve study.

## **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:

(i) A blanket causes of loss – special form policy of property insurance with sprinkler leakage, debris removal and water damage endorsements, insuring the entire Condominium, except for (i) options, extras, additions, alterations and improvements supplied or installed by or at the request of 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 Condominium (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.

(ii) Commercial general liability insurance, for a limit to be determined by the Board of Directors, but not less than \$1,000,000 for any single occurrence and \$2,000,000 general aggregate and an umbrella policy in the amount of not less than \$1,000,000. Such insurance shall cover all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Common Elements. Such policy shall include (i) a cross liability clause to cover liabilities of the Unit Owners as a group to a Unit Owner, (ii) medical payments insurance and contingent liability coverage arising out of the use of hired and non-owned automobiles, (iii) coverage for any legal liability that results from lawsuits related to employment contracts in which the Association is a party; and (iv) a waiver of the contractual liability exclusion for personal injury.

(iii) Workmen's compensation insurance to the extent necessary to meet the requirements of the laws of Arizona and a policy of employer's liability insurance with coverage limits determined by the Board of Directors.

(iv) Directors' and officers' liability insurance covering all the directors and officers of the Association in such limits as the Board of Directors may determine from time to time, but not less than \$1,000,000.

(v) 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 of the Board of Directors and 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 Section 8.1.1(i) above.

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

(a) 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.

(b) There shall be no subrogation with respect to the Association, its agents, servants and employees against Unit Owners and members of their household.

(c) 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.

(d) 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.



(e) 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.

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

(g) 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.

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

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

(viii) 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.

(ix) Such other insurance as may be required to be carried by the Association in order for the Association to be in compliance with all applicable requirements established by the Federal Housing Administration, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association or any other governmental agency, except to the extent such coverage is not reasonably available or has been waived in writing by such agencies, as applicable.

(x) “Agreed Amount” and “Inflation Guard” endorsements, except where not applicable or available.

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 Unit Owner which is the subject of any claim shall be responsible for paying or reimbursing the Association for any deductible payable in connection with such claim. In the event any single claim is made with respect to more than one (1) Unit and only a single deductible is charged by the insurance carrier, the deductible amount shall be assessed in equal shares to each of the affected Units. The deductible payable with respect to

damage to Common Elements shall be a Common Expense, but the Association may assess to a Unit Owner any such deductible amount necessitated by the negligence, misuse or neglect for which such Unit Owner is responsible. Each Unit Owner will be responsible for any and all deductibles for all insurance maintained by a Unit Owner pursuant to Section 8.4.

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, 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 Unit 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 of Directors, in its sole discretion, determines is unreasonable under the circumstances; or (c) the Members fail to approve any increase in the Common Expense 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 fact 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 Unit Owners and of the Association.

## 8.2 Fidelity Bonds.

8.2.1 The Association shall maintain blanket fidelity bonds 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 maintained by the Association shall be based upon the best business judgment of the Board of Directors, 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 the sum equal to three (3) months aggregate Common Expense Assessments on all Units plus reserve funds. Fidelity bonds obtained by the Association must comply with all requirements imposed by governmental agencies which insure home mortgages and must also meet the following requirements:

- (i) The fidelity bonds shall name the Association as an obligee;

(ii) The bonds 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; and

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

8.2.2 The Association shall require any management agent of the Association to maintain its own fidelity bond in an amount equal to or greater than the amount of the fidelity bond to be maintained by the Association pursuant to Subsection 8.2.1. The fidelity bond 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.

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

8.4 **Insurance Obtained by Unit Owners.** Each Unit Owner shall be responsible for: (a) property insurance on his personal property located in his Unit and elsewhere on the Condominium; (b) property insurance on any options, extras, additions, alterations and improvements to his Unit (whether installed by a Declarant, by such Unit Owner or any prior Unit Owner); and (c) comprehensive general liability insurance to the extent not covered by the policies of liability insurance obtained by the Board of Directors for the benefit of all of the Unit Owners. Each Unit Owner shall be responsible for any and all deductibles for any insurance obtained by the Unit Owner and maintained on the Unit. All policies of property insurance carried by a Unit Owner shall be without contribution with respect to the policies of property insurance obtained by the Board of Directors for the benefit of all of the Unit Owners. No Unit Owner shall separately insure his Unit against loss by fire or other casualty covered by any insurance carried by the Association. If any Unit Owner violates this provision, any diminution in insurance proceeds otherwise payable under the Association’s policies that results from the existence of other insurance will be chargeable to the Unit Owner who acquired other insurance.

8.5 **Reporting a Claim.** No Unit Owner or Resident may make any claim against any Association policy without first conferring with the Board of Directors.

8.6 **Payment of Insurance Proceeds.** Any loss covered by property insurance obtained by the Association in accordance with this Article shall be adjusted with the Association and the insurance proceeds shall be payable to the Association and not to any mortgagee or beneficiary under a deed of trust. The Association shall hold any insurance proceeds in trust for Unit Owners and lienholders as their interests may appear, and the proceeds shall be disbursed and applied as provided for in A.R.S. Section 33-1253 of 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, to any Unit Owner, mortgagee or beneficiary under a deed of trust. The insurer issuing the policy shall not cancel or refuse to renew it until thirty (30) days after notice of the

proposed cancellation or nonrenewal has been mailed to the Association, each Unit Owner and each mortgagee or beneficiary under a deed of trust to whom a certificate or memorandum of insurance has been issued at their respective last known addresses.

**8.8 Annual Insurance Review.** After the termination of the Period of Declarant Control, the Board of Directors shall determine annually whether the amounts and types of insurance it 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 Unit Owners and of the Association.

## **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 (i) the Condominium is terminated, (ii) repair or replacement would be illegal under any state or local health or safety statute or ordinance or (iii) eighty percent (80%) of the Unit Owners' 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 of this Declaration.

**9.2 Determination Not to Reconstruct without Termination.** If eighty percent (80%) of the Unit Owners vote not to rebuild and the Condominium is not terminated in accordance with the Condominium Act, the insurance proceeds shall be distributed to the Unit Owners of the Units and/or Limited Common Elements destroyed in proportion to their respective share of Common Expense Liability relative to the total share of Common Expense Liability allocated to such Units, or to lienholders as their interests may appear. The remainder of the proceeds shall be distributed to all Unit Owners or lienholders in proportion to their respective obligation for Common Expense Liability bears to the Common Expense Liability for all the Units.

**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 portion of the Common Elements and to make settlements with the insurer for less than full insurance coverage on the damage to such Common Elements. Any settlement made by the Association in good faith shall be binding upon all Unit 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 of this Declaration, 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, a Unit shall be made by and at the individual expense of the Unit Owner of that Unit and shall be completed as promptly as practicable and in a lawful and workmanlike manner.

9.6 **Priority.** Nothing contained in this Article shall entitle a Unit 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 Unit Owner with a remnant which may not be practically or lawfully used for any purpose permitted by this Declaration, the award must compensate the Unit 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 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 shall become 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 Unit Owner for the reduction in the value of his Unit and interest in the Common Elements, regardless of whether any Common Elements are taken.

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 Unit 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 shall be terminated and the provisions of A.R.S. Section 33-1228 of the Condominium Act shall apply.

10.5 **Priority and Power of Attorney.** Nothing contained in this Article shall entitle a Unit 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 Unit Owner hereby appoints the Association as attorney-in-fact for the purpose of negotiations and settlement with the condemning authority for the acquisition of the Common Elements or any part thereof. This power of attorney is coupled with an interest, shall be irrevocable, and shall be binding on any heirs, personal representatives, successors or assigns of a Unit Owner.

## ARTICLE 11 RIGHTS OF FIRST MORTGAGEES

11.1 **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:

11.1.1 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;

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

11.1.3 Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and

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

### 11.2 **Approval Required for Amendment to Declaration, Articles or Bylaws.**

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

- (i) Voting rights;
- (ii) Assessments, Assessment Liens or subordination of Assessment Liens;
- (iii) Reserves for maintenance, repair and replacement of Common Elements;

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

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

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

11.2.4 The provisions of this Section 11.2 shall not affect or apply to the amendments that may be executed by Declarant in the exercise of its Development Rights.

11.3 **Prohibition Against Right of First Refusal.** The right of a Unit Owner to sell, transfer or otherwise convey his Unit shall not be subject to any right of first refusal or similar restriction.

11.4 **Right of Inspection of Records.** Any Unit Owner, First Mortgagee or Eligible Insurer or Guarantor will, upon written request, be entitled to: (i) inspect the current copies of the Condominium Documents and the books, records and financial statements of the Association during normal business hours, provided that the Association shall have up to ten (10) days after any such request to make such items available for inspection; (ii) receive within ninety (90) days following the end of any fiscal year of the Association, an audited financial statement of the Association for the immediately preceding fiscal year of the Association, free of charge to the requesting party; and (iii) receive written notice of all meetings of the Members of the Association and be permitted to designate a representative to attend all such meetings.

11.5 **Prior Written Approval of First Mortgagees.** Except as provided herein or by statute in case of condemnation or substantial loss to the Units or the Common Elements and unless at least two-thirds (2/3) of all First Mortgagees (based upon one (1) vote for each First Mortgage owned) and at least two-thirds (2/3) of all Unit Owners (other than 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:

11.5.1 By act or omission, seek to abandon or terminate this Declaration or the Condominium;

11.5.2 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;

11.5.3 Partition or subdivide any Unit;

11.5.4 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;

11.5.5 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.



11.6 **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.

11.7 **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.

11.8 **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.

11.9 **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 (i) an amendment of the Declaration, Articles or Bylaws, (ii) a termination of the Condominium or (iii) certain actions of the Association as specified in Subsections 11.2 and 11.5 of this Declaration, the provision requiring the consent of the greatest number or percentage of Unit Owners, First Mortgagees, Eligible Mortgage Holders or Eligible Insurers or Guarantors shall prevail; provided, however, that Declarant, without the consent of any Unit Owner being required, shall have the right to amend this Declaration, the Articles or the Bylaws during the Period of Declarant Control in order to (i) comply with the Condominium Act or any other applicable law if the amendment does not adversely affect the rights of any Unit Owner, (ii) 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, (iii) 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 and the Veterans Administration or (iv) the rules or requirements of any federal, state or local governmental agency whose approval of the Condominium or the Condominium Documents is required by law or requested by Declarant.

