

41

**AMENDED AND RESTATED DECLARATION OF
CONDOMINIUM
AND OF COVENANTS, CONDITIONS AND
RESTRICTIONS
FOR
PINETOP CROSSING CONDOMINIUM**

March 22, 2005

TABLE OF CONTENTS

	Page
1. DEFINITIONS	1
1.1 General Definitions.....	1
1.2 Defined Terms	1
2. SUBMISSION OF PROPERTY; UNIT BOUNDARIES; ALLOCATION OF PERCENTAGE INTERESTS, VOTES, AND COMMON EXPENSE LIABILITIES	5
2.1 Submission of Property.....	5
2.2 Name of Condominium	5
2.3 Name of Association.....	5
2.4 Identifying Numbers of Units.....	5
2.5 Unit Boundaries	6
2.6 Allocation of Common Element Interest and Common Expense Liabilities	6
2.7 Allocation of Votes in the Association.....	6
2.8 Allocation of Limited Common Elements.....	7
2.9 Reallocation of Limited Common Elements	7
2.10 Change in Number of Units.....	7
3. EASEMENTS.....	8
3.1 Utility Easement	8
3.2 Easements for Ingress and Egress.....	8
3.3 Unit Owners' Easements of Enjoyment	8
3.4 Declarant's Use for Sales and Leasing Purposes	9
3.5 Declarant's Rights and Easements	10
3.6 Easement for Support	10
3.7 Common Elements Easement in Favor of the Association	10
3.8 Common Elements Easement in Favor of Unit Owners.....	10
3.9 Units and Limited Common Elements Easement in Favor of Association	11
3.10 Easement for Unintended Encroachments.....	12
4. USE AND OCCUPANCY RESTRICTIONS AND OBLIGATIONS.....	12
4.1 Residential Use	12
4.2 Antennas	12
4.3 Utility Service.....	12
4.4 Improvements and Alterations.....	12
4.5 Trash Containers and Collection	13
4.6 Machinery and Equipment.....	13
4.7 Animals.....	13
4.8 Temporary Occupancy.....	14
4.9 Clothes Drying Facilities	14
4.10 Mineral Exploration.....	14
4.11 Diseases and Insects	14
4.12 Trucks, Trailers, Campers and Boats.....	14
4.13 Motor Vehicles	14
4.14 Garage Doors (if any)	15
4.15 Towing of Vehicles.....	15

TABLE OF CONTENTS
(continued)

	Page
4.16 Signs	15
4.17 Lawful Use.....	15
4.18 Nuisances and Offensive Activity	15
4.19 Window Coverings	15
4.20 Limitation on Leasing of Units.....	16
4.21 Declarant Approval Required.....	16
4.22 No Landscaping or Irrigation.....	16
5. MAINTENANCE AND REPAIR OF COMMON ELEMENTS AND UNITS	16
5.1 Duties of the Association.....	16
5.2 Duties of Unit Owners.....	16
5.3 Repair or Restoration Necessitated by Owner.....	16
5.4 Unit Owner's Failure to Maintain	17
5.5 Responsibility for Landscaping	17
6. THE ASSOCIATION; RIGHTS AND DUTIES, MEMBERSHIP	17
6.1 Rights, Powers, and Duties of the Association.....	17
6.2 Directors and Officers.....	17
6.3 Rules	18
6.4 Composition of Members	18
7. ASSESSMENTS.....	18
7.1 Preparation of Budget.....	18
7.2 Common Expense Assessment.....	19
7.3 Special Assessments	20
7.4 Assessments for Incomplete Units.....	20
7.5 Effect of Nonpayment of Assessments; Remedies of the Association.....	20
7.6 Subordination of Assessment Lien to Mortgages.....	21
7.7 No Exemption of Unit Owner.....	21
7.8 Certificate of Payment	21
7.9 No Offsets.....	21
7.10 Surplus Funds.	21
7.12 Transfer Fee.....	22
7.13 Working Capital Funds.....	22
8. INSURANCE	22
8.1 Scope of Coverage.....	22
8.2 Payment of Premiums.....	24
8.3 Insurance Obtained by Unit Owners.....	24
8.4 Payment of Insurance Proceeds	24
8.5 Certificate of Insurance.....	24
9. RIGHTS OF FIRST MORTGAGEES.....	24
9.1 Notification to First Mortgagees.....	24
9.2 Approval Required for Amendment to Declaration, Articles or Bylaws	25
9.3 Prohibition Against Right of First Refusal	26
9.4 Right of Inspection of Records	26
9.5 Prior Written Approval of First Mortgagees	26

