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Sidney Y. Kohn
1200 N. El Dorado Place, Suite H-810
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CONDOMINIUM DECLARATION
FOR
COSTA DEL SOL CONDOMINIUMS

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**CONDOMINIUM DECLARATION
FOR
COSTA DEL SOL CONDOMINIUMS**

This Condominium Declaration for Costa Del Sol Condominiums is made this 25 day of May, 2006, by WGA North Euclid Avenue, L.P., a California limited partnership.

RECITALS:

A. Declarant is the owner of that certain real property situated in the County of Pima, Arizona, which is more particularly described in Exhibit A (the "Parcel").

B. Declarant desires to establish for its own benefit and for the mutual benefit of all future Occupants (as defined below) of the Condominium (as defined below) created by this Declaration, certain covenants, conditions, restrictions, easements, rights, privileges, assessments and liens, as set forth herein, which shall run with and be a burden upon the Parcel.

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

D. Declarant desires to submit and subject the Parcel, together with all Improvements now or subsequently constructed or located thereon, and all easements and rights appurtenant thereto, to a condominium plan of description and ownership pursuant to the Condominium Act (as defined below).

NOW THEREFORE, Declarant, for the purposes hereinafter set forth, hereby incorporates the foregoing Recitals into this Declaration and declares as follows:

**ARTICLE 1
DEFINITIONS**

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

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

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

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1.3. "**Assessment Lien**" means the lien granted to the Association by the Condominium Act to secure the payment of Regular Assessments, Special Assessments, late charges on the Regular and Special Assessments, and reasonable attorney's fees and costs incidental thereto.

1.4. "**Association**" means Costa Del Sol Condominiums Maintenance Corporation, an Arizona nonprofit corporation, its successors and assigns.

1.5. "**Balcony**" means a portion of the Limited Common Elements designated as a balcony on the Plat.

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

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

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

1.9. "**City**" means the City of Tucson.

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

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

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

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

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

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

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

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

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

(g) taxes paid by the Association;

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

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

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

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

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

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

1.17. "**Declarant**" means WGA North Euclid Avenue, L.P., a California limited partnership, and its successors and any Person to whom it may transfer any Special Declarant Right by a Recorded instrument.

1.18. "**Declaration**" means this Condominium Declaration for Costa Del Sol Condominiums, as amended from time to time.

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

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

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

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

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

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

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

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

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

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

1.25. "**Improvement**" means any physical structure, fixture or facility existing or constructed, placed, erected or installed on the land included in the Condominium, including, but not limited to, Buildings, private drives, paving, fences, walls, sculptures, signs, hedges, plants, trees and shrubs of every type and kind.

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

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

1.28. "**Laundry Room**" means the Common Element designated as such in the Plat.

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

1.30. "**Limited Common Elements**" means a portion of the Common Elements specifically designated in this Declaration or the Plat 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.

1.31. "**Maintenance Room**" means the Common Element designated as such in the Plat.

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

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

1.34. "Office" means the Common Element designated as such in the Plat.

1.35. "Owner" or "Unit Owner" means the record owner, whether one or more Persons, of beneficial or equitable title (and legal title if the same has merged with the beneficial or equitable title) to the fee simple interest of a Unit. "Owner" or "Unit Owner" shall not include Persons having an interest in a Unit merely as security for the performance of an obligation, or a Lessee or tenant of a Unit. "Unit Owner" shall include a purchaser under a contract for the conveyance of real property, a contract for deed, a contract to convey, an agreement for sale or any similar contract subject to A.R.S. § 33-741, *et seq.* "Unit Owner" shall not include a purchaser under a purchase contract and receipt, escrow instructions or similar executory contracts which are intended to control the rights and obligations of the parties to executory contracts pending the closing of a sale or purchase transaction. In the case of Units the fee simple title to which is vested in a trustee pursuant to A.R.S. § 33-801, *et seq.*, the Trustor shall be deemed to be the Unit Owner.

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

1.37. "Parking Space" means a portion of the Limited Common Elements intended for the parking of a single motor vehicle and identified on the Plat as a parking space, which are hereby designated for the use of the Unit Owners to which such spaces are assigned in accordance with the provisions of this Declaration, and, their guests, Lessees, and invitees. Unit Owners (or their Lessees, if applicable) must solely use the assigned Parking Spaces, if any, for parking their vehicles.

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

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

1.40. "Plat" means the condominium plat for Costa Del Sol Condominiums, recorded in Book 61, at page 41 of Maps and Plats, in the official records of the County Recorder of Pima County, Arizona, and any amendments, supplements or corrections thereto.

1.41. "Pool" means the Common Elements designated as such on the Plat.

1.42. "Purchaser" means any Person (other than a Declarant) who becomes a Unit Owner.

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

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

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

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

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

1.47. "Special Assessments" means the assessments that may be levied against Units pursuant to Section 7.3.

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

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

2.1 Submission of Property. The Declarant is the owner of fee title to the Parcel. Declarant hereby submits the Parcel to the provisions of the Condominium Act for the purpose of creating a condominium in accordance with the provisions of the Condominium Act and hereby declares that the Parcel shall be held and conveyed subject to the terms, covenants, conditions and restrictions set forth in this Declaration. The Declarant designates each Unit for separate ownership or occupancy. Declarant further declares that all of the easements, restrictions, conditions and covenants in this Declaration shall run with the Parcel and shall be

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binding upon and inure to the benefit of the Declarant and all Unit Owners, Lessees and Occupants and all other Persons having or acquiring any right, title or interest in the Condominium or any part thereof, their heirs, successors, successors in title and assigns. Each Owner or other Person who acquires any right, title or interest in the Condominium, or any part thereof, agrees to abide by all of the provisions of the Condominium Documents. This Declaration shall be binding upon and shall be for the benefit of and enforceable by the Association. Declarant makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of the Condominium Documents, or as to the compliance of any of the provisions of the Condominium Documents with public laws, ordinances and regulations applicable thereto.

2.2 Name of Condominium. The name of the Condominium created by this Declaration is Costa Del Sol Condominiums.

2.3 Name of Association. The name of the Association is the Costa Del Sol Condominiums Maintenance Corporation.

2.4 Identifying Numbers of Units. The Identifying Numbers of the Units are Units 101 to 144 and 201 to 244.

2.5 Unit Boundaries.

2.5.1 The boundaries of each Unit are as follows: (a) the vertical boundaries are the interior unfinished surfaces of the perimeter walls, doors and windows of the Unit; (b) the lower horizontal boundary is the unfinished floor of the lowest level of the Unit; and (c) the upper horizontal boundary is the unfinished ceiling of the Unit. A description of the boundaries of each Unit and each Unit's identifying number is as more particularly set forth on the Plat. Each Unit shall include all openings and outlets of all utility installations in the Unit. All lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the finished surfaces of the walls or floor are part of the Unit, and all other portions of the walls and floor are part of the Common Elements. All spaces, interior partitions and other fixtures and improvements (including, but not limited to, chutes, flues, wires, conduits, heating and air conditioning unit, hot water heaters and cable television, water, sewer and electric pipes, lines or meters) within the boundaries of a Unit and which serve only the Unit are part of the Unit, and any such fixtures or improvements located within the boundaries of a Unit but which serve more than one Unit are part of the Common Elements. All fixtures (including, but not limited to, chutes, flues, wires, conduits, heating and air conditioning unit, hot water heaters and cable television, water, sewer and electric pipes, lines or meters) located outside of a Unit which serve only the Unit are part of the Unit and are the Unit Owner's responsibility up to the point where any such fixture breaks to serve more than one Unit, at which point any such fixture becomes a part of the Common Area and the responsibility of the Association. In the event of any inconsistency or conflict between the provisions of this Subsection 2.5.1 and the Plat in regard to the description of the boundaries of the Unit, this Section shall control.

2.5.2 Declarant reserves the right to relocate the boundaries between adjoining Units owned by the Declarant and to reallocate each such Unit's Common Element Interest, votes

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in the Association and Common Expense Liabilities subject to and in accordance with A.R.S. § 33-1222.