## ARTICLE 12 DISPUTE RESOLUTION FOR DEVELOPMENT AND CONSTRUCTION RELATED MATTERS

It is the Declarant's intent that all Improvements constructed by any builder who may construct a Unit within the Condominium including the Declarant (each, a "Builder" and, collectively, the "Builders") shall be built in compliance with all applicable building codes and ordinances and will be of a quality that is consistent with good construction and development practices. Nevertheless, disputes may arise as to whether a defect exists with respect to the construction by a Builder of any of the Improvements constructed within the Condominium and a Builder's responsibility therefore. It is the intent of the Builders that all disputes and claims

regarding Alleged Defects (as defined below) be resolved amicably, and without the necessity of time-consuming and costly litigation. Accordingly, the Association, the Board of Directors, the Builders and all Unit Owners shall be bound by the claim resolution procedures, provisions and limitations set forth or described in this Article 12. Nothing in this Article 12 shall be amended, revised, revoked or modified in any respect except with the express written consent of the Owners of all Units.

**12.1 Limitation on Unit Owners' Remedies.** In the event that the Association, the Board of Directors or any Unit Owner (collectively, "Claimant") claims, contends or alleges that any portion of a Unit, the Common Elements or any other part of any Condominium is defective or that one or more of the Builders, their agents, consultants, contractors or subcontractors (collectively, "Agents") were negligent in the planning, design, engineering, grading, construction or other development thereof (collectively, an "Alleged Defect"), the only right or remedy that any Claimant shall have with regard to any such Alleged Defect is the right to have the Alleged Defect repaired and/or replaced by the Builder which was responsible for the construction of the Improvement which is the subject of the Alleged Defect, but such right or remedy shall only be available if and to the extent such Builder is, at that time, still obligated to repair such Alleged Defect pursuant to applicable statutes or common law or pursuant to any applicable rules, regulations and guidelines imposed by the Arizona Registrar of Contractors (the "Applicable Laws"). By accepting a deed to a Unit, each Unit Owner shall, with respect to any Alleged Defect(s), be deemed to have waived the right to seek damages or other legal or equitable remedies from any Builder or from any affiliates, subcontractors, agents, vendors, suppliers, design professionals and materialmen of any Builder under any common law, statutes and other theories of liability, including, but not limited to, negligence, tort and strict liability. Under no circumstances will any Builder or Declarant be liable for any consequential, indirect, special, punitive or other damages, including, but not limited to, any damages based on a claim of diminution in the value of the Claimant's Unit and each Unit Owner, by accepting a deed to a Unit, shall be deemed to have waived its right to pursue any such damages. It shall be a condition to a Claimant's rights and a Builder's obligations under this Article that the Claimant fully and timely abide by the requirements and conditions set forth in this Article. To accommodate the Builders' right to repair and/or replace an Alleged Defect, the Builders hereby reserve the right for themselves to be notified of all such Alleged Defects and to enter onto the Condominium, Common Elements and Units to inspect, repair and/or replace such Alleged Defect(s) as set forth herein.

**12.2 Notice of Alleged Defect.** In the event that a Claimant discovers any Alleged Defect, Claimant shall within fifteen (15%) days of discovery of the Alleged Defect provide the Builder which constructed the Improvement which is the subject of the Alleged Defect with written notice of the Alleged Defect, and of the specific nature of such Alleged Defect ("Notice of Alleged Defect").

**12.3 Right to Enter, Inspect, Repair and/or Replace.** Within a reasonable time after the receipt by a Builder of a Notice of Alleged Defect, or the independent discovery of any Alleged Defect by a Builder, such Builder shall have the right, upon reasonable notice to Claimant and during normal business hours, to enter onto or into, as applicable, the Unit, Common Element or other part of the Condominium as may be necessary or appropriate for the purposes of inspecting and/or conducting testing and, if deemed necessary by the Builder,

repairing and/or replacing such Alleged Defect. In conducting such inspection, testing, repairs and/or replacements, Builder shall be entitled to take any actions as it shall deem reasonable and necessary under the circumstances to repair or correct any such Alleged Defect.

**12.4 No Additional Obligations; Irrevocability and Waiver of Right.** Nothing set forth in this Section shall be construed to impose any obligation on Builders to inspect, test, repair or replace any item or Alleged Defect for which Builders are not otherwise obligated to do so under Applicable Laws or by contract. Specifically, a Builder's obligation to repair and/or replace an Alleged Defect shall expire upon the expiration of any applicable warranty provided by Builder for such item, if any, or on any later applicable date which the Applicable Laws specify or recognize as the date(s) through which a contractor is responsible for such Alleged Defect. The right of Builders to enter, inspect, test, repair and/or replace reserved hereby shall be irrevocable and may not be waived or otherwise terminated except by a writing, in recordable form, executed and recorded by Builders.

**12.5 Tolling of Statutes of Limitations.** In no event shall any statutes of limitations be tolled during the period in which a Builder conducts any inspection or testing of any Alleged Defects.

**12.6 Binding Arbitration.** In the event of a dispute between or among a Builder, its contractors, subcontractors or brokers or their agents or employees, on the one hand, and any Unit Owner or the Association, on the other hand, regarding any controversy or claim between the parties, including any claim based on contract, tort, statute or any other theory of liability arising out of or relating to the rights or duties of the parties under this Declaration, the design or construction of the Condominium, any Unit, any Common Element or any part of the Condominium or an Alleged Defect, the matter shall be resolved by binding arbitration conducted in accordance with the requirements, terms and provisions set forth in this Section 12.6.

**12.6.1 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 American Arbitration Association ("AAA") Commercial Arbitration Rules, as amended from time to time (the "AAA Rules").

**12.6.2 Condition to Initiation of Arbitration.** In the event a dispute arises regarding an Alleged Defect and the Claimant is the Association, the Association must provide written notice to all Members prior to initiation of any proceeding or arbitration against a Builder which notice shall (at a minimum) include (i) a description of the Alleged Defect; (ii) a description of the Builder's position related to such Alleged Defect and any attempts of the affected Builder to correct such Alleged Defect and the opportunities provided to the affected Builder to correct such Alleged Defect; (iii) a certification from an engineer licensed in the State of Arizona, confirming its opinion of the existence of such Alleged Defect and a resume of such engineer; (iv) the estimated cost to repair such Alleged Defect; (v) the name and professional background of the attorney retained by the Association to pursue the claim against the Builder and a description of the relationship between such attorney and member(s) of the Board of Directors, if any; (vi) a thorough description of the fee arrangement or proposed fee arrangement between such attorney and the Association; (vii) the estimated attorneys' fees and expert fees and

costs necessary to pursue the claim against Builder(s) and the source of the funds which will be used to pay such fees and expenses; (viii) the estimated time necessary to conclude the action against Builder; and (ix) an affirmative statement from the Board of Directors that the action is in the best interests of the Association and its Members. In the event the Association recovers any funds from Declarant(s) (or any other Person) to repair an Alleged Defect, any excess funds remaining after repair of such Alleged Defect shall be paid into the Association's reserve fund.

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

12.6.4 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 is referred to in this Section as the "Arbitrator".

12.6.5 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.

12.6.6 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 12.6.4 above.

12.6.7 Compensation. The Arbitrator shall be fully compensated for all time spent in connection with the arbitration proceedings in accordance with the Arbitrator's 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.

12.6.8 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 Guidelines, 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.

12.6.9 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.

12.6.10 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 and the parties attorneys and expert witnesses (where applicable to their testimony), except that, upon the 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.

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

12.6.12 Final Award. The Arbitrator shall promptly, within sixty (60) days of 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 have absolutely no ability or authority to award any damages of any kind except for the actual cost to repair any defect for which a Builder is found to be responsible and which such Builder fails to correct. Accordingly, except for the actual damages referred to in the preceding sentence, the Arbitrator shall not award indirect, consequential, special, punitive or other damages. The Arbitrator shall assess the costs of the proceedings (including, without limitation, the fees of the Arbitrator) against the non-prevailing party.

12.6.13 Statute of Limitations. All statutes of limitation applicable to claims which are subject to binding arbitration pursuant to this Section shall apply to the commencement of arbitration proceedings under this Section. If arbitration proceedings are not initiated within the applicable period, the claim shall forever be barred.

12.7 **Approval of Legal Proceedings.** The Association shall not incur attorneys' fees or other legal expenses in connection with any legal proceedings without the written approval of Unit Owners holding more than two-thirds (2/3) of the total votes in the Association, excluding the vote of any Unit Owner who would be a defendant in such proceedings. The Association must finance any such legal proceeding with monies that are specifically collected for same and may not borrow money or use working capital or reserve funds or other monies collected for specific Association obligations other than legal fees. In the event that the Association commences any legal proceedings, all Unit Owners must notify prospective purchasers of the existence of such legal proceedings and must provide such prospective purchasers with a copy of any applicable notice provided by the Association in accordance with Section 12.6.2 of this Declaration. This Section shall not apply to legal proceedings initiated by the Association to collect any unpaid Assessments levied pursuant to this Declaration or to enforce against any Unit Owners (other than Declarant or a Builder) any covenants, conditions, restrictions or easements contained in this Declaration.

**12.8 Repurchase Option for Alleged Defect Claims.** Notwithstanding anything in this Declaration to the contrary, in the event any Unit Owner, either directly or through the Association, shall commence an action against a Builder in connection with any Alleged Defects in such Unit Owner's Unit, the Builder (or any assignee of such Builder) that constructed and/or sold such Unit shall have the option (but not the obligation) to purchase such Unit on the following terms and conditions:

12.8.1 The purchase price shall be an amount equal to the sum of the following less any sums paid to such Unit Owners under any homeowner's warranty in connection with the Alleged Defect:

(i) The purchase price paid to the Builder by the original Unit Owner which purchased the Unit from a Builder;

(ii) The value of any documented Improvements made to the Unit by third-party contractors or decorators that added an ascertainable value to the Unit;

(iii) The Unit Owner's reasonable moving costs; and

(iv) Any reasonable and customary closing costs, including loan fees and/or "points" incurred by the Unit Owner in connection with the purchase of another primary residence within ninety (90) days after the closing of the repurchase provided for herein.

12.8.2 Close of escrow shall not occur later than forty-five (45) days after written notice from Builder to the Unit Owner of Builder's intent to exercise the option herein.

12.8.3 Title to the Unit shall be conveyed to the applicable Builder free and clear of all monetary liens and encumbrances other than non-delinquent real estate taxes.

12.8.4 All closing costs in connection with the repurchase shall be paid by the applicable Builder.

12.8.5 Exercise of the repurchase option as provided hereinabove shall constitute full and final satisfaction of all claims relating to the subject Unit, including claims relating to the Alleged Defect. The Unit Owner (or Association, as applicable) shall promptly execute and deliver any notice of dismissal or other document necessary or appropriate to evidence such satisfaction.