2.6 Allocation of Common Element Interest and Common Expense Liabilities.

Each Unit is allocated a 1.1364% of undivided interest in the Common Elements. The Common Element allocation is based upon a fraction, the numerator is one (1) and the denominator is eighty eight (88), being the total number of Units in the Condominium. The allocation of Common Expenses is as set forth on Exhibit B. The Common Expense allocation is based upon a fraction, the numerator of which is one (1), and the denominator is eighty eight (88). The percentage of interest of each Unit in the Common Elements shall be an undivided interest, and the Common Elements shall be owned by the Unit Owners as tenants in common in accordance with their respective percentages of interest. The ownership of each Unit shall not be conveyed separate from the percentage of interest in the Common Elements allocated to the Unit. The undivided percentage of interest in the Common Elements allocated to any Unit shall always be deemed conveyed or encumbered with any conveyance or encumbrance of that Unit, even though the legal description in the instrument conveying or encumbering the Unit may refer only to the fee title to the Unit. Except as permitted by the Condominium Act, the Common Elements are not subject to partition, and any purported conveyance, encumbrance, judicial sale or other voluntary or involuntary transfer of an undivided interest in the Common Elements made without the Unit to which that interest is allocated is void.

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

2.8 Allocation of Limited Common Elements.

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

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

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

(c) Each Unit is allocated the Balcony adjoining the Unit as shown on the Plat. The boundaries of each Balcony shall be as follows: (i) the lower boundary shall be the unfinished floor of the Balcony; (ii) the upper boundary shall be the unfinished ceiling of the Balcony or, to the extent there is no ceiling, to the unfinished ceiling of the interior of the Unit;

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meet quality of construction standards and current applicable building codes. Pursuant to A.R.S. § 33-1215(B), attached hereto as Exhibit B is a letter from the City of Tucson stating that no building permits for the property are available. Declarant is not able to ascertain the name and address of the original owner, builder, developer and general contractor as no building permits for the construction of the original multi-family improvements to Parcel can be located.

The name and address of each owner of the Parcel since 1968, as determined by a search of the records of the County Recorder of Pima County, is as follows:

<u>Name</u>	<u>Address</u>
Tucson Townhouse Corporation, an Arizona corporation	Address unknown
Euclid Terrace Townhouse Company, a limited partnership	Address unknown
Mary W. Hauer, Edward G. West, Tilgham West and Vincent West	Address unknown
Edward G. West and Mary L. West, Trustees U/T/A dated April 28, 1973	Address unknown
Euclid Terrace Townhouse Company, a California partnership	Address unknown
MAG V, Inc., a California corporation	2565 Camino Del Rio S San Diego, CA 92108
Raymond D. Sabin, Trustee of the Raymond D. Sabin Trust Under Declaration of Trust dated October 10, 1986 as to an undivided 86% interest, and Lois D. Boyett and Sue Boyett, husband and wife	Address unknown
Arizona Commons, Inc., an Arizona corporation	9747 Business Park Avenue #208 San Diego, CA 92131
WGA North Euclid Avenue, L.P., a California limited partnership	9252 Chesapeake, Suite 100 San Diego, CA 92123

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

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2.10 Disclaimer of Representations. No representations or warranties of any kind, express or implied, have been given or made by 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, taxes or regulation thereof, except as specifically and expressly set forth in this Declaration, or in a Public Report for the Condominium issued to Declarant by the Arizona Department of Real Estate, or in any written contract with a prospective Purchaser executed by Declarant. Declarant further makes no warranties, express or implied, about the existing or future soil or environmental conditions on or adjacent to the Condominium, including possible present or future pollution of the air, water or soil from any sources, including but not limited to, power lines, radon gas, or underground migration or seepage of hazardous substances or other pollutants. Declarant expressly disclaims any liability for any type of damage, whether direct, indirect or consequential, which the Condominium or the Owners and Occupants, their family members and Invitees, may suffer because of any existing or future environmental or other conditions in or adjacent to the Condominium. Declarant reserves the right to make substitutions of equal or better quality for any flooring, countertop, appliance, or other Owner-selection items, and to any other improvements, fixtures, equipment or building materials if original selected or specified items are discontinued, unavailable to enable construction to occur or for other reasons deemed appropriate by Declarant in its sole and absolute discretion.

ARTICLE 3 EASEMENTS AND DEVELOPMENT RIGHTS

3.1 Utility Easement. There is hereby granted and created an easement upon, across, over and under the Common Elements and the Units for the installation, replacement, repair or maintenance of utility lines and systems, including, but not limited to, natural gas, water, sewer, telephone, electricity and cable television or other communication lines and systems. By virtue of this easement, it shall be expressly permissible for the providing utility or service company, the Association or the Declarant to install and maintain the necessary utility lines, pipes, facilities and equipment on the Common Elements and the Units, but no sewer lines, natural gas lines, electrical lines, water lines, or other utility or service lines or facilities may be installed or located on the Common Elements or the Units except as initially designed, approved and constructed by the Declarant or as approved by the Board of Directors. This easement shall in no way affect any other recorded easements on the Common Elements.

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

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3.3 Unit Owners' Easements of Enjoyment.

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

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

(b) The right of the Association to convey the Common Elements or subject the Common Elements to a mortgage, deed of trust, or other security interest, if such action is approved by Owners entitled to cast at least eighty percent (80%) of the votes in the Association. Provided, however, that all Owners of Units to which any Limited Common Element is allocated must agree in order to convey that Limited Common Element or subject it to a mortgage, deed of trust or security interest. Any such action by the Association shall be done in the manner and subject to the limitations set forth in the Condominium Act;

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

(d) The right of the Association to grant exclusive or non-exclusive licenses to the maintenance building comprising a portion of the Common Elements to maintenance, landscaping, pool or building contractors, subcontractors or materialmen;

(e) The right of Declarant during the Period of Declarant Control and, thereafter, the Board of Directors, to transfer, license or lease any Parking Space to any Unit Owner, Occupant or otherwise to any agent or employee of Declarant or the Board of Directors;

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

(g) The right of the Association to suspend the right of an Owner, Lessee or Occupant to use the Common Elements for any period during which the Owner, Lessee or Occupant is in violation of any provision of the Condominium Documents;

(h) Notwithstanding the provisions of Subsection 3.3.1 to the contrary, if a Unit is leased or rented, the Lessee and the other Occupants of the Unit shall have the right to use any recreational amenities which are part of the Common Elements during the term of the lease, and the Unit Owner shall have no right to use such recreational amenities until the termination or expiration of the lease;

(i) The guests of any Owner, Lessee or Occupant entitled to use the Common Elements pursuant to this Section 3.3 may use the Common Elements provided they are accompanied by a Member, Lessee or Occupant entitled to use the Common Elements pursuant to this Section 3.3 and must follow the Rules. The Board of Directors shall have the right to

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limit the number of guests who may use the Common Elements at any one time and may restrict the use of the Common Elements by guests to certain specified times.

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

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

3.4 Declarant's Rights and Easements.

3.4.1 Declarant shall have the right and an easement to maintain sales or leasing offices, management offices, storage areas, models and related facilities throughout the Condominium, and to maintain one or more marketing, directional or advertising signs on the Common Elements so long as the Declarant is marketing Units in the Condominium. Declarant reserves the right to maintain models, management offices, storage areas and sales and leasing offices in any Units owned or leased by Declarant and on any portion of the Common Elements in such number, of such size and in such locations as Declarant deems appropriate. During its period of exclusive use of the sales or leasing offices, management offices, storage areas, models and related facilities, Declarant will be responsible for all costs and expenses associated therewith. Declarant may from time to time relocate models, storage areas, management offices and sales and leasing offices to different locations within the Condominium. Declarant shall have the right and an easement to install or post signs, flags and banners on the Common Elements in connection with its marketing of Units. Some employees, agents or contractors of the Declarant or of the Association may temporarily reside in Units owned by the Declarant, but such Units shall not be deemed converted to Common Elements and such Units will not be conveyed to the Association.

3.4.2 So long as Declarant is marketing Units in the Condominium, Declarant shall have the right to restrict the use of the Parking Spaces. Such right shall include reserving such Parking Spaces for use by prospective Purchasers, Declarant's employees and others engaged in sales, leasing, maintenance, construction or management activities.

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

3.4.4 Declarant and its employees, agents, contractors and subcontractors shall have the right and an easement on, over and across the Common Elements and the Units to erect and construct the Common Elements and the Units shown on the Plat and all other

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Improvements the Declarant may deem appropriate and to use the Common Elements and any Units owned by Declarant for construction or renovation related purposes including the storage of tools, machinery, equipment, building materials, appliances, supplies and fixtures, and the performance of work in the Condominium.

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

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

3.4.7 To the extent not expressly reserved by or granted to Declarant by other provisions of this Declaration, Declarant hereby reserves all Development Rights and Special Declarant Rights as defined in the Condominium Act.

3.4.8 The Declarant shall have the right to the exclusive use, without charge, of any portion of any of the facilities within the Common Elements on a short term basis for employee meetings, administrative purposes, special events or any other purpose, subject to the following: (a) the availability of the facilities at the time a request is submitted by Declarant to the Association; and (b) the Declarant shall return the facilities to the Association in the same condition as existed prior to Declarant's use thereof.

3.4.9 In the event of any conflict or inconsistency between this Section 3.4 and any other provision of the Condominium Documents, this Section 3.4 shall control and prevail over such other provisions. The rights of the Declarant set forth in this Section 3.4 shall be enforceable by injunction, by any other remedy available at law or in equity and/or by any means provided in this Declaration.

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

3.5 **Easements and Rights of the Association for Pest Control.** Each Unit shall be subject to an easement in favor of the Association and the agents, employees and contractors of the Association for the purpose of performing such pest control activities as the Association may deem necessary to control or prevent the infestation of the Condominium by insects, rodents or other pests or to eradicate insects, rodents or other pests from the Condominium. The Association may cause the temporary removal of any Owner, Lessee or Occupant for such periods and at such times as necessary for prompt, effective treatment of wood-destroying pests

or organisms. The cost of the temporary relocation is to be borne by the Owner of the Unit affected. Not less than fifteen (15) days nor more than thirty (30) days notice of the need to temporarily vacate shall be given to occupants and to the Owner of the Unit affected. The notice shall state: (a) the reason for the temporary relocation; (b) the date and time of the beginning of the treatment; (c) the anticipated date and time of termination of treatment; and (d) that the Owner, Lessee or Occupant will be responsible for their own accommodations during the temporary relocation.

3.6 Common Elements Easement in Favor of Unit Owners and Declarant.

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

(a) For the installation, repair, maintenance, use, removal or replacement of pipes, ducts, heating and air conditioning systems, electrical, telephone and other communication wiring and cables and all other utility lines and conduits which are a part of or serve any Unit and which pass across or through a portion of the Common Elements; provided that the installation, repair, maintenance, use, removal or replacement of any such item does not unreasonably interfere with the common use of any part of the Common Elements, adversely affect either the thermal or acoustical character of the Building or impair or structurally weaken the Building.

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

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

3.6.2 Notwithstanding any other provision of this Declaration to the contrary, no Owner, Lessee or Occupant or any other Person (except for the Association) shall penetrate, alter or damage any part of the Common Elements, including but not limited to, the perimeter walls of the Units. Penetrating the perimeter walls of the Units could damage any soundproofing and/or waterproofing of the Units.

3.7 **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 Declarant, the Association, and their respective directors, officer, agents, employees and independent contractors:

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

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

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

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

(e) For inspection of the Units and the Limited Common Elements in order to verify that the provisions of the Condominium Documents and any maintenance manuals (interior and exterior manuals) and termite reports are being complied with by the Unit Owners, Lessees and Occupants of the Unit.

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

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

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

3.10 Easement for Inspection by Declarant. The Common Elements are hereby made subject to the following easement in favor of the Declarant, its members, agents,

employees and independent contractors: (a) for inspection of the Common Elements in order to verify the performance of the Association of all items of maintenance and repair for which they are responsible pursuant to the Condominium Documents, any maintenance manuals (interior and exterior manuals), termite reports, and reserve studies, and maintenance program that was delivered by the Declarant to the Association; (b) for inspection, maintenance, repair and replacement of the Common Elements or the Limited Common Elements; (c) for correction of conditions (including without limitation, broken or leaky water pipes, broken sewer lines, replacement of roofs, repair of exterior surfaces, maintenance of parking lot and swimming pool, landscape equipment, etc.) which have been damaged or if left uncorrected could damage the Common Elements, including those that may affect the same due to the failure on the part of the Unit Owners to perform their obligations under Section 5.2 hereof. If and to the extent the Declarant elects to perform any maintenance or make any repairs or replacements, the appropriate party, either the Association as to the Common Elements, or the Unit Owner as to the Unit and the Limited Common Elements allocated to their Unit, shall reimburse Declarant within seven (7) days after receipt of written notice therefore is delivered by the Declarant to the party owing the amount. If not repaid within the specified time period, then that amount together with interest thereon at the lesser of twelve percent (12%) per annum or the maximum legal rate, plus any and all costs, including attorneys' fees, incidental to the collection of the same shall be paid by the party failing to repay the referenced amount.

ARTICLE 4 USE AND OCCUPANCY RESTRICTIONS

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

4.2 Antennas. No antenna, satellite television dish or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation shall be installed, used or maintained on any portion of the Condominium whether attached to the Building or otherwise without the prior written approval of the Board of

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liability insurance in such amounts as may be required by the Board of Directors. The Owner shall be obligated to designate Declarant, the Association, the Board of Directors and any other Person designated by the Board of Directors as additional insureds under the policies. The Owner shall be responsible for all costs incurred by the Board of Directors in connection with the Board of Director's review of proposed changes to the Owner's Unit, including, without limitation, all costs of architects, engineers and other professionals, which may be retained by the Board of Directors to assist in their review. Any such costs not timely paid by the Unit Owner shall be deemed an Individual Expense Assessment.

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

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

4.4 **Trash Containers and Collection.** No rubbish, trash or garbage shall be placed or kept on the Common Elements except in covered containers of a type, size and style, which are approved by the Board of Directors. All rubbish, trash and garbage shall be regularly removed from the Units by the Owners, Lessees or Occupants thereof. All trash, garbage or

rubbish must be kept in sanitary containers and must be bagged and deposited in designated trash receptacles. The Rules may contain provisions governing the disposal of trash, garbage and rubbish in the Condominium.

4.5 Animals. Except as expressly permitted by this Section no animals, birds, reptiles, fish, fowl, poultry or livestock shall be maintained or kept in any Unit or on any other portion of the Condominium. Two (2) Permitted Pets may be kept or maintained in a Unit if kept, bred or raised solely as a domestic pet and not for commercial purposes, and further provided that the Unit Owner shall first obtain the consent and approval of the Association prior to bringing or keeping any Permitted Pet in the Condominium Project. For purposes of this Section, a "Permitted Pet" shall mean a dog, cat, fish or bird of a variety commonly kept as a household pet. Provided, however, that no breed of dog shall be kept by any Unit Owner in the Condominium that (i) could cause cancellation of any homeowners' liability, or Association insurance policy, or (ii) weighs seventy-five (75) or more pounds (lbs.). No Permitted Pet shall be allowed to make an unreasonable amount of noise, cause an odor, which is detectable outside the Unit, or be an annoyance to a person of ordinary sensibilities. All dogs shall be kept on a leash when outside a Unit and all dogs shall be directly under the control of the Owner, Lessee or Occupant at all times. Any person bringing a dog onto the Common Elements shall immediately remove any feces deposited on the Common Elements by the dog. Any Unit where a Permitted Pet is kept or maintained shall at all times be kept in a neat and clean condition. No structure for the care, housing, confinement, or training of any Permitted Pet shall be maintained on any portion of the Common Elements or in any Unit so as to be visible from the exterior of the Building or any other Unit. Upon the written request of any Owner, the Board of Directors shall determine whether, for the purposes of this Section, a Permitted Pet makes an unreasonable amount of noise, causes an odor which is detectable outside the Unit or is an annoyance to a person of ordinary sensibilities. The Association shall have absolute discretion to permit or deny the keeping of any pet by any Unit Owner. The Board of Directors shall have the right to adopt, amend and repeal Rules governing the keeping of Permitted Pets in the Condominium, and such Rules may include limitations on the height and/or weight of Permitted Pets.

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

4.7 Motor Vehicles. Except for emergency repairs, no automobile, motorcycle, motorbike or other motor vehicle shall be constructed, reconstructed, serviced or repaired on any portion of the Condominium, and no inoperable vehicle may be stored or parked on any portion of the Condominium. No automobile, motorcycle, motorbike or other motor vehicle shall be permitted in the Condominium if it is leaking, in serious or unsafe disrepair, renders emissions that exceed any City or state law, or that would constitute a nuisance (including, but not limited to, a loud engine or stereo equipment played at an unreasonable pitch). No Unit Owner's, Lessee's or Occupant's automobile, motorcycle, motorbike or other motor vehicle shall be parked upon any part of the Condominium, except in the Parking Space assigned to the Unit.