**12.9 As-Built Conditions.** Various engineering and architectural plans pertaining to the Condominium, including, but not limited to, the Plat, subdivision maps, grading plans, plot plans, improvement plans and building plans (collectively, the "Plans"), contain dimensions regarding certain aspects of the Units, Common Elements and other parts and aspects of the Condominium. By accepting a deed to a Unit, each Unit Owner shall be deemed to have acknowledged and agreed that (a) if there is a discrepancy between the Plans and the actual as-built conditions of any Unit, Common Element or any other Improvement within the Condominium, the as-built conditions will control and be deemed to be accepted as-is by the Unit Owner; (b) the usable or buildable area, location and configuration of the Unit, Common Elements and any other Improvements located within the Condominium may deviate from the

Plans or from any other display or configuration related thereto; (c) the location, size, height and composition of all walls and fences to be constructed on or as part of a Unit or adjacent thereto shall be determined by Builders in their sole and absolute discretion. Despite the Plans or any other materials that may exist, Builders shall be deemed to have made no representations, warranties or assurances with respect to any such matters or with respect to the size, height, location or composition of any wall or fence to be constructed on or adjacent to any Units; and (d) each Unit Owner waives the right to make any demands of or claims against Builders as a result of any discrepancies between the Plans and any actual as-built conditions of any Unit.

**12.10 Limitation on Declarant's and Builders' Liability.** Notwithstanding anything to the contrary herein, it is expressly agreed, and each Unit Owner, by accepting title to a Unit and becoming a Unit Owner, and each other person, by acquiring any interest in the Condominium, acknowledges and agrees, that neither Declarant nor Builders (including, but not limited to, any assignee of the interest of Declarant or a Builder) nor any partner, shareholder, officer, director, employee or affiliate of Declarant or a Builder shall have any personal liability to the Association, or to any Unit Owner, Member or other person, arising under or in connection with this Declaration or resulting from any action or failure to act with respect to this Declaration, the Association or the Committee except, in the case of Declarant and Builders (or their assignees), to the extent of their respective interests in the Condominium; and, in the event of a judgment against any such parties no execution or other action shall be sought or brought thereon against any other assets, nor be a lien upon such other assets, of the judgment debtor. Neither Declarant nor the Association shall be liable for any theft, vandalism, disturbance, accident, unauthorized entrance or other similar occurrence or breach of the peace or security which may occur or take place within the Condominium.

### **ARTICLE 13 GENERAL**

**13.1 Enforcement.** The Association, or any Unit Owner, shall have the right to enforce by any proceeding, at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of the Condominium Documents. Failure by the Association or by any Unit Owner to enforce any covenant or restriction contained in the Condominium Documents shall in no event be deemed a waiver of the right to do so thereafter.

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

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

**13.4 Termination of Condominium.** Except in the case of a taking of all the Units by eminent domain, the Condominium may be terminated only by the agreement of Unit Owners of Units to which at least ninety percent (90%) 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 A.R.S. Section 33-1220 of the Condominium Act, by the Association under A.R.S. Section 33-1206 or A.R.S. Section 33-1216(D) of the Condominium Act, or by certain Unit Owners under A.R.S. Sections 33-1218(B), 33-1222, 33-1223 or 33-1228(B) of the Condominium Act, the Declaration, including the Condominium 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 (which must include, in the event the amendment would change provisions of this Declaration or the Condominium Plat relating to the Commercial Unit [as opposed to those relating generally to all Residential Units], the affirmative vote of the Owner(s) holding all votes assigned to the Commercial Unit (including, if applicable, any further Units created by a subdivision of the Commercial Unit).

13.5.2 Except to the extent expressly permitted or required by the Condominium Act, an amendment to the Declaration shall not create or increase Special Declarant Rights, increase the number of Units or change the boundaries of any Unit, the allocated interest of a Unit or the use as to which any Unit is restricted, in the absence of unanimous written consent of all Unit Owners and of Declarant.

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 Declarant, and no amendment to Article 12 shall be effective unless Declarant approves the amendment in writing even if Declarant no longer owns any Unit at the time of such Amendment.

13.5.4 During the Period of Declarant Control, Declarant shall have the right to unilaterally, without the consent of any other Unit Owner, amend the Condominium Plat, the Declaration and any of the other Condominium Documents to (i) comply with the Condominium Act or any other applicable law if the amendment does not adversely affect the rights of any Unit Owner, (ii) correct any error or inconsistency in the Declaration if the amendment does not adversely affect the rights of any Unit Owner or (iii) 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 Veterans Administration, the Federal Housing Administration, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.

13.5.5 Any amendment adopted by the Unit Owners pursuant to Subsection 13.5.1 of this Declaration shall be signed by the President or Vice President of the Association and shall be Recorded. Any such amendment shall certify that the amendment has been approved as required by this Section. Any amendment made by Declarant pursuant to



Subsection 13.5.4 of this Declaration or the Condominium Act shall be executed by Declarant and shall be Recorded.

13.5.6 Until Declarant no longer owns any portion of the Property, prior written approval by the Declarant is required for any amendment to this Declaration which would impair or diminish the Declarant's rights to complete the development of the Condominium as Declarant deems appropriate or to sell or lease Units therein in accordance with this Declaration. In addition, notwithstanding any other provisions in this Declaration, until such time as Declarant no longer owns any Units, the following actions, before being undertaken by the Association, must first be approved in writing by Declarant: (a) any amendment or action requiring the approval of First Mortgagees pursuant to this Declaration; (b) the annexation to the Condominium of real property; (c) the levy of any assessment for the construction of new facilities not constructed on the Common Elements by Declarant; and (d) any significant reduction of the Association's maintenance of the Common Elements or other services of the Association.

13.5.7 Notwithstanding anything to the contrary in this Section 13.5 or elsewhere in this Declaration, no amendment to this Declaration that would alter any provisions hereof relating to maintenance shall be effective unless and until such amendment receives the written consent of the City Attorney's Office of the City of Tempe.

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

13.7 **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 Unit Owner. A Unit Owner may change address on file with the Association for receipt of notices by delivering a written notice of change of address to the Association pursuant to this Section. A notice given by mail, whether regular, certified or registered, shall be deemed to have been received by the Person to whom the notice was addressed on the earlier of the date the notice is actually received or three (3) days after the notice is mailed. If a Unit is owned by more than one person, notice to one of the Unit Owners shall constitute notice to all Unit Owners of the same Unit. Each Unit Owner shall file his correct mailing address with the Association and shall promptly notify the Association in writing of any subsequent change of address.

13.8 **Binding Effect.** By acceptance of a deed or by acquiring any ownership interest in any portion of the Condominium, each Person, for himself, his heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, rules and regulations now or hereafter imposed by the Condominium Documents and any amendments thereof. In addition, each such Person by so doing thereby acknowledges that the Condominium Documents set forth a general scheme for the improvement and development of the real property covered thereby and hereby evidences his interest that all the restrictions, conditions, covenants, rules and regulations contained in the Condominium Documents shall run

with the land and be binding on all subsequent and future Unit Owners, grantees, purchasers, assignees and transferees thereof. Furthermore, each such Person fully understands and acknowledges that the Condominium Documents shall be mutually beneficial, prohibitive and enforceable by the various subsequent and future Unit Owners. Declarant, its successors, assigns and grantees, covenants and agrees that the Units and the membership in the Association and the other rights created by the Condominium Documents shall not be separated or separately conveyed, and each shall be deemed to be conveyed or encumbered with its respective Unit even though the description in the instrument of conveyance or encumbrance may refer only to the Unit.

13.9 **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.

13.10 **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.

13.11 **Survival of Liability.** The termination of membership in the Association shall not relieve or release any such former Unit Owner or Member from any liability or obligation incurred under, or in any way connection 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 Unit Owner or Member arising out of, or in any way connected with, such ownership or membership and the covenants and obligations incident thereto.

13.12 **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.

13.13 **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.

13.14 **Guests and Tenants.** Each Unit Owner shall be responsible for compliance by his agents, tenants, guests, invitees, licensees and their respective servants, agents and employees with the provisions of the Condominium Documents. A Unit Owner's failure to insure compliance by such Person 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.

13.15 **Attorneys' Fees.** In the event 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.

13.16 **Number of Days.** In computing the number of days for purposes of any provision of the Condominium Documents, all days shall be counted, including Saturdays,

Sundays and holidays; provided, however, that if the final day of any time period falls on a Saturday, Sunday or holiday, then the next day shall be deemed to be the next day which is not a Saturday, Sunday or holiday.

**13.17 Notice of Violation.** The Association shall have the right to record a written notice of a violation by any Unit Owner 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 name of the Unit Owner; (ii) the legal description of the Unit against which the notice is being Recorded; (iii) a brief description of the nature of the violation; (iv) a statement that the notice is being recorded by the Association pursuant to this Declaration; and (v) 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. If, after the recordation of such notice, it is determined by the Association that the violation referred to in the notice does not exist or that the actual violation referred to in the notice has been cured, the Association shall record a notice of compliance which shall state the legal description of the Unit against which the Notice of Violation was Recorded and the recording data of the Notice of Violation and shall state that the violation referred to in the Notice of Violation has been cured, or if such be the case, that it did not exist.

**13.18 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 Declarant, the Association shall sign such letters, documents or other writings as may be required the Arizona Corporation Commission in order for any other nonprofit corporation formed or incorporated by Declarant to use a corporate name which is the same or deceptively similar to the name of the Association.

**13.19 Development and Special Declarant Rights.** Notwithstanding anything to the contrary within the Condominium Documents, Declarant hereby expressly reserves the right, but not the obligation, to exercise the Development Rights and the Special Declarant Rights.

**13.20 Disclaimer Regarding Gated Entrances.** The Declarant may construct access gates at the entrances to the Condominium in order to limit access and provide more privacy for the Unit Owners and the other residents and occupants of the Units. The access gate shall be part of the Common Elements and shall be maintained, repaired and replaced by the Association. The Association shall have the right, but not the obligation, to provide guard service for the Condominium at such times and upon such terms as are approved by the Board. Each Unit Owner and other resident or occupant of a Unit acknowledges and agrees that neither any access gate nor any guard service that may be provided by the Association guarantees the safety or security of the Unit Owners and other occupants of the Condominium or their guests or guarantees that no unauthorized person will gain access to the Condominium. Each Unit Owner and resident, for themselves and their families, invitees and licensees, acknowledge that the gated entrances may restrict or delay entry into the Condominium by the police, fire department,

ambulances and other emergency vehicles or personnel. Each Unit Owner and resident, for itself and its families, invitees and licensees, agrees to assume the risk that the gated entrances will restrict or delay entry to the Condominium by emergency vehicles and personnel. Neither the Declarant Parties, the Association nor any director, officer, agent or employee of the Association shall be liable to any Unit Owner, resident or its family, invitees or licensees for any claims or damages resulting, directly or indirectly, from the construction, existence or maintenance of the gated entrances. Each Unit Owner and resident hereby releases the Declarant Parties and the Association from any and all claims, actions, suits, demands, causes of action, losses, damages or liabilities related to or arising in connection with any nuisance, inconvenience, disturbance, injury or damage resulting from the gated entrances.