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4.8 Towing of Vehicles. The Condominium has a sufficient number of Parking Spaces to accommodate the assignment of only one Parking Space to each and every Unit. As such, the Board of Directors shall have the right to have any vehicle, automobile, sport utility vehicle, van, truck, recreational vehicle, motorcycle, motorbike, trailer, or other motor vehicle parked, kept, maintained, constructed, reconstructed or repaired in violation of the Condominium Documents towed away at the sole cost and expense of the owner of the vehicle. Any expense incurred by the Association in connection with the towing of any vehicle shall be paid to the Association upon demand by the owner of the vehicle.

4.9 Signs. No signs (including, but not limited to, "For Sale" or "For Rent" signs) shall be permitted on the exterior of a Building or in the interior of a Unit if the signs would be visible from the exterior of the Building, or on any other portion of the Condominium without the prior written approval of the Board of Directors or otherwise pursuant to a written sign placement policy adopted by the Board of Directors. Political signs may be displayed by Unit Owners no earlier than forty five (45) days before the day of election and removed no later than seven (7) days following the election, and shall comply with any ordinance of the City of Tucson with respect to the number and size of political signs. If the City of Tucson has no ordinance regulating the number and/or size of political signs on residential property, then each Unit Owner will be permitted to place on their Unit only one (1) political sign if the number is not regulated, and/or with a maximum size of 24" by 24" if the size is not regulated.

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

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

4.12 Window Coverings. No reflective materials, including, but without limitation, aluminum foil, reflective screens or glass, mirrors or similar items, shall be installed or placed upon the outside or inside of any windows of a Unit without the prior written approval of the Board of Directors. Except for tinting which is part of the original construction of the Building, window tinting is prohibited.

4.13 Balconies. No furniture, furnishings, umbrellas or plants shall be kept or maintained on any Balcony. Except for gas operated barbeque grills, no other fire producing apparatus, including, but not limited to, wood or charcoal barbeque grills, hibachi grills, tiki torches, gas lamps, chimineas, fire pits, deep fryers, space heaters, etc. shall be kept or used on any Balcony. No astro turf, carpet or other floor covering shall be installed in any Balcony without the prior written approval of the Board of Directors. No Balcony shall be used as a storage area for items or materials that are not customarily intended for use on a Balcony, such as

the use of a Balcony to store bicycles or exercise equipment. No clotheslines, linens, blankets, rugs, swimsuits or any other articles whatsoever may be hung from any Balcony.

4.14 Rental of Units. No Owner may lease less than his entire Unit. All leases must be in writing and must provide that the terms of the lease are subject in all respects to the provisions of this Declaration and the Rules and that any violation of this Declaration or the Rules by the Lessee or the other Occupants shall be a default under the lease. There shall be no subleasing of Units or assignments of leases. Except for Units owned by Declarant, no leasing of any Unit shall be permitted if such lease would cause the Condominium to be occupied by less than seventy percent (70%) of Owner-occupied Units or seasonal second home Owners (and qualify as such under Internal Revenue rules and regulations). At least ten (10) days before commencement of the lease term, the Owner shall provide the Association with a copy of the signed lease and the following information: (a) the commencement date and expiration date of the lease term; (b) the names of each of the Lessees and each other person who will reside in the Unit during the lease term; (c) the address and telephone number at which the Owner can be contacted by the Association during the lease term; and (d) the name, address and telephone number of a person whom the Association can contact in the event of an emergency involving the Unit. Any Owner who leases his Unit must provide the Lessee with copies of this Declaration and the Rules. The Owner shall be liable for any violation of this Declaration or the Rules by the Lessees or other persons residing in the Unit and their guests or invitees and, in the event of any such violation, the Unit Owner, upon demand of the Association, shall immediately take all necessary actions to correct any such violations. The Board of Directors may from time to time adopt such additional rules and requirements concerning leases as it deems proper. The foregoing provisions notwithstanding, Declarant makes no representation or warranty that it will complete the sale of all Units or otherwise that it will continue to market the Units for sale to third party purchasers. Declarant shall have the right, in its sole and absolute discretion, to cease sales of Units and to instead operate the Units owned by it or its successors in title as apartment rentals.

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

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

4.17 Noise Reduction. No Owner, Lessee or Occupant of a Unit situated on the second level of a Building shall install or allow to be installed any hard floor coverings (including, but not limited to, tile, marble or wood) on the third floor of such level except the kitchen, bathroom(s), laundry and front door entry. Provided, however, that hard floor coverings may be installed if such Unit Owner prior to any such installation, demonstrates to the Board of Directors that (i) such installation will include a sound control underlayment system which must

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include perimeter insulative material to insure that impact noises will not be transmitted into the Unit below the floor either directly through the floor or by going around the floor and through the surrounding walls, and (ii) that such hard floor covering installation shall not exceed the sound transference pitch standards as may be adopted by the Board of Directors from time to time. No Owner, Lessee or Occupant having a Balcony shall alter, attach to, or lay over the concrete flooring of such Balcony with any other material. In order to maintain the highest level of acoustical privacy possible, the Board of Directors may, from time to time, adopt rules and regulations to reduce levels of noise emission from Units. Additionally, no loudspeakers shall be affixed to any wall, ceiling, shelving or cabinets so as to cause vibrations discernable between Units. The use of stereo equipment, televisions and musical instruments shall be subject to and must be used in accordance with the Rules. All Owners, Lessees and Occupants shall take all reasonable precautions to lower noise transference between Units and to abide by the rules and regulations of the Association and any noise reduction ordinance of the City.

4.18 Number of Vehicles. There is a sufficient number of Parking Spaces in the Condominium to accommodate the assignment of only one Parking Space to each and every Unit. Each Unit that is assigned a Parking Space shall be limited to the accommodation of not more than one (1) vehicle to be regularly parked by Owners, Lessees and Occupants of such Unit in the Condominium. In order for the Association to regulate the number of vehicles, each Owner, Lessee or Occupant of a Unit shall be required to register with the Association each vehicle that is to be regularly parked in the Condominium. The Board of Directors is authorized to adopt such additional rules and regulations as it deems necessary under the circumstances with respect to parking.

4.19 Occupancy Limitations. It is intended that the Condominium will provide a quiet yet enjoyable atmosphere for its Owners, Lessees and Occupants. As such, the occupancy in each Unit will be limited to two (2) persons per bedroom, where the number of "bedroom" designations shall be the number as established and/or adopted by the Board from time to time. The Board of Directors is authorized to adopt additional rules and regulations as it deems necessary under the circumstances with respect to occupancy limitations. The Board of Directors is further authorized to make reasonable accommodations to Owners, Lessees or Occupants to permit temporary or permanent exemptions in the event such limit should be exceeded when the facts and circumstances warrant such accommodation.

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

ARTICLE 5 MAINTENANCE AND REPAIR OF COMMON ELEMENTS AND UNITS

5.1 Duties of the Association. The Association shall inspect, maintain, repair and replace all Common Elements, except for the Limited Common Elements, which the Unit Owners are obligated to maintain, repair and replace pursuant to Section 5.2. The cost of all such inspection, maintenance, repairs and replacements shall be a Common Expense and shall be

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

5.2 Duties of Unit Owners. Each Owner shall maintain, repair and replace, at his own expense, all portions of his Unit in a good, clean and sanitary condition. In addition, each Owner shall be responsible for reimbursing the Association for the cost of the maintenance, repair and replacement of all Limited Common Elements allocated to his Unit pursuant to Subsections 2.8.1. Each Owner shall be responsible for maintaining the interior of the Balcony allocated to the Unit as a Limited Common Element in a good, clean and sanitary condition. Any Owner, Lessee or Occupant that leaves his Unit unoccupied for more than seven (7) consecutive days shall turn off the water to all toilets in the Unit. If the Declarant provides a maintenance program to the Association, each Unit Owner shall obtain from the Board of Directors the maintenance program applicable to the Units and utilize the maintenance program for the maintenance, upkeep, repair, inspection and replacement of the Unit and all Limited Common Elements that the Owner is obligated to maintain, repair and replace pursuant to this Section. The failure to maintain, repair and replace the Unit and the Limited Common Elements in accordance with the maintenance program shall void all express and implied warranties by the Declarant or by any contractor, subcontractor, supplier or manufacturer. Each Owner shall cause the HVAC system serving the Owner's Unit to be inspected periodically (but in all events, not less than annually) by a qualified technician to properly assess the condition of the system and to identify any necessary repair, maintenance or replacement of the system. The Owner shall promptly make all recommended repairs, maintenance and replacements of the HVAC system, and all repairs, maintenance and replacements must be performed by a licensed contractor. No person other than a licensed contractor performing repairs, maintenance or replacement of an HVAC system or Association employees, agents or contractors shall be permitted on the roof of a Building without the prior written approval of the Board of Directors.