**13.21 Required Consent of Unit Owners for Legal Action.** Notwithstanding anything to the contrary contained in this Declaration, any action or claim instituted by the Association against any one or more of the Declarant Parties, relating to or arising out of the Condominium, the Declaration or any other Condominium Documents, the use or condition of the Condominium or the design or construction of or any condition on or affecting the Condominium, including, but not limited to, construction defects, surveys, soils conditions, grading, specifications, installation of Improvements (including, but not limited to, Units) or disputes which allege negligence or other tortious conduct, breach of contract or breach of implied or express warranties as to the condition of the Condominium or any Improvements, shall have first been approved by Unit Owners representing seventy-five percent (75%) of the votes in the Association who are voting in person or by proxy at a meeting duly called for such purpose.

13.21.1 Notice to Unit Owners.

(i) Prior to obtaining the consent of the Unit Owners in accordance with Section 13.23 the Association must provide written notice to all Unit Owners which notice shall (at a minimum) include (1) a description of the nature of any action or claim (the "Claim"), (2) a description of the attempts of the Declarant to correct such Claim and the opportunities provided to the Declarant to correct such Claim, (3) a certification from an engineer licensed in the State of Arizona that such Claim is valid along with a description of the scope of work necessary to cure such Claim and a resume of such engineer, (4) the estimated cost to repair such Claim, (5) the name and professional background of the attorney proposed to be retained by the Association to pursue the Claim against the Declarant and a description of the relationship between such attorney and member(s) of the Board (if any), (6) a description of the fee arrangement between such attorney and the Association, (7) the estimated attorneys' fees and expert fees and costs necessary to pursue the Claim against the Declarant and the source of the funds which will be used to pay such fees and expenses, (8) the estimated time necessary to conclude the action against the Declarant, and (9) an affirmative statement from the Board that it has determined that the action is in the best interest of the Association and its Members.

(ii) In the event the Association recovers any funds from the Declarant (or any other person or entity) to repair a Claim, any excess funds remaining after repair of such Claim shall be paid into the Association's reserve fund.

13.21.2 Notification to Prospective Purchasers. In the event that the Association commences any action or claim, all Unit Owners must notify prospective purchasers of such action or claim and must provide such prospective purchasers with a copy of the notice received from the Association in accordance with Subsection 13.22.1.

13.22 **Effect of Declaration.** The Declarant makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of this Declaration, or as to the compliance of any of these provisions with public laws, ordinances and regulations applicable thereto.

13.23 **No Representations or Warranties.** No representations or warranties of any kind, express or implied, have been given or made by the Declarant or its agents, consultants or employees in connection with the Condominium, or any portion thereof, its physical condition, zoning, compliance with applicable laws, fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, costs of maintenance, taxes or regulation thereof, except as specifically and expressly set forth in this Declaration.

13.24 **Right to Configure Project.** To the extent permitted by law, the Declarant shall have the right, at any time, to change the design, size and configuration, or make any other changes as it deems appropriate, of the Condominium. There is no guarantee that the Condominium will be developed as originally planned.

13.25 **Indemnification.** The Association will indemnify each and every officer and director of the Association and each and every member of any committee appointed by the Board (including, for purposes of this Section 13.27, former officers and directors of the Association and former members of committees appointed by the Board) (collectively, "Association Officials" and individually an "Association Official") against any and all expenses, including attorneys' fees, reasonably incurred by or imposed upon an Association Official in connection with any action, suit or other proceeding (including settlement of any suit or proceeding, if approved by the Board serving at the time of such settlement) to which he or she may be a party by reason of being or having been an Association Official, except for his or her own individual willful misfeasance, malfeasance, misconduct or bad faith. No Association Official will have any personal liability with respect to any contract or other commitment made by them or action taken by them, in good faith, on behalf of the Association (except indirectly to the extent that such Association Official may also be a Member of the Association and therefore subject to Assessments hereunder to fund a liability of the Association), and the Association will indemnify and forever hold each such Association Official free and harmless from and against any and all liability to others on account of any such contract, commitment or action. Any right to indemnification provided for herein is not exclusive of any other rights to which any Association Official may be entitled. If the Board deems it appropriate, in its sole discretion, the Association may advance funds to or for the benefit of any Association Official who may be entitled to indemnification hereunder to enable such Association Official to meet on-going costs and expenses of defending himself or herself in any action or proceeding brought against such Association Official by reason of his or her being, or having been, an Association Official. In the event it is ultimately determined that an Association Official to whom, or for whose benefit, funds were advanced pursuant to the preceding sentence does not qualify for indemnification pursuant to this Section 13.27 or otherwise under the Articles, Bylaws, Rules or applicable law,

such Association Official must promptly upon demand repay to the Association the total of such funds advanced by the Association to him or her, or for his or her benefit, with interest (should the Board so elect) at a rate not to exceed ten percent (10%) per annum from the date(s) advanced until paid.

**13.26 No Partition.** No Person acquiring any interest in the Property or any part thereof will have a right to, nor may any person seek, any judicial partition of the Common Elements, nor will any Unit Owner sell, convey, transfer, assign, hypothecate or otherwise alienate all or any of such Unit Owner's interest in the Common Elements or any funds or other assets of the Association except in connection with the sale, conveyance or hypothecation of such Unit Owner's Unit (and only appurtenant thereto), or except as otherwise expressly permitted herein. This Section must not be construed to prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring or disposing of title to real property which may or may not be subject to this Declaration.

**13.27 References to this Declaration in Deeds.** Deeds to and instruments affecting any Unit or any other part of the Condominium may contain the covenants, conditions and restrictions herein set forth by reference to this Declaration, but whether or not any such reference is made in any deed or instrument, each and all of the provisions of this Declaration are and will be binding upon the grantee-Unit Owner or other Person claiming through any instrument and his, her or its heirs, executors, administrators, successors and assigns.

**13.28 Laws, Ordinances and Regulations.**

13.28.1 The covenants, conditions and restrictions set forth in this Declaration and the provisions requiring Unit Owners and other Persons to obtain the approval of the Board or any committee appointed by the Board with respect to certain actions are independent of the obligation of the Owners and other Persons to comply with all applicable laws, ordinances and regulations, and compliance with this Declaration will not relieve a Unit Owner or any other Person from the obligation also to comply with all applicable laws, ordinances and regulations.

13.28.2 Any violation of any state, municipal or local law, ordinance or regulation pertaining to the ownership, occupation or use of any property within the Condominium is hereby declared to be in violation of this Declaration and subject to any or all of the enforcement proceedings set forth herein.

13.28.3 If and to the extent applicable Arizona law requires or mandates specific procedures for the enforcement, interpretation or application of this Declaration, that conflict with provisions in this Declaration, such mandated or required procedures shall be followed and this Declaration shall be deemed modified or amended in such regard, but to the minimum extent reasonably necessary to give effect to such required or mandated procedure.

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

DORSEY PLACE CONDOMINIUMS, L.L.C.,  
an Arizona limited liability company


By: Gardner Capital Partners, L.P., an Arizona  
limited partnership, a Member

By: Gardner Financial Corporation, an  
Arizona corporation,  
its General Partner

  
\_\_\_\_\_  
Douglas D. Gardner  
President

By: ACHEN CAPITAL PARTNERS, L.P., an  
Arizona limited partnership, a Member

By: Achen Financial Corporation, its General  
Partner

  
\_\_\_\_\_  
Sanders T. Achen  
President

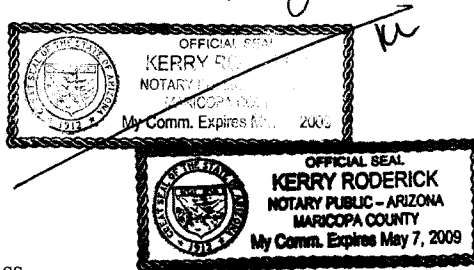
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STATE OF ARIZONA )  
 )  
County of Maricopa ) ss.

The foregoing instrument was acknowledged before me this 14<sup>th</sup> day of May, 2007, by Douglas D. Gardner, President of Gardner Financial Corporation, an Arizona corporation, the general partner of Gardner Capital Partners, L.P., an Arizona limited partnership, a Member of Dorsey Place Condominiums, L.L.C., an Arizona limited liability company, as duly authorized, for and on behalf of the company.

Kerry Roderick  
Notary Public

My Commission Expires:  
May 7, 2009



STATE OF ARIZONA )  
 )  
County of Maricopa ) ss.

The foregoing instrument was acknowledged before me this 14<sup>th</sup> day of May, 2007, by Sanders T. Achen, President of Achen Financial Corporation, an Arizona corporation, the general partner of Achen Capital Partners, L.P., an Arizona limited partnership, a Member of Dorsey Place Condominiums, L.L.C. as a Member of Dorsey Place Condominiums, L.L.C., an Arizona limited liability company, as duly authorized, for and on behalf of the company.

Kerry Roderick  
Notary Public

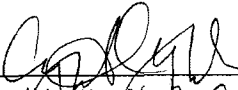
My Commission Expires:  
May 7, 2009



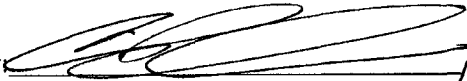


APPROVED AS TO FORM:

CITY ATTORNEY FOR CITY OF TEMPE,  
ARIZONA

By:   
Name: CYNTHIA Y. MCCOY  
Title: ASSIST CITY ATTORNEY

DEVELOPMENT SERVICES MANAGER  
FOR THE CITY OF TEMPE

By:   
Name: CHRISTOPHER J. ANARODAN  
Title: DEVELOPMENT SERVICES MANAGER

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[SIGNATURE PAGE APPROVING AS TO FORM]

**EXHIBIT "A"**

## Legal Description of the Property Submitted to Condominium

THAT PART OF THE NORTHWEST QUARTER OF SECTION 23, TOWNSHIP 1 NORTH, RANGE 4 EAST, OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTH QUARTER CORNER OF SECTION 23;

THENCE NORTH 89° 54' 28" WEST ALONG THE NORTH LINE OF SAID NORTHWEST QUARTER, A DISTANCE OF 52.93 FEET; THENCE SOUTH 0° 05' 32" WEST, A DISTANCE OF 55.00 FEET TO THE SOUTH RIGHT OF WAY LINE OF UNIVERSITY DRIVE AND THE POINT OF BEGINNING;

THENCE SOUTH 45° 56' 37" EAST, A DISTANCE OF 28.28 FEET TO A POINT ON THE WEST RIGHT OF WAY OF DORSEY LANE;

THENCE SOUTH 00° 01' 53" WEST, A DISTANCE OF 230.02 FEET;

THENCE NORTH 89° 54' 28" WEST; A DISTANCE OF 342.25 FEET;

THENCE NORTH 00° 05' 32" EAST, A DISTANCE OF 250.00 FEET TO SAID SOUTH RIGHT OF WAY LINE OF UNIVERSITY DRIVE;

THENCE SOUTH 89° 54' 28" EAST, A DISTANCE OF 322.00 FEET TO THE POINT OF BEGINNING.