5.3 Repair or Restoration Necessitated by Owner. Each Owner shall be liable to the Association for any damage to the Common Elements or Limited Common Elements, or the Improvements, landscaping or equipment thereon which results from the negligence or willful

misconduct of the Owner or of the Owner's Lessees, Occupants or Invitees. The cost to the Association of any such repair, maintenance or replacements required by such act of an Owner or of the Owner's Lessees, Occupants or Invitees shall be assessed against the Owner as provided in Subsection 7.2.4.

5.4 Owner's Failure to Keep in Good, Clean and Sanitary Condition. If an Owner fails to keep in good clean and sanitary condition the Limited Common Element adjacent to their respective units and the same is not performed within fifteen (15) days after written notice has been given to the Owner by the Association, the Association shall have the right, but not the obligation, to perform the required services necessary to maintain the same in good, clean and sanitary condition. The cost of providing the services to place the Limited Common Element in good, clean and sanitary condition shall be assessed against the nonperforming Unit Owner pursuant to Subsection 7.2.4.

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

ARTICLE 6 THE ASSOCIATION

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

than two-thirds (2/3) of the votes in the Association. Unless the Condominium Documents or the Condominium Act specifically require a vote of the Members, the Board of Directors may act in all instances on behalf of the Association.

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

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

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

6.5 Voting. The Unit Owner or co-owners of each Unit shall be entitled to one (1) vote per Unit. The calling and conducting of meetings of the Association and the exercise of voting rights shall be controlled by the Association Bylaws. In the event any Unit is owned by more than one Unit Owner, only one of such Owners shall be designated to vote on behalf of the other Owner(s), and any such vote cast by the designated Owner shall be binding on the other Owner(s). The right to vote shall be strictly limited to Unit Owners, and in no event shall votes be cast by any Lessee of a Unit, unless the Unit Owner provides a valid proxy, during the Period of Declarant Control, to the Association appointing such Lessee as proxy on such Unit Owner's behalf. Cumulative voting shall be permitted only for purposes of electing members of the Board of Directors.

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

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7.1.3 The Board of Directors shall cause an annual financial audit, review or compilation of the Association's books. Such audit, review or compilation shall be completed no later than one hundred eighty (180) days following the end of the Association's fiscal year. Within thirty (30) days of the completion of such audit, review or compilation, the same shall be made available upon request to the Unit Owners.

7.2 Regular Assessment.

7.2.1 For each fiscal year of the Association commencing with the fiscal year in which the first Unit is conveyed to a Purchaser, the total amount of the estimated Common Expenses set forth in the budget adopted by the Board of Directors (except for the Common Expenses which are to be assessed against less than all of the Units pursuant to this Declaration) shall be assessed against each Unit in proportion to the Unit's Common Expense Liability as set forth in Section 2.6. The amount of the Regular Assessment assessed pursuant to this Subsection 7.2.1 shall be in the sole discretion of the Board of Directors, subject to any limitations imposed by law. In no event will any Assessment be increased above twenty percent (20%) of the prior year's Assessment without the approval of a majority of the Members. If the Board of Directors determines during any fiscal year that its funds budgeted or available for that fiscal year are, or will, become inadequate to meet all Common Expenses for any reason, including, without limitation, nonpayment of Assessments by Members, the Board of Directors may increase the Regular Assessment for that fiscal year and the revised Regular Assessment shall commence on the date designated by the Board of Directors.

7.2.2 The Regular Assessments shall commence as to all Units at such time as the first Unit is conveyed to a Purchaser. Until such time as Declarant institutes the commencement of Regular Assessments, Declarant shall be responsible for all Association expenses. The first Regular Assessment shall be adjusted according to the number of months remaining in the fiscal year of the Association. The Assessment for any Unit on which construction has not been substantially completed may, at Declarant's option, be assessed at twenty five percent (25%) of the Assessments for completed Units; provided, however, that Declarant shall pay to the Association any deficiency in monies due to the Declarant having paid a reduced Assessment as necessary to enable the Association to timely pay all Common Expenses. The Board of Directors may require that the Regular Assessments or Special Assessments be paid in installments.

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

7.2.4 If any Common Expense is caused by the misconduct of any Owner, Lessee, Occupant or Invitee of a particular Unit, the Association shall assess that Common Expense exclusively against that Unit. Assessments to pay a judgment against the Association may be made only against the Units in the Condominium at the time the judgment was entered, in proportion to their Common Expense Liabilities.

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

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

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

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

7.6 **Purposes for which Association's Funds May be Used.** The Association may use the funds and property collected and received by the Association (including, but not limited to, all Assessments, fees, loan proceeds, surplus funds and all funds and property received from any other source) for the purpose of: (a) discharging and performing the Association's duties and obligations under the Condominium Documents or applicable law; (b) exercising the rights and powers granted to the Association by the Condominium Documents or applicable law; (c) providing or promoting activities and services the Board of Directors deems appropriate, necessary or desirable to foster or promote the common good and general welfare of the Condominium and the Owners, Lessees and Occupants; (d) contracting for services (including,

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without limitation, trash collection or cable television) to be provided to Owners, Lessees and Occupants; and (e) taking such other action as the Board of Directors deems necessary, appropriate or desirable for the management and administration of the Association or the benefit of the Association or the Condominium.

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

7.7.1 Any Assessment, or any installment of an Assessment, which is not paid within fifteen (15) days after the Assessment first became due shall, together with all costs of collection advanced by the Association including all reasonable attorneys' and/or collection fees, be deemed delinquent and shall bear interest from the date of delinquency at the rate of interest equal to fifteen percent (15%) per annum. If any Assessment, or any installment thereof, is not paid within fifteen (15) days after the Assessment first became due, the Association may assess against the delinquent Unit Owner a late fee in the amount established from time to time by the Board of Directors.

7.7.2 All Regular and Special Assessments, charges for late payment of such Regular and Special Assessments, collection costs and reasonable attorneys' and/or collection fees incurred incidental thereto 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 Regular and Special Assessments, charges for late payment of Regular or Special Assessments, and collection costs and reasonable attorneys' and/or collection fees imposed or levied against a Unit or the Unit Owner which are secured by the Assessment Lien.

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

7.7.4 The Association shall have the right, at its option, to enforce collection of any delinquent Regular or Special Assessments, charges for late payment of Regular and Special Assessments, and reasonable attorneys and/or collection fees and costs incidental thereto owed to the Association in any manner allowed by law including, but not limited to: (a) bringing an action at law against the Unit Owner personally obligated to pay the delinquent amounts and

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such action may be brought without waiving the Assessment Lien securing any such delinquent amounts; or (b) bringing an action to foreclose the Assessment Lien against the Unit in the manner provided by law for the foreclosure of a realty mortgage. The Association shall have the power to bid in at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any and all Units purchased at such sale.

7.7.5 The Association shall have the right, at its option, to enforce collection of all other Assessments (other than Regular Assessments and Special Assessments), fees, charges, late charges, monetary penalties and interest charges permitted by the Condominium Act or other applicable law, other than for those specified in Subsection 7.7.4 above, in any manner allowed by law, including bringing an action at law against the Unit Owner personally obligated to pay such amounts. The Association shall have a lien against such Owner and his Unit only after the entry of a judgment in a civil suit for such Assessments, fees, charges, late charges, monetary penalties, interest charges, and such other charges as shall be awarded by a court of competent jurisdiction, and the recording of the judgment in official records of Pima County.

7.8 **Certificate of Payment.** The Association on written request shall furnish to a lienholder, Unit Owner or person designated by a Unit Owner a recordable statement setting forth the amount of unpaid Assessments against his Unit. The statement shall be furnished within ten (10) days after receipt of the request and is binding on the Association, the Board of Directors, and every Unit Owner. The Association may charge a reasonable fee in an amount established by the Board of Directors for each such statement.

7.9 **No Exemption or Offsets.** No Owner may exempt himself from liability for payment of Assessments, charges for late payment of Assessments, monetary penalties and other fees and charges levied pursuant to the Condominium Documents by waiver and nonuse of any of the Common Elements and facilities or by the abandonment of his Unit. All Assessments, charges for late payment of 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, charges for late payment of Assessments, monetary penalties and other fees and charges shall be permitted for any reason, including, without limitation, a claim that the Association is not properly exercising its duties and powers as provided in the Condominium Documents or the Condominium Act.