**ADDENDUM:**  
**Examples of condominium declarations with similar statements**  
**purporting to grant statutory rights to condominium associations**

Condominium	Text
Edison Midtown Maricopa County Recorder No. 20150906439	§ 6.1: “The Association shall have such rights, powers and duties as are prescribed by law and as are set forth in the Condominium Documents together with such rights, powers and duties as may be reasonably necessary to effectuate the objectives and purposes of the Association as set forth in this Declaration and in the Condominium Act.” [APP126]
Orpheum Lofts Maricopa County Recorder No. 20021080763	§ 6.1: “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.” [APP128]
Regatta Point Maricopa County Recorder No. 20000921821	§ 6.1: “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.” [APP130]
Esplanade Place Maricopa County Recorder No. 20010143899	§ 6.1: “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.” [APP132]
Biltmore Square Maricopa County Recorder No. 2005- 0795411	§ 6.1: “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.” [APP134]
Verde Park Maricopa County Recorder No. 20190377363	§ 6.1: “The Association shall have such rights, powers and duties as are prescribed by law and as are set forth in the Condominium Documents together with such rights, powers and duties as may be reasonably necessary to effectuate the objectives and purposes of the Association as set forth in this Declaration and the Condominium Act.” [APP137]

<p>3<sup>rd</sup> Avenue Palms Maricopa County Recorder No. 20051708788</p>	<p>§ 6.1: “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.” [APP140]</p>
<p>Desert Breeze Maricopa County Recorder No. 2005- 1687475</p>	<p>§ 6.1: “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.” [APP142]</p>
<p>Morning Sun Condominium Yavapai County Recorder No. 8818779</p>	<p>§ 6.0: “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.” [APP144]</p>
<p>Moon Valley Pinal County Recorder No. 2006- 111648</p>	<p>§ 6.1: “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.” [APP146]</p>
<p>The Views at Butler Coconino County Recorder No. 3925269</p>	<p>§ 5.1: “The Association shall be organized as a nonprofit Arizona corporation vested with the rights, powers and duties prescribed by law and set forth in the Condominium Documents and Condominium Act together with such rights, powers, and duties as may be implied and reasonably necessary to effectuate the same, including but not limited to including the management and maintenance of the Common Elements.” [APP148]</p>
<p>Ocotillo Business Center Condo Mohave County Recorder No. 2004052717</p>	<p>§ 6.1: “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.” [APP150]</p>

<p>CK Cabins Condominium</p> <p>Apache County Recorder No. 2016-005571</p>	<p>§ 9.1: “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.” [APP152]</p>
<p>Casa Blanca Condos, Phase 1</p> <p>Graham County Recorder No. 2008-05236</p>	<p>§ 6.0: “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.” [APP154]</p>
<p>Insight/Out Living Condominiums</p> <p>La Paz County Recorder No. 2008-00602</p>	<p>§ 6.0: “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.” [APP156]</p>
<p>Stone Curves Condominium</p> <p>Pima County Recorder No. 20031520156</p>	<p>§ 6.1: “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.” [APP158]</p>

**WHEN RECORDED, RETURN TO:**

Jason F. Wood, Esq.  
Titus Brueckner & Levine PLC  
8355 E. Hartford Drive, Suite 200  
Scottsdale, AZ 85255

**DECLARATION OF CONDOMINIUM AND  
COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR  
EDISON MIDTOWN CONDOMINIUMS**

and thereafter the Board of Directors.

(G) In the event any party wall encroaches upon a Unit, a valid easement for such encroachment and for the maintenance of the party wall shall and does exist in favor of the Owners of the Units which share such party wall.

## ARTICLE 6

### THE ASSOCIATION; RIGHTS AND DUTIES; MEMBERSHIP

**6.0 Existence, Rights, Powers and Duties of the Association.** No later than the date on which the first Unit is conveyed to a Purchaser, the Association shall be organized as a nonprofit Arizona corporation. The Association shall be the entity through which the Unit Owners shall act. The Association shall have such rights, powers and duties as are prescribed by law and as are set forth in the Condominium Documents together with such rights, powers and duties as may be reasonably necessary to effectuate the objectives and purposes of the Association as set forth in this Declaration and in the Condominium Act. Unless the Condominium Documents or the Condominium Act specifically require a vote of the Members, approvals or actions to be given or taken by the Association shall be valid if given or taken by the Board of Directors. Notwithstanding anything herein to the contrary, so long as the Declarant owns any Unit, the prior written consent of the Declarant shall be required to any decision by the Association to establish self-management when professional management previously had been in place. The Association has the specific duty to make available to Declarant, Eligible Mortgage Holders, Unit Owners, and Eligible Insurers or Guarantors of any First Mortgage during normal business hours, current copies of the Condominium Documents and other books, records and financial statements of the Association as may be requested from time to time by such parties. Such requests shall be in writing, and the Association shall have the right to charge for copying and administrative expense.

(A) The Association, as the agent and representative of the Unit Owners, shall have the right, but not the obligation, to enforce the provisions of this Declaration. Further, Declarant or any other Unit Owner, so long as Declarant or such other Unit Owner owns property within the Condominium, shall have the right and authority, but not the obligation, to enforce the provisions of this Declaration.

(B) Subject to the restrictions and limitations contained herein, or in the Articles, the Bylaws, and the laws of the State of Arizona, the Association may enter into contracts or other transactions with other parties, including Declarant or its affiliated companies. Such contracts or other transactions shall not be void or voidable because one or more directors or officers of the Association are employed by, have a financial interest in or are otherwise affiliated with such other parties, including Declarant or its affiliates (even if such officer(s) or director(s) is present and/or votes at the meeting of the Board of Directors or committee which authorizes the contract or transaction), if (i) the fact of such interest has been previously disclosed or made known to the other members of the Board of Directors or the committee acting upon such contract or transaction, and

**WHEN RECORDED, RETURN TO:**

Donald E. Dyekman, Esq.  
Mariscal, Weeks, McIntyre & Friedlander, P.A.  
2901 North Central Avenue  
Suite 200  
Phoenix, Arizona 85012

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**CONDOMINIUM DECLARATION**

**FOR**

**ORPHEUM LOFTS,  
a condominium**



Declaration as a Limited Common Element shall be maintained, repaired and replaced by the Owner of the Unit served.

## ARTICLE 6

### THE ASSOCIATION

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

**6.2 Directors and Officers.** During the Period of Declarant Control, Declarant shall have the right to appoint and remove the members of the Board of Directors and the officers of the Association who do not have to be Unit Owners. Upon the termination of the Period of Declarant Control, the Unit Owners shall elect the Board of Directors which must consist of at least five (5) members, all of whom must be Unit Owners. For purposes of election the Board of Directors by the Members, the Units will be divided into two classes with one class consisting of the Residential Units and the other class consisting of the Commercial Units. The Owners of the Residential Units shall elect three (3) directors, and the Owners of the Commercial Units shall elect two (2) directors. 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

WHEN RECORDED, RETURN TO:

**LAWYERS TITLE OF ARIZONA, INC.**

Picerne-Rio Salado, LLC

Attn: Laurie Dryden

1420 East Missouri, Suite 100

Phoenix, AZ 85014

604795 - RLC <sup>Doc/</sup>

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**CONDOMINIUM DECLARATION**

**FOR**

**REGATTA POINTE CONDOMINIUMS**

**5.6 Cooperation of Association.** If Developer, or its successors and assigns, brings any action before the Arizona Registrar of Contractors against a contractor or subcontractor performing work within the Condominium or Areas of Association Responsibility, the Association and any affected Owner of a Unit shall cooperate in such action including, but not limited to, providing access to the Condominium, Areas of Association Responsibility, a Unit, or Association books and records.

## ARTICLE 6 THE ASSOCIATION; RIGHTS AND DUTIES, MEMBERSHIP

**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 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 written consent or affirmative vote of Owners representing more than fifty percent (50%) of the votes in the Association. Unless the Condominium Documents or the Condominium Act specifically require a vote of the Members, approvals or actions to be given or taken by the Association shall be valid if given or taken by the Board. Notwithstanding anything herein to the contrary, so long as Declarant owns any Unit <sup>Unit</sup> ~~the~~ <sub>Unofficial Document</sub> prior written consent of Declarant shall be required to any decision by the Association to establish self-management when professional management previously had been in place. The Association has the specific duty to make available, during normal business hours, to Declarant, Eligible Mortgage Holders, Owners, and Eligible Insurers or Guarantors, current copies of the Declaration, Bylaws, Articles, Rules and other books, records and financial statements of the Association as may be requested from time to time by such parties. Such requests shall be in writing, and the Association shall have the right to charge for copying expenses.

### **6.2 Directors and Officers.**

6.2.1 During the Period of Declarant Control, Declarant shall have the right to appoint and remove the members of the Board of Directors, officers of the Association, and members of the Architectural Committee who do not have to be Owners.

6.2.2 Upon the termination of the Period of Declarant Control, the Owners shall elect the Board of Directors which must consist of at least three (3) members, at least a majority of whom must be Owners. The Board of Directors elected by the Owners shall then elect the officers of the Association. In addition, at any time prior to or upon termination of the Period of Declarant Control, Declarant shall have the right to appoint the members of a transition committee consisting of unaffiliated Owners. The transition committee shall represent the Owners and shall have the authority to negotiate a binding transition agreement with Declarant.

6.2.3 Declarant may voluntarily surrender its right to appoint and remove the

WHEN RECORDED, RETURN TO:

LAWYERS TITLE OF ARIZONA, INC.

Donald E. Dyekman, Esq.  
Dyekman, Curtis & Cohen, P.L.C.  
6750 E. Camelback Road  
Suite 104  
Scottsdale, Arizona 85251

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Jo

605326 Jay

**AMENDED AND RESTATED**  
**CONDOMINIUM DECLARATION**  
**FOR**  
**ESPLANADE PLACE,**  
**a condominium**

All pipes, heads and other parts of the sprinkler system (whether located within or outside of the Unit) shall be part of the Common Elements and shall be maintained, repaired and replaced by the Association. If a Unit Owner, Lessee or Occupant of a Unit or their Invitees causes the sprinkler system to be activated (except in the case of a fire) or damages or destroys any part of the sprinkler system, the Unit Owner shall be responsible for the cost of any repairs to the sprinkler system made by the Association and for all other losses or damages resulting from such actions.

## 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 <sup>Unofficial Document</sup> may act in all instances on behalf of the Association. The Association is the Owner of the Parcel for the purposes of the Camelback Esplanade Declaration, and only the Association and not any Unit Owner may act as the Owner for the purposes of the Camelback Esplanade Association.