7.10 **Initial Working Capital Fund.** To provide the Association with initial operating funds, each Purchaser of a Unit from the Declarant shall pay to the Association, immediately upon becoming the Owner of the Unit, an initial working capital fund payment. Until the Regular Assessments have commenced with respect to all Units pursuant to Subsection 7.2.2, the initial working capital fund payment will be equal to two (2) times the estimated monthly Regular Assessment. After Regular Assessments have commenced, the working capital fund payment will be a sum equal to two (2) monthly installments of the Regular Assessment for the Unit. Such amount shall be non-refundable and shall not be considered as an advance payment of any Assessments levied by the Association pursuant to this Declaration.

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7.11 Reserve Contribution.

7.11.1 Except as provided in Subsection 7.11.2, each Person who purchases or otherwise becomes the Owner of a Unit shall pay to the Association, immediately upon becoming the Owner of the Unit, a contribution to the reserves to be established pursuant to Section 7.13. The amount of the initial reserve contribution from each Unit Owner acquiring a Unit shall be Five Hundred Dollars (\$500.00). The Board of Directors may from time to time increase or decrease the amount of the reserve contribution, but the amount of the reserve contribution may not be increased by the Board of Directors by more than twenty percent (20%) during any twelve month period without the approval of Members holding more than fifty percent (50%) of the votes in the Association.

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

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

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

7.13 Reserves.

7.13.1 The Board of Directors shall establish reserves for the future periodic maintenance, repair or replacement of the major components of the Common Elements, which the Association is obligated to maintain, repair and replace. The reserves may be funded from Regular Assessments, the reserve contributions paid pursuant to Section 7.11 or any other revenue of the Association. All amounts designated as reserves shall be deposited by the Board of Directors in a separate bank account, to be known as the reserve account, and to be held for the purposes for which they are collected and are to be segregated from and not commingled with any other funds of the Association. Withdrawal of funds from the Association's reserve

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death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Common Elements. Such policy shall include (i) a cross liability clause to cover liabilities of the Owners as a group to an Owner, and (ii) medical payments insurance and contingent liability coverage arising out of the use of hired and non-owned automobiles.

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

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

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

(i) Each Unit Owner shall be an insured under the policy with respect to liability arising out of his ownership of an undivided interest in the Common Elements or his membership in the Association.

(ii) There shall be no subrogation with respect to the Association, its agents, servants, and employees against Unit Owners, members of their household, Lessees, Invitees, and Occupants of a Unit except for claims against Unit Owners by members of their households, Lessees, Invitees, or Occupants of a Unit for employee dishonesty or forgery.

(iii) No act or omission by any Unit Owner, or the Lessees, Occupants or Invitees of a Unit, unless acting within the scope of his authority on behalf of the Association, shall void the policy or be a condition to recovery on the policy.

(iv) The coverage afforded by such policy shall be primary and shall not be brought into contribution or proration with any insurance which may be purchased by Unit Owners or their mortgagees or beneficiaries under deeds of trust, mortgages or contracts for sale of real estate.

(v) A "severability of interest" endorsement which shall preclude the insurer from denying the claim of a Unit Owner because of the negligent acts of the Association or other Unit Owners, Lessees, Occupants or Invitees of a Unit.

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

(vii) For policies of property insurance, a standard mortgagee clause providing that the insurance carrier shall notify the Association, each Unit Owner and each First Mortgagee named in the policy to whom a certificate of insurance has been issued at least thirty (30) days in advance of the effective date of any substantial change in coverage, cancellation or nonrenewal of the policy.

(viii) Any insurance trust agreement will be recognized by the insurer.

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

(g) Flood insurance in accordance with applicable governmental regulations or the regulations or requirements of the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.

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. Provided, however, that the total amount of insurance after application of any deductibles shall not be less than eighty percent (80%) of the actual cash value of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundation and other items normally excluded from property policies. The deductible, if any, on any insurance policy obtained by the Association shall be a Common Expense, but the Association may assess to a Unit Owner any deductible amount necessitated by the negligence, misuse or neglect for which such Unit Owner is responsible.

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

8.1.5 The Association and its directors and officers shall have no liability to any Owner or First Mortgagee or other Person having a lien on a Unit if, after a good faith effort, (a) the Association is unable to obtain insurance required hereunder because the insurance is no longer available; (b) if available, the insurance can be obtained only at a cost that the Board, in its sole discretion, determines is unreasonable under the circumstances; or (c) the Members fail to approve any increase in the Regular Assessment needed to pay the insurance premiums. If the insurance required by this Declaration is not reasonably available as aforesaid, the Association shall promptly notify the Unit Owners of such fact. Upon any such occurrence, the Association may, in its discretion, obtain and carry any other insurance it deems appropriate to protect the Association or Unit Owners.

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

8.2 Fidelity Bonds or Insurance.

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

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

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

(c) The bonds or insurance policies shall provide that they may not be canceled or substantially modified (including cancellation from nonpayment of premium) without at least thirty (30) days prior written notice to the Association, each Unit Owner and each First Mortgagee to whom a certificate of insurance has been issued.

8.2.2 The Association shall require any management agent of the Association to maintain its own fidelity bond or fidelity insurance in an amount equal to or greater than the amount of the fidelity bond or fidelity insurance to be maintained by the Association pursuant to Subsection 8.2.1. The fidelity bond or fidelity insurance maintained by the management agent shall cover funds maintained in bank accounts of the management agent and need not name the Association as an obligee or an insured.

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

8.4 Insurance Obtained by Unit Owners. To the extent not covered by the policies of liability insurance obtained by the Association for the benefit of all of the Unit Owners, each Unit Owner shall be responsible for obtaining: (a) property insurance on his Unit and all fixtures, furnishings, cabinets and appliances and all personal property of the Owner located in

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 Improvements or any other portion of the Common Elements, and to make settlements with the insurer for less than full insurance coverage on the damage to such Improvements or any other portion of the Common Elements. Any settlement made by the Association in good faith shall be binding upon all Owners and First Mortgagees. Insurance proceeds for any damage or destruction of any part of the Condominium covered by property insurance maintained by the Association shall be paid to the Association and not to any First Mortgagee or other lienholder. The Association shall hold any proceeds in trust for the Unit Owners and lienholders as their interests may appear. Except as otherwise provided in Sections 9.1 and 9.2, all insurance proceeds shall be disbursed first for the repair or restoration of the damaged Common Elements.

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

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

ARTICLE 10 EMINENT DOMAIN

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

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

10.3 **Taking of Common Elements.** If part of the Common Elements is acquired by eminent domain, the portion of the award attributable to the Common Elements taken shall be

paid to the Association for the benefit of the Unit Owners, but any portion of the award attributable to the acquisition of a Limited Common Element shall be equally divided among and paid by the condemning authority, at the direction of the Association, to the Owners of the Units (or their First Mortgagees, as applicable) to which that Limited Common Element was allocated at the time of the acquisition.

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

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

ARTICLE 11 DISPUTE RESOLUTION

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

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

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

(c) "Claim" means: (i) any claim or cause of action arising out of or related in any way to the planning, design, engineering, grading, construction or development of the Common Elements, the Units or any other part of the Condominium, including, without limitation, any claim or cause of action that the Common Elements or the Units are defective or that the Declarant, its agents, contractors, employees, subcontractors, architects, engineers or consultants were negligent in the planning, design, engineering, grading, construction or development thereof; or (ii) any claim or cause of action against the Declarant or any employee, agent, director, member or officer of Declarant arising out of or in any way related to the development of the Condominium or the management or operation of the Association, including, without limitation, any claim for negligence, fraud, intentional misconduct or breach of fiduciary duty.

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

11.3 Notice of Claim. Any Bound Party who contends or alleges to have a Claim (a "Claimant") against any other Bound Party (a "Respondent") shall notify each Respondent in writing of the Claim (the "Claim Notice"), stating plainly and concisely: (a) the nature of Claim, including, date, time, location, Persons involved, and Respondent's role in the Claim; (b) the factual and legal basis of the Claim; and (c) what Claimant wants Respondent to do or not do to resolve the Claim. In the event the Claimant is the Association and the Claim involves an Alleged Defect, the Association must provide written notice to all Members prior to delivering a Claim Notice to a Bound Party or initiating any legal action, cause of action, or proceeding against any Bound Party which notice shall (at a minimum) include: (a) a description of the Claim; (b) a description of the attempts of Declarant or any other Bound Party to correct such Alleged Defect and the opportunities provided to Declarant or any other Bound Party to correct such Alleged Defect; (c) a certification from an engineer licensed in the State of Arizona that such Alleged Defect exists along with a description of the scope of work necessary to cure such Alleged Defect and a resume of such engineer; (d) the estimated cost to repair such Alleged Defect; (e) the name and professional background of the attorney retained by the Association to pursue the Claim and a description of the relationship between such attorney and member(s) of the Board of Directors (if any); (f) a description of the fee arrangement between such attorney and the Association; (g) the estimated attorneys' fees and expert fees and costs necessary to pursue the Claim and the source of the funds which will be used to pay such fees and expenses; (h) the estimated time necessary to conclude the action; and (i) an affirmative statement from the Board of Directors that the action is in the best interests of the Association and its Members. If the Alleged Defect is alleged to be the result of an act or omission of a person licensed by the State of Arizona under Title 20 or Title 32 of the Arizona Revised Statutes (a "Licensed Professional"), then the Claim Notice from the Association must be accompanied by an affidavit from a Licensed Professional in the same discipline as the Licensed Professional alleged to be responsible for the Alleged Defect. The affidavit must contain the information required to be contained in a preliminary expert opinion affidavit submitted pursuant to A.R.S. § 12-2602(B). The Claimant or Respondent may notify all First Mortgagees of the delivery of a Claim Notice which pertains to a Claim for an Alleged Defect. Further, all Unit Owners must notify any prospective Purchaser that such action has been agreed upon by the Association, and Declarant must be delivered a copy of such letter within two (2) business days after the same is sent.

11.4 Mediation. The Claimant and the Respondent shall negotiate in good faith in an attempt to resolve the claim. If the Parties do not resolve the Claim through negotiation within ninety (90) days after the date of the Claim Notice or within such longer period as may be agreed upon by the Parties ("Termination of Negotiations"), Claimant shall have thirty (30) additional days within which to submit the Claim to mediation by the American Arbitration Association ("AAA") or such other independent mediation service selected by mutual agreement of the Claimant and the Respondent. If Claimant does not submit the Claim to mediation within thirty (30) days after Termination of Negotiations, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim. If the Parties do not settle the Claim within thirty (30) days after submission of the matter to the mediation process, or within such time as determined reasonable

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or appropriate by the mediator, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation Notice"). The Termination of Mediation Notice shall set forth when and where the Parties met, that the Parties are at an impasse, and the date that mediation was terminated.

11.5 Litigation. If a Termination of Mediation Notice is issued by the mediator as set forth in Section 11.4 above, only then shall either Claimant or Respondent be entitled to file an action in the Maricopa County Superior Court, Maricopa County, Arizona.

11.6 Declarant's Right to Purchase. Anything in Section 11.5 to the contrary notwithstanding, at such time as a Claimant has submitted a Claim to litigation and provided such Claim involves Declarant, then Declarant shall have the right, in its sole and absolute discretion to repurchase the Unit(s) subject to the Claim upon written notice to Claimant. In the event Declarant elects to repurchase the Unit(s) as aforesaid, the purchase price to be paid by the Declarant to each Claimant shall be equal to an amount equal to the greater of (i) the original purchase price of the Unit, or (ii) ninety percent (90%) of the appraised value of the Unit, plus the reasonable costs of relocation of Claimant, which relocation costs shall not exceed Five Thousand Dollars (\$5,000). The Unit shall be appraised by an appraiser selected by Declarant. The ninety percent (90%) of appraised value determination as set forth above has been determined a reasonable and fair valuation because there will be no need to engage the services of a licensed real estate broker in connection with the sale of the Unit and, further, in light of the fact that Declarant will pay all costs of such acquisition, including but not limited to, appraisal fees, escrow, recording and title costs. The closing of any such repurchase shall be consummated within sixty (60) days of Declarant's notice to Claimant(s) that it has elected to repurchase the Unit(s) subject to the Claim as provided in this Subsection. Such repurchase, once elected and consummated, shall constitute full and complete satisfaction of the Claim.

11.7 Right to Enter, Inspect, Repair and/or Replace. Following the receipt by a Bound Party of a Claim Notice with respect to an Alleged Defect, the Bound Party and its employees, agents, contractors, subcontractors and consultants shall have the right, upon reasonable notice to Claimant and during normal business hours, to enter onto or into, as applicable, the Common Elements and any Unit for the purposes of inspecting and/or conducting testing to determine the validity of the Claim and, if deemed necessary by the Bound Party, to correct, repair and/or replace the Alleged Defect. If a claim is made by a Unit Owner, such Unit Owner(s) shall ensure that the Unit is made available for inspection no later than (10) days after receipt of Bound Party's request for inspection. In conducting such inspection, testing, repairs and/or replacement, the Bound Party shall be entitled to take any actions as it shall deem reasonable and necessary under the circumstances. Nothing set forth in this Section 11.7 shall be construed to impose any obligation on any Bound Party to inspect, test, repair, or replace any item or Alleged Defect for which the Bound Party is not otherwise obligated under applicable law or any warranty provided by Declarant or any other Bound Party in connection with the sale of the Units. The right of a Bound Party and its employees, agents, contractors and consultants to enter, inspect, test, repair and/or replace reserved hereby shall be irrevocable and may not be waived or otherwise terminated except by a writing, in recordable form, executed and Recorded by the Bound Party. In no event shall any statute of limitations be tolled during the period in which or by which a Bound Party conducts any inspection, testing, repair or replacement of any Alleged Defects.

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

11.9 Approval of Litigation. The Association shall not deliver a Claim Notice to any Bound Party or commence any legal action or proceeding or incur legal expenses (including without limitation, attorneys' fees) in connection with any Claim without (i) first obtaining at the annual general meeting under the Bylaws, the written approval of Unit Owners entitled to cast more than seventy-five percent (75%) of the total votes in the Association, excluding the votes of any Unit Owner who would be a defendant in such proceedings, and (ii) giving the Declarant, if the Declarant would be the Respondent under said Claim, sixty (60) days prior written notice of said meeting, and (iii) Declarant (it's agents, contractors, attorneys and accountants) is permitted to give the last presentation regarding said Claim before a vote it taken. The Association must pay for any such legal action or mediation or proceeding with monies that are specifically collected for such purposes and may not borrow money or use reserve funds or other monies collected for specific Association obligations. In the event that the Association commences any legal action or proceeding involving a Claim, all Unit Owners must notify any prospective Purchaser of their Unit of such legal action or proceeding and must provide such prospective Purchaser with a copy of the notice received from the Association in accordance with Section 11.3.

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

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

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

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**ARTICLE 12
RIGHTS OF FIRST MORTGAGEES**

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

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

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

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

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

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

12.2.1 The approval of Eligible Mortgage Holders that represent at least fifty-one percent (51%) of the votes in the Association allocated to 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:

(a) Voting rights;

(b) Increases in Assessments that raise the previously assessed amount by more than twenty percent (20%), assessment liens or the priority of assessment liens;

(c) Reductions in reserves for maintenance, repair and replacement of Common Elements;

(d) Hazard or fidelity insurance requirements;

(e) Responsibility for maintenance and repairs;

(f) Expansion or contraction of the Condominium, or the addition, annexation of property to the Condominium;

(g) Redefinition of any Unit boundaries;

- (h) Reallocation of interests in the Common Elements or Limited Common Elements or rights to their use;
- (i) Convertibility of Units into Common Elements or of Common Elements into Units;
- (j) Imposition of any restrictions on the leasing of Units;
- (k) Imposition of any restrictions on a Unit Owner's right to sell or transfer his Unit;
- (l) A decision by the Association to establish self management when professional management had been required previously by an Eligible Mortgage Holder;
- (m) Restoration or repair of the Condominium (after a hazard damage or partial condemnation) in a manner other than that specified in the Condominium Documents;
- (n) Any provisions that expressly benefit mortgage holders, insurers, or guarantors.

Provided, however, that no such approval of Eligible Mortgage Holders shall operate to either (i) deny or delegate control over the general administrative affairs of the Association by the Unit Owners or the Board of Directors, or (ii) prevent the Association or Board of Directors from commencing, intervening, or settling any litigation or proceedings, or receiving or distributing any insurance proceeds.

12.2.2 Any action to terminate the legal status of the Condominium after substantial destruction or condemnation occurs must be agreed to by the Unit Owners of Units to which at least eighty percent (80%) of the votes in the Association are allocated and the approval of Eligible Mortgage Holders that represent at least fifty-one percent (51%) of the votes of Units subject to mortgages held by Eligible Mortgage Holders or Eligible Insurers or Guarantors.