### **6.2 Directors and Officers.**

6.2.1 During the Period of Declarant Control, the Declarant shall have the right to appoint and remove the members of the Board of Directors and the officers of the Association who do not have to be Unit Owners. Upon the termination of the Period of Declarant Control, the Unit Owners shall elect the Board of Directors which must consist of at least three members, all of whom must be Unit Owners. The Board of Directors elected by the Unit Owners shall then elect the officers of the Association.

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

# Unofficial Document

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1 OF 1

TOHUTAC

*Hold for P/U*  
When recorded ~~mail to:~~

Name: Warner Angle

Address: 3550 N Central Ave. #1500

City/State/Zip: Phoenix, AZ 85012

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APP13492

**DECLARATION OF CONDOMINIUM AND COVENANTS, CONDITIONS AND  
RESTRICTIONS AND GRANT OF EASEMENTS**

**FOR**

**BILTMORE SQUARE CONDOMINIUMS,  
a condominium**

Unofficial Document  
**June 9, 2005**

**DISCLOSURE: THIS DECLARATION AND THE PROJECT DOCUMENTS  
DESCRIBED IN THIS DECLARATION CONTAIN ALTERNATIVE DISPUTE  
RESOLUTION PROCEDURES THAT ARE APPLICABLE TO CLAIMS AND DISPUTES  
ARISING OUT OF OR UNDER THE DECLARATION AND OTHER PROJECT  
DOCUMENTS. THESE ALTERNATIVE DISPUTE RESOLUTION PROCEDURES ARE  
CONTAINED IN ARTICLE XII OF THE DECLARATION AND IN THE BYLAWS OF THE  
ASSOCIATION (WHICH ARE PART OF THE PROJECT DOCUMENTS).**

**5.7 General Standards.** Except as may be otherwise provided in this Declaration or the other Condominium Documents, each respective Unit Owner shall maintain the areas they are respectively responsible for at a level of general maintenance at least equal to that prevailing with respect to areas of a similar nature located in residential and commercial communities commonly and generally deemed to be of the same quality as the Condominium.

**5.8 Utilities.** Utility costs that are metered collectively for the Common Elements and paid by the Association shall be a Common Expense. Electricity for individual Units will be metered separately to each Unit and will be the responsibility of the respective Unit Owners for payment. Utilities that are utilized by individual Units, but not separately metered, shall be a Common Expense.

## **ARTICLE 6 THE ASSOCIATION**

**6.1 Rights, Powers and Duties of the Association.** No later than the date that the first Unit is conveyed to an individual Purchaser for use as a condominium (as distinguished from sales of all or substantially all of the Project), 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 Unofficial Document 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, including but not limited to the following:

6.1.1 **Common Elements.** Maintain and otherwise manage the Common Elements and all other real and personal property that may be acquired by the Association;

6.1.2 **Legal and Accounting Services.** Obtain legal, accounting, and other services deemed by the Board of Directors, in its discretion, to be necessary or desirable in the operation of the Association and the Common Elements;

6.1.3 **Easements.** Subject to the limitations, if any, imposed by the Condominium Documents, grant easements where necessary for utilities, sewer facilities, and CATV on, under, over, through, upon, or across the Common Elements to serve the Common Elements or any Unit;



# Unofficial 20 Document

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**When recorded return to:**  
Margaret L. Steiner  
Lane & Nach, P.C.  
2001 East Campbell Avenue  
Suite 103  
Phoenix, Arizona 85016

## **CONDOMINIUM DECLARATION FOR RESIDENCY AT VERDE PARK CONDOMINIUMS**

any such maintenance, repair or replacement shall be assessed against the nonperforming unit Owner pursuant to Section 7.4.D hereof.

**5.5 Sewer Lines.** 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. If the Sewer Facilities have a design flow or more than ten thousand (10,000) gallons per day, then the Association shall operate and maintain the Sewer Facilities in accordance with the operation and maintenance plan for the Sewer Facilities approved by the Maricopa County Environmental Services department in connection with the approval and installation 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 located and mark underground utility lines and facilities within dedicated public rights-of-way are not available to located 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 (1) Unit and <sup>Unofficial Document</sup> 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.

**5.6 Utilities.** The Association shall acquire and pay for the following: (A) water and sewer, for the Units and the Common Elements; (B) electrical service, and refuse and rubbish collection for the Common Elements, and (C) if the Association installs electrical charging stations in the Parking Spaces, the electric service for such charging stations. Each Unit Owner shall be responsible for electrical service for such Owner's Unit, and for obtaining any telephone, cable television or internet service (including individual hookup charges for any master service provided by the Association) that such Owner may desire, and the costs of any such services shall be the responsibility of the Unit Owner.

## **ARTICLE 6 ASSOCIATION**

**6.1 Rights, Powers and Duties of the Association.** No later than the date on which the first (1<sup>st</sup>) Unit is conveyed to a Purchaser, the Association shall be incorporated 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, including, without limitation, the following: (A) commence and maintain actions or restrain and enjoin any actual or threatened breach of this Declaration and enforce, by mandatory injunction or otherwise, all of the provisions of this Declaration; (B) pay taxes, capital improvement assessments or special assessments and other liabilities which are or would become a lien on any portion of the Condominium owned or maintained by the Association; (C) levy Assessments and perfect and enforce liens as hereinafter provided; (D) enter into contracts including, but not limited to, management contracts; (E) perform the duties set forth herein, including but not limited to, maintenance and repair of the Common Elements and the obtaining of insurance; and (F) adopt, amend and repeal Rules as it deems reasonable. 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 sixty-seven percent (67%) of the votes in the Association. Unless the Condominium Documents or the Condominium Act specifically require a vote of the Members, the Board of Directors may act in all instances on behalf of the Association.

**6.2 Directors and Officers.** During the Period of Declarant Control, Declarant shall have the right to appoint and remove the members of the Board of Directors and the officers of the Association, none of whom are required to be Unit Owners. Upon the termination of the Period of Declarant Control, the Members shall elect the Board of Directors which shall consist of three (3) Members, all of whom must be Unit Owners. The Board of Directors <sup>Unofficial Document</sup> and the Members 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 prior to 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 Membership.** Each Owner shall be a member of the Association. Such membership shall automatically terminate when an Owner ceases for any reason to be an Owner, and such Owner's successor-in-interest shall likewise automatically succeed to such membership in the Association. No Owner shall transfer membership in the Association, except upon the sale or conveyance of the Unit to which it is appurtenant. Any attempt to make a prohibited transfer of a membership will be void and will not be recognized by or reflected upon the books and records of the Association.

**6.4 Personal Liability.** No member of the Board of Directors, or any officer of the Association, or any Manager, or Declarant, or any agent of Declarant, 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 any such person or entity if such person or entity has, on the basis of such information as may be possessed by him or it, acted in good faith without willful or intentional misconduct.

***The Talon Group***

FIRST AMERICAN TITLE

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When recorded mail to:

So

The Talon Group  
3200 E. Camelback Rd., #200  
Phoenix, Arizona 85018  
Attn: Angela Wellman  
4592764

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RE-RECORDING  
OF

DECLARATION OF CONDOMINIUM AND COVENANTS, CONDITIONS AND  
RESRICTIONS AND GRANT OF EASEMENTS  
FOR  
3<sup>RD</sup> AVENUE PALMS CONDOMINIUMS,  
A CONDOMINIUM

**This document is being re-recorded for the sole purpose of deleting previous Exhibit  
"B" and adding correct Exhibit "B".**

**6.1 Rights, Powers and Duties of the Association.** No later than the date that the first Unit is conveyed to an individual Purchaser for use as a condominium (as distinguished from sales of all or substantially all of the Project), 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, including but not limited to the following:

6.1.1 Common Elements. Maintain and otherwise manage the Common Elements and all other real and personal property that may be acquired by the Association;

6.1.2 Legal and Accounting Services. Obtain legal, accounting, and other services deemed by the Board of Directors, in its discretion, to be necessary or desirable in the operation of the Association, Unofficial Document the Common Elements;

6.1.3 Easements. Subject to the limitations, if any, imposed by the Condominium Documents, grant easements where necessary for utilities, sewer facilities, and CATV on, under, over, through, upon, or across the Common Elements to serve the Common Elements or any Unit;

6.1.4 Employment of Managers. Employ affiliated or third-party managers or other persons and contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Association;

6.1.5 Purchase Insurance. Purchase insurance for the Common Elements for risks, with companies, and in amounts as required by this Declaration and/or applicable law or otherwise as the Board of Directors determines to be necessary, desirable, or beneficial;

6.1.6 Other. Perform other acts authorized expressly or by implication under this Declaration and the other Condominium Documents including, without limitation, the right to construct improvements on the Units and Common Elements; and

6.1.7 Enforcement. Enforce the provisions of this Declaration and the other Condominium Documents by all legal means, including, without limitation, the expenditure of funds of the Association, the employment of legal counsel, the

**RETURN TO  
HELP**

WHEN RECORDED, RETURN TO:

D. Randall Stokes  
Lewis and Roca LLP  
40 North Central Avenue  
Phoenix, AZ 85004-4429

**Unofficial  
Document**

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IBARRAS

**CONDOMINIUM DECLARATION**

**FOR**

**DESERT BREEZE, A CONDOMINIUM**

## ARTICLE 6

### THE ASSOCIATION; RIGHTS AND DUTIES, MEMBERSHIP

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 written consent or affirmative vote of Unit Owners representing 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, approvals or actions to be given or taken by the Association shall be valid if given or taken by the Board. Notwithstanding anything herein to the contrary, so long as the Declarant owns any Unit, the prior written consent of the Declarant shall be required to any decision by the Association to establish self-management when professional management previously had been in place. The Association has the specific duty to make available to the Declarant, Eligible Mortgage Holders, Unit Owners, and Eligible Insurers or Guarantors, current copies of the Declaration, Bylaws, Articles, Rules and other books, records and financial statements of the Association as may be requested from time to time by such parties. Such requests shall be in writing, and the Association shall have the right to charge for reasonable copying expenses.

#### 6.2 **Directors and Officers.**

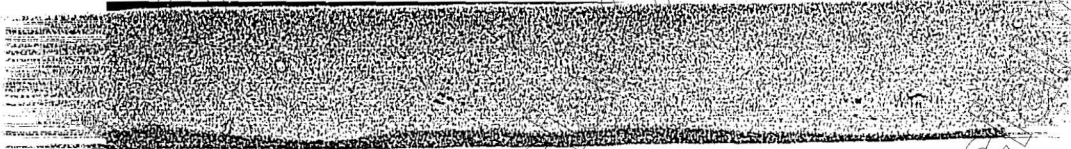
6.2.1 During the Period of Declarant Control, the Declarant shall have the right to appoint and remove the members of the Board and the officers of the Association, who do not have to be Unit Owners.