12.2.3 Any action to terminate the legal status of the Condominium for reasons other than substantial destruction or condemnation of the Condominium must be approved by Eligible Mortgage Holders holding mortgages on Units the Unit Owners of which have at least eighty percent (80%) of the votes in the Association allocated to Unit Owners of all Units subject to First Mortgages held by Eligible Mortgage Holders.

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

12.3 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.

12.4 Right of Inspection of Records. Any Unit Owner, First Mortgagee or Eligible Insurer or Guarantor will, upon written request, be entitled to: (a) inspect the current copies of the Condominium Documents and the books, records and financial statements of the Association during normal business hours; (b) receive within one hundred eighty (180) days following the end of any fiscal year of the Association, a financial audit, review or compilation of the Association for the immediately preceding fiscal year of the Association, free of charge to the requesting party; and (c) receive written notice of all meetings of the Members of the Association and be permitted to designate a representative to attend all such meetings. Upon written request of any agency or corporation which has an interest or prospective interest in the Condominium, the Association shall prepare and furnish within a reasonable time a financial audit, review or compilation of the Association. The Association, upon request, shall make available for inspection during normal business hours to prospective Purchasers of a Unit, copies of the Condominium Documents and the most recent annual financial audit, review or compilation.

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

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

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

Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Department of Veterans Affairs.

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

ARTICLE 13 GENERAL PROVISIONS

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

- (a) imposing reasonable monetary penalties after notice and an opportunity to be heard is given to the Unit Owner or other violator. A Unit Owner shall be personally responsible for payment of any fine levied or imposed against a Lessee or Occupant of the Owner's Unit or by any Invitee of the Unit Owner or any Lessee or Occupant;
- (b) suspending a Unit Owner's right to vote;
- (c) suspending any Person's right to use any facilities within the Common Elements; provided, however, nothing herein shall authorize the Board to limit ingress or egress to or from a Unit;
- (d) suspending any services provided by the Association to a Unit Owner or the Owner's Unit if the Unit Owner is more than fifteen (15) days delinquent in paying any Assessment or other charge owed to the Association;
- (e) exercising self-help of taking action to abate any violation of the Condominium Documents in a non-emergency situation;
- (f) requiring a Unit Owner, at the Unit Owner's expense, to remove any Improvement installed or constructed in such Owner's Unit or in any Limited Common Element allocated to the Owner's Unit in violation of this Declaration and to restore the Unit or the Limited Common Element to its previous condition and, upon failure of the Unit Owner to do so, the Board of Directors or its designee shall have the right to enter the Unit or Limited Common Element, remove the violation and restore the property to substantially the same condition as previously existed and any such action shall not be deemed a trespass;
- (g) without liability to any Person, prohibiting any contractor, subcontractor, agent, employee or other Invitee of a Unit Owner who fails to comply with the terms and provisions of the Condominium Documents from continuing or performing any further activities of the Condominium;

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

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

(j) recording a written notice of a violation of any restriction or provision of the Condominium Documents. The notice shall be executed and acknowledged by an officer of the Association and shall contain substantially the following information: (i) the legal description of the Unit against which the notice is being recorded; (ii) a brief description of the nature of the violation; and (iii) a statement of the specific steps which must be taken by the Unit Owner to cure the violation. Recordation of a notice of violation shall serve as a notice to the Unit Owner and to any subsequent Purchaser of the Unit that there is a violation of the provisions of the Condominium Documents. Provide, however, any such notice is in no event intended to affect title to any such Unit.

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

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

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

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

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

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

13.5 Amendment.

13.5.1 Except in cases of amendments that may be executed by a Declarant in the exercise of its Development Rights or under §33-1220 of the Condominium Act, by the Association under §33-1206 or §33-1263(J) of the Condominium Act, or by certain Unit Owners under §33-1218(B) or §33-1228(B) of the Condominium Act, the Declaration, including the Plat, may be amended only by a vote of the Unit Owners to which at least sixty-seven percent (67%) of the votes in the Association are allocated.

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

13.5.3 An amendment to the Declaration shall not terminate or decrease any unexpired Development Right, Special Declarant Right or Period of Declarant Control unless the Declarant approves the amendment in writing. In addition, any amendment to this Declaration adopted during the Period of Declarant Control must be approved in writing by the Declarant, and no amendment to Article 11 shall be effective unless the Declarant approves the amendment in writing even if the Declarant no longer owns any Unit at the time of such amendment. After the expiration of the Period of Declarant Control, any amendment to this Declaration which attempts to terminate any unexpired Development Right or Special Declarant Right may only amend or delete any such provision with the unanimous consent of the Unit Owners.

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

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

Declarant pursuant to Subsection 13.5.4 or the Condominium Act shall be executed by the Declarant and shall be Recorded.

13.5.6 Any amendment to this Declaration must be approved in writing by the Beneficiary under the Deed of Trust, Assignment of Rents and Fixture Filing recorded in Docket 12621 at page 5327 in the records of the County Recorder of Pima County, Arizona, as long as such Deed of Trust encumbers one or more Units.

13.6 Notices. All notices, demands, statements or other communications required to be given to or served on a Unit Owner under this Declaration shall be in writing and shall be deemed to have been duly given and served if delivered personally or sent by United States mail, postage prepaid, addressed to the Unit Owner, at the address which the Unit Owner shall designate in writing and file with the Association or, if no such address is designated, at the address of the Unit of such Owner. A Unit Owner may change his address on file with the Association for receipt of notices by delivering a written notice of change of address to the Association. A notice given by mail, whether regular, certified, or registered, shall be deemed to have been received by the person to whom the notice was addressed on the earlier of the date the notice is actually received or five (5) days after the notice is mailed. If a Unit is owned by more than one person, notice to one of the Owners shall constitute notice to all Owners of the same Unit. Each Unit Owner shall file his correct mailing address with the Association, and shall promptly notify the Association in writing of any subsequent change of address.

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

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

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

13.10 Construction. In the event of any discrepancies, inconsistencies or conflicts between the provisions of this Declaration and the Articles, Bylaws or the Association Rules, the provisions of this Declaration shall prevail. In the event of any conflict between the provisions of the Condominium Act or any other applicable law and this Declaration, this Declaration shall be construed to be revised to comply with such law.

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

13.12 Guests and Tenants. Each Unit Owner shall be responsible for compliance by his agents, tenants, guests, invitees, licensees and their respective servants, agents, and employees with the provisions of the Condominium Documents. A Unit Owners' failure to ensure compliance by such Persons shall be grounds for the same action available to the Association or any other Unit Owner by reason of such Unit Owner's own noncompliance.

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

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

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

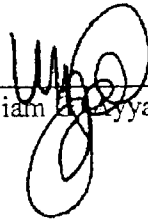
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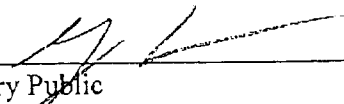
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California limited partnership

By: North Euclid Avenue, LLC, a California
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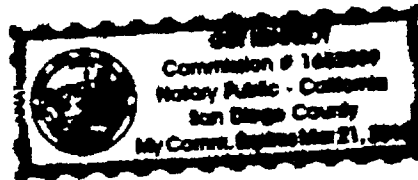
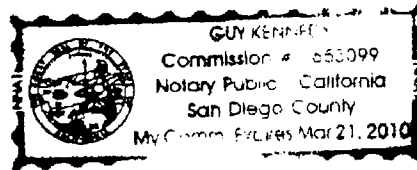
By: 
William G. Ayyad, Manager

STATE OF CALIFORNIA)
) ss.
County of San Diego)

The foregoing instrument was acknowledged before me this 24 day of May, 2006, by William G. Ayyad, personally known to me (or proved to me on the basis of satisfactory evidence), in his capacity as Manager of North Euclid Avenue, LLC, a California limited liability company, the General Partner of WGA NORTH EUCLID AVENUE, L.P., a California limited partnership.


Notary Public

My Commission Expires: March 21, 2010



11090037 09471

EXHIBIT A

Legal Description of the Property

11/20/01 09:41:03

EXHIBIT "A"

LOTS 1, 2, 3, 4, 10, 11, 14, 15, ALL IN BLOCK 31, OF FELDMAN'S ADDITION,
ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY
RECORDER OF PIMA COUNTY, ARIZONA, RECORDED IN BOOK 2 OF MAPS, PAGE
35.

14000007 00444

EXHIBIT B

City Letter regarding No Building Permits

140000703475