6.2.2 Upon the termination of the <sup>Unofficial Document</sup> Period of Declarant Control, the Unit Owners shall elect the Board which must consist of at least three members, all of whom must be Unit Owners. The Board elected by the Unit Owners shall then elect the officers of the Association.

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

6.3 **Rules.** The Board, 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 any area by any Unit Owner, by the family of such Unit Owner, or by any invitee, licensee or lessee of such Unit Owner; provided, however, that the Rules may not unreasonably discriminate among Unit Owners and shall not be inconsistent with the Condominium Act, this Declaration, the Articles or Bylaws. A copy of the Rules as they may from time to time be adopted, amended or repealed, shall be mailed or otherwise delivered to each Unit Owner and may be recorded.

6.4 **Composition of Members.** Each Unit Owner shall be a Member of the Association. The membership of the Association at all times shall consist exclusively of all the Unit Owners. A Unit Owner (including the Declarant) of a Unit shall automatically, upon becoming the Unit Owner thereof, be a Member of the Association and shall remain a Member of the Association until such time as such Unit Owner's ownership ceases for any reason, at which time such Unit Owner's membership in the Association shall automatically cease.




WHEN RECORDED RETURN TO:

Donald E. Dyekman  
One East Camelback Road  
Suite 1100  
Phoenix, Arizona 85012-1656

# 5338

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Bk		Map				Pcl

CONDOMINIUM DECLARATION  
FOR  
MORNING SUN CONDOMINIUM


 INSTRUMENT # 8818779  
 OFFICIAL RECORDS OF  
 YAVAPAI COUNTY  
 PATSY C. JENNEY  
 REQUEST OF:  
 ROBERT HALL  
 DATE: 05/26/88 TIME: 10:30  
 FEE: 49.00  
 BOOK 2046 PAGE 932 PAGES: 049

BOOK 2046 PAGE 932





# 5338

obligation, to perform the required maintenance, repair or replacement. The cost of any such maintenance, repair or replacement shall be assessed against the nonperforming Unit Owner pursuant to Section 7.1(E) of this Declaration.

#### ARTICLE 6

##### THE ASSOCIATION; RIGHTS AND DUTIES, MEMBERSHIP

6.0. 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 written consent or affirmative vote of Unit Owners representing more than fifty percent (50%) of the votes in the Association. Unless the Condominium Documents or the Condominium Act specifically require a vote of the Members, approvals or actions to be given or taken by the Association shall be valid if given or taken by the Board.

##### 6.1. Directors and Officers.

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

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

(C) The Declarant may voluntarily surrender his right to appoint and remove the members of the Board of Directors and the officers of the Association before termination of the Period of Declarant Control, and in that event the Declarant may require, for the duration of the Period of Declarant Control, that specified actions of the Association or

302



OFFICIAL RECORDS OF  
PINAL COUNTY RECORDER  
LAURA DEAN-LYTLER

When recorded mail to:  
THOMAS WHELAN  
ATTORNEY AT LAW  
2058 S. DOBSON RD STE 9  
MESA, AZ. 85202

DATE/TIME: 08/08/06 1300  
FEE: \$45.00  
PAGES: 36  
FEE NUMBER: 2006-111648

(The above space reserved for recording information)

**CAPTION HEADING**

CONDOMINIUM DECLARATION FOR MOON VALLEY IV CONDOMINIUMS

**DO NOT DISCARD THIS PAGE. THIS COVER PAGE IS RECORDED AS PART OF YOUR DOCUMENT. THE CERTIFICATE OF RECORDATION WITH THE FEE NUMBER IN THE UPPER RIGHT CORNER IS THE PERMANENT REFERENCE NUMBER OF THIS DOCUMENT IN THE PINAL COUNTY RECORDER'S OFFICE.**

**5.4 Unit Owner's Failure to Maintain.** If a Unit Owner fails to maintain in good condition and repair his Unit or any Limited Common Element which he is obligated to maintain under this Declaration and the required maintenance, repair or replacement is not performed within fifteen (15) days after written notice has been given to the Unit Owner by the Association, the Association shall have the right, but not the obligation, to perform the required maintenance, repair or replacement. The cost of any such maintenance, repair or replacement shall be assessed against the nonperforming Unit Owner pursuant to Subsection 7.2.4.

## ARTICLE 6 THE ASSOCIATION

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

### 6.2 Directors and Officers.

6.2.1 During the Period of Declarant Control, the Declarant shall have the right to appoint and remove the members of the Board of Directors and the officers of the Association who do not have to be Unit Owners. The initial directors and officers of the Association shall be designated in the Articles, and such designation shall constitute the appointment of such persons by the Declarant. The initial directors and officers shall serve until their death, resignation or removal from office. Upon the termination of the Period of Declarant Control, the Unit Owners shall elect the Directors.

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

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



Return to:  
Miramonte Beaver, LLC  
102 S. Mike's Pike  
Flagstaff, AZ 86001

**DECLARATION OF COVENANTS,  
CONDITIONS, RESTRICTIONS AND EASEMENTS  
FOR  
THE VIEWS AT BUTLER**

Unofficial Copy

## ARTICLE 5 THE CONDOMINIUM ASSOCIATION

### 5.1 Rights, Powers and Duties of the Association.

5.1.1. The Association shall be the entity through which the Owners act. The Association shall be organized as a nonprofit Arizona corporation vested with the rights, powers and duties prescribed by law and set forth in the Condominium Documents and Condominium Act together with such rights, powers, and duties as may be implied and reasonably necessary to effectuate the same, including but not limited to including the management and maintenance of the Common Elements.

5.1.2. The Association shall have the right to finance capital improvements in the Condominium by encumbering future Assessments if such action is approved by the written consent or affirmative vote of Owners representing more than seventy-five (75%) of the votes in the Association.

### 5.2 Board of Directors and Officers.

5.2.1. The business of the Association shall be conducted by the Board and the Board officers as elected or appointed in accordance with the Bylaws. Unless the Condominium Documents or applicable laws specifically require a vote of the Members, approvals, or actions to be given or taken by the Association shall be valid if given or taken by the Board.

5.2.2. During the Period of Declarant Control, the Declarant shall have the right to appoint and remove the members of the Board and the officers of the Association, and such directors and officers do not have to be Owners.

5.2.3. The Declarant may voluntarily surrender the right to appoint and remove the members of the Board and the officers of the Association before the expiration of the Period of Declarant Control. In that event, the Declarant may require, for the duration of the Period of Declarant Control, that specified actions of the Association or the Board be approved by the Declarant before they become effective.

5.2.4. When the Period of Declarant Control expires, the Members shall elect the Board, a majority of whom must be Owners. The Board elected by the Owners shall then elect the officers of the Association.

5.3 **Management.** The Board may appoint or engage a manager or management company to be responsible for the day-to-day operation of the Association and the Common Elements.

5.4 **Committees.** The Board may appoint additional committees at its sole and absolute discretion.

5.5 **Personal Liability.** No Board member, officer, committee member, employee, representative of the Association, or the Association, shall be personally liable to any Owner, Occupant, or to any other Person, including the Association, for any damage, loss, costs, fees

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Recorded at the request of *Capital Title Agency Inc.*  
when recorded mail to  
OCOTILLO CENTRE PARTNERS LLC  
ATTN: Gerald J. Visconti  
22019 Vanowen Street, Suite A  
Canoga Park, California 91303

RE  
2004052717 BK 5056 PG 29  
OFFICIAL RECORDS OF MOHAVE COUNTY  
JOAN MC CALL, MOHAVE COUNTY RECORDER  
06/09/2004 03:25P PAGE 1 OF 50  
CAPITAL TITLE AGENCY INC  
RECORDING FEE 59.00

**CONDOMINIUM DECLARATION  
FOR  
OCOTILLO BUSINESS CENTER CONDOMINIUM ASSOCIATION**

Escrow No. 15032004

This Condominium Declaration recorded June 4, 2004 in Book 5049, Page 115 is being re-recorded to correct page 5, 1.2.36., to add the legal description, and to add Exhibit "C"- Site Plan.

Unofficial Copy

**5.5 Sprinkler System and Fire Alarm System.** In accordance with the requirements of applicable laws, each Building is equipped with a sprinkler system and a fire alarm system. The heads of the sprinkler system will intrude into the Units. All pipes, heads and other parts of the sprinkler system (whether located within or outside of a Unit) and all control panels, wiring and other components of the fire alarm system (whether located within or outside of a Unit) shall be part of the Common Elements and shall be maintained, repaired and replaced by the Association. If an Owner, Lessee or Occupant or their Invitees causes the sprinkler system or the fire alarm system to be activated (except in the case of a fire) or damages or destroys any part of the sprinkler system or the fire alarm system, the Owner of the Unit shall be responsible for the cost of any repairs to the sprinkler system or the fire alarm system made by the Association and for all other losses or damages resulting from such actions.

## 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 Owner 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 reasonably be 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 required a vote of the Members, the Board of Directors may act in all instances on behalf of the Association.

### **6.2 Directors and Officers.**

6.2.1. During the Period of Declarant Control, the Declarant shall have the right to appoint and remove the members of the Board of Directors and the officers of the Association who do not have to be Unit Owners. The initial directors and officers of the Association shall be designated in the Articles, and such persons, shall serve until their death, resignation or removal from office. Upon the termination of the Period of Declarant Control, the Unit Owners shall elect the Board of Directors, which must consist of at least three members, all of whom must be a Unit Owner but not more than one Unit Owner of a Unit may be in the Board of Directors at the same time. The Board of Directors elected by the Unit Owners shall then elect the officers of the Association.

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

Recording Requested By:  
Empire West Title Agency

And When Recorded Mail to:  
Douglas C Sandahl  
CK Cabins LLC  
PO Box 80316  
Phoenix, AZ 85060

61245EW

2.3

**AMENDED  
DECLARATION OF CONDOMINIUM AND OF  
COVENANTS, CONDITIONS, RESTRICTIONS  
AND EASEMENTS  
FOR  
CK CABINS CONDOMINIUM**

**DATED  
October 30, 2016**



upon demand, to the Association. The Association may enforce collection of any such amounts in the same manner and to the same extent as provided for in this Declaration for the collection of Assessments.

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

## ARTICLE IX

### THE ASSOCIATION; RIGHTS AND DUTIES; MEMBERSHIP

9.1 Rights, Powers and Duties of the Association. No later than the date on which the first Unit is conveyed to a Purchaser, the Association shall be organized as a nonprofit Arizona corporation. The Association shall be the entity through which the Unit Owners shall act. The Association shall have such rights, powers and duties as are prescribed by law and as are set forth in the Condominium Documents together with such rights, powers and duties as may be reasonably necessary to effectuate the objectives and purposes of the Association as set forth in this Declaration and the Condominium Act. The Association shall have the right to finance capital improvements in the Condominium by encumbering future Assessments if such action is approved by the written consent or affirmative vote of Unit Owners representing more than fifty percent (50%) of the votes in the Association and by Declarant during the Period of Declarant Control. Unless the Condominium Documents or the Condominium Act specifically require a vote of the Members, approvals or actions to be given or taken by the Association shall be valid if given or taken by the Board. The Association has the specific duty to make available to Declarant, Eligible Mortgage Holders, and Unit Owners during normal business hours, current copies of the Condominium Documents and other books, records and financial statements of the Association as may be requested from time to time by such parties. Such requests shall be in writing, and the Association shall have the right to charge for copying expenses and the reasonable cost of postage, shipping or transmission of the information requested.

9.2 Directors and Officers.

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

(B) Upon the termination of the Period of Declarant Control, the Unit Owners shall elect the Board of Directors which must consist of at least three (3) members, all of whom must be Unit Owners, or an individual designated by a corporation, partnership or other non-individual Unit Owner. The Board of Directors elected by the Unit Owners shall then elect the officers of the Association.

2008-05236

Page 1 of 45

Requested By: JACK H RUBIN

Wendy John, Graham County Recorder

07-11-2008 12:52 PM Recording Fee \$54.00

**When recorded return to:**

Jack Rubin

9502 North 106<sup>th</sup> Place

Scottsdale, Arizona 85258



fs

**CAPTION HEADING: DECLARATION OF  
CONDOMINIUM AND OF COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR CASA  
BLANCA CONDOS, PHASE 1**

**DO NOT REMOVE**

**This is part of the official document.**

UNOFFICIAL DOCUMENT

maintenance of the concrete slabs or finished flooring of, the patio areas and/or balcony areas (except for repair to the structural portions thereof); (ii) maintenance, repair and replacement of all doors and windows of the Unit, including Entrance Area doors; and (iii) the air conditioning unit (including compressors and condensers), heater and hot water heater servicing the Unit and, to the extent not included within the categories described in this Section 5.1(B), the Limited Common Elements of the type described in Sections 2.1 (B) and (D) above. No Unit Owner may paint or change the exterior color scheme or surfacing materials of his patio areas or balcony areas or any portion of the Limited Common Elements allocated to his Unit visible from the Common Elements or any other Unit without the prior written consent of the Board.

(C) Each Unit Owner shall take all necessary action to keep his Unit and the Limited Common Elements which he is obligated to maintain under this Section 5.1 dean and free from unsightly accumulations of trash, furniture in weathered or poor condition, and litter.

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

5.3 Unit Owner's Failure to Maintain. If a Unit Owner fails to maintain in good condition and repair his Unit or any Limited Common Element which he is obligated to maintain under this Declaration in the manner set forth in this Declaration and the required maintenance, repair or replacement is not performed within thirty (30) days after written notice has been given to the Unit Owner by the Association, the Association shall have the right, but not the obligation, to perform the required maintenance, repair or replacement. The cost of any such maintenance, repair or replacement shall be assessed against the nonperforming Unit Owner pursuant to Section 7.1(E) of this Declaration.

## ARTICLE 6 THE ASSOCIATION; RIGHTS AND DUTIES; MEMBERSHIP

6.0 Rights, Powers and Duties of the Association. No later than the date on which the first Unit is conveyed to a Purchaser, the Association shall be organized as a nonprofit Arizona corporation. The Association shall be the entity through which the Unit Owners shall act. The Association shall have such rights, powers and duties as are prescribed by law and as are set forth in the Condominium Documents together with such rights, powers and duties as may be reasonably necessary to effectuate the objectives and purposes of the Association as set forth in this Declaration and the Condominium Act. The Association shall have the right to finance capital improvements in the Condominium by encumbering future Assessments if such

When recorded return to:  
7135 W. Manchester Ave  
Suite 6 Westchester CA 90045  
(Final Recording)



2008-00602  
Page 1 of 39  
Requested By: DEVRIK WILLIAMS  
SHELLY D BAKER, RECORDER  
OFFICIAL RECORDS OF LA PAZ COUNTY, AZ  
02-08-2008 02:35 PM Recording Fee \$46.00

**DECLARATION OF CONDOMINIUM  
AND  
COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
INSIGHT/OUT LIVING CONDOMINIUMS  
Amends-2008-00369**

**THIS DECLARATION OF CONDOMINIUM AND OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR INSIGHT/OUT LIVING CONDOMINIUMS** is made this 6<sup>th</sup> day of February, 2008 by **INSIGHT/OUT LIVING, LLC**, an Arizona limited liability company (the "Declarant").

**WITNESSETH:**

**WHEREAS**, the Declarant is the fee owner of that certain real property situated in Parker, La Paz County, Arizona, described on Exhibit "A" attached hereto.

**WHEREAS**, Declarant desires to develop the subject property, together with all Buildings and improvements now or hereafter constructed on the property, and all easements and rights appurtenant thereto (hereinafter collectively referred to as "the Property") as a residential condominium, and

**WHEREAS**, Declarant desires to establish for its own benefit and for the mutual benefit of all future Owners who hold their interest subject to this Declaration, which is recorded in furtherance of establishing the general plan of condominium ownership for the Property and for establishing rules for the use, occupancy and management thereof, all for the purpose of enhancing and protecting the value, utility, desirability, and attractiveness of the Property.

**ARTICLE 1  
DEFINITIONS**

1.0 General Definitions. Capitalized terms 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 the same may be amended from time to time (the "Condominium Act").

adjacent to the rear wall of the Garage.

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

5.3 Unit Owner's Failure to Maintain. If a Unit Owner fails to maintain in good condition and repair his Unit or any Limited Common Element which he is obligated to maintain under this Declaration or to keep the Garage in the manner set forth in this Declaration and the required maintenance, repair or replacement is not performed within thirty (30) days after written notice has been given to the Unit Owner by the Association, the Association shall have the right, but not the obligation, to perform the required maintenance, repair or replacement. The cost of any such maintenance, repair or replacement shall be assessed against the nonperforming Unit Owner pursuant to Section 7.1 (E) of this Declaration.

**ARTICLE 6  
THE ASSOCIATION; RIGHTS AND  
DUTIES; MEMBERSHIP**

6.0 Rights, Powers and Duties of the Association. No later than the date on which the first Unit is conveyed to a Purchaser, the Association shall be organized as a nonprofit Arizona corporation. The Association shall be the entity through which the Unit Owners shall act. The Association shall have such rights, powers and duties as are prescribed by law and as are set forth in the Condominium Documents together with such rights, powers and duties as may be reasonably necessary to effectuate the objectives and purposes of the Association as set forth in this Declaration and the Condominium Act. The Association shall have the right to finance capital Improvements in the Condominium by encumbering future Assessments if such action is approved by the written consent or affirmative vote of Unit Owners representing more than fifty percent (50%) of the votes in the Association and by Declarant during the Period of Declarant Control. Unless the Condominium Documents or the Condominium Act specifically require a vote of the Members, approvals or actions to be given or taken by the Association shall be valid if given or taken by the Board. The Association has the specific duty to make available to the Declarant, Eligible Mortgage Holders, Unit Owners, and Eligible Insurers or Guarantors during normal business hours, current copies of the Condominium Documents and other books, records and financial statements of the Association as may be requested from time to time by such parties. Such requests shall be in writing, and the Association shall have the right to charge for copying expenses and the reasonable cost of postage, shipping or transmission of the information requested.

F. ANN RODRIGUEZ, RECORDER  
RECORDED BY: GPL  
DEPUTY RECORDER  
1008 PE4

W  
TUCSON CITY CLERK  
PICK UP



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PAGE: 260  
NO. OF PAGES: 56  
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08/07/2003  
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GOLDSCHMIDT LAW FIRM  
4558 N. First Avenue  
Suite 150  
Tucson, Arizona 85718-5607

***DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS***

***FOR***

***STONE CURVES CONDOMINIUM***

**5.2 Duties of Unit Owners.** Each Unit Owner shall maintain, repair and replace, at his own expense, all portions of his Unit. In addition, each Unit Owner shall be responsible for the maintenance and repair of the Limited Common Elements allocated to his Unit pursuant to Subsections 2.8.1(a) and (b); the exterior doors and door frames and windows allocated to the Unit as Limited Common Elements pursuant to Section 2.8.1(c) and the frames and glass for such windows and the hardware for the exterior doors; the interior of the patio allocated to the Unit by Subsection 2.8(d), as well as any walls enclosing the patios allocated to the exclusive use of the Unit.

**5.3 Repair or Restoration Necessitated by Owner.** Each Unit 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 Unit Owner. The cost to the Association of any such repair, maintenance or replacements required by such act of a Unit Owner shall be paid by the Unit Owner, upon demand, to the Association. The Association may enforce collection of any such amounts in the same manner and to the same extent as provided for in this Declaration for the collection of Assessments.

**5.4 Unit Owner's Failure to Maintain.** If a Unit Owner fails to maintain in good condition and repair his Unit or any Limited Common Element which he is obligated to maintain under this Declaration and the required maintenance, repair or replacement is not performed within fifteen (15) days after written notice has been given to the Unit Owner by the Association, the Association shall have the right, but not the obligation, to perform the required maintenance, repair or replacement. The cost of any such maintenance, repair or replacement shall be assessed against the nonperforming unit Owner pursuant to Subsection 7.2.4 of this Declaration.

## ARTICLE 6.

### THE ASSOCIATION; RIGHTS AND DUTIES; MEMBERSHIP

**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 written consent or affirmative vote of Unit Owners representing at least eighty percent (80%) of the votes in the Association. Unless the Condominium Documents or the

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

6.2 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 any area by any Unit Owner, by the family of such Unit Owner, or by any invitee, licensee or lessee of such Unit Owner.

6.3 Composition of Members. Each Unit Owner shall be a Member of the Association. The membership of the Association at all times shall consist exclusively of all the Unit Owners. Membership in the Association shall be mandatory. A Unit Owner shall automatically, upon becoming a Unit Owner, be a member of the Association and shall remain a member of the Association until such time as his/her ownership ceases for any reason, at which time his/her 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 7. ASSESSMENTS

7.1 Preparation of Budget. An annual budget shall be prepared under the supervision of the Treasurer and the Budget Committee. The Board of Directors shall present the budget to the annual meeting of the Association.

7.1.2 Contents of Budget. The budget shall clearly state the projects and maintenance items to be performed during the coming year and their estimates of cost. The budget shall contain:

7.1.2.1 estimated revenue and expenses 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; and (C) the amount required to render to the Unit Owners all services required to be rendered by the Association under the Condominium Documents; and