TABLE OF CONTENTS
(continued)

		Page
9.6	Liens Prior to First Mortgage	27
9.7	Condemnation or Insurance Proceeds	27
9.8	Limitation on Partition and Subdivision.....	27
9.9	Conflicting Provisions	27
10.	GENERAL PROVISIONS	28
10.1	Enforcement.....	28
10.2	Severability	28
10.3	Duration	28
10.4	Termination of Condominium	28
10.5	Amendment.....	28
10.6	Remedies Cumulative.....	29
10.7	Notices	29
10.8	Binding Effect.....	29
10.9	Gender.....	30
10.10	Topic Headings	30
10.11	Survival of Liability.....	30
10.12	Construction.....	30
10.13	Joint and Several Liability	30
10.14	Guests and Tenants	30
10.15	Attorney' Fees	30
10.16	Number of Days.....	30
10.17	Notice of Violation	31
10.18	High Power Transmission Lines.....	31
10.19	Bulk Service Agreements	31
10.20	Limitations on Actions	33
10.21	Arbitration Disclosures and Agreements.....	33
11.	DISCLOSURE AND TREATMENT OF TRACTS C, D, E, F, I AND J.....	35
11.1	Tracts C, D, E, F, I and J Excluded	35
11.2	Perpetual Easements in Favor of Tracts I and J.....	35
11.3	Amendment of Article	35

**AMENDED AND RESTATED DECLARATION OF CONDOMINIUM
AND OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
PINETOP CROSSING CONDOMINIUM**

This Amended and Restated Declaration of Condominium and of Covenants, Conditions and Restrictions for Pinetop Crossing Condominium ("Declaration") is made this 22 day of March, 2005, by Pinetop Crossing Development, L.L.C., an Arizona limited liability company ("Declarant").

A. This Declaration is with respect to land located in Navajo County, Arizona, described as follows:

Units 1 through 9 and Unit 11 through 69 and Common Elements (Tracts A, B, G, H and K) of Pinetop Crossing Condominium, a condominium of Navajo County, Arizona, recorded August 20, 2002, in Book 22 of Maps, Pages 32 through 35, Navajo County Records, and re-recorded in Book 23 of Maps, Pages 29 through 33, Navajo County Records.

which real property shall hereinafter be referred to as the "Property".

B. The Property is a condominium created pursuant to the plat for Pinetop Crossing Condominium, a condominium of the County of Navajo, Arizona, recorded in Book 22 of Maps and Plats at Page 32, Navajo County Records (the "Plat"), and that certain Condominium Declaration for Pinetop Crossing, recorded at instrument no. 2002-23686, Navajo County Records (the "Original Declaration").

C. The Declarant is the owner of at least sixty-seven percent of the units within the Condominium has the authority to amend the Original Declaration under state law and pursuant to Section 10.5(a).

D. This Declaration shall amend and restate the Original Declaration in its entirety.

NOW THEREFORE, Declarant hereby declares, covenants and agrees as follows:

1. DEFINITIONS

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

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

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

1.2.2 "Assessments" means the Common Expense Assessments and Special Assessments levied and assessed against each Unit pursuant to Article 7 of this Declaration.

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

1.2.4 "Association" means PINETOP CROSSING CONDOMINIUM ASSOCIATION, INC., an Arizona nonprofit corporation, its successors and assigns.

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

1.2.6 "Building" means the structures designated as buildings on the Plat or constructed on or within the boundaries of a Unit or within the "Building Envelope Lines" as shown on the Plat.

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

1.2.8 "Common Elements" means all portions of the Condominium other than the Units and expressly includes all portions of the Condominium (including improvements and landscaping) located within "Building Envelope Lines" as shown on the Plat which have not been improved with a Building.

1.2.9 "Common Expenses" means expenditures made by or financial liabilities of the Association, together with any allocations to reserves.

1.2.10 "Common Expense Assessment" means the assessment levied against the Units pursuant to Section 7.2 of this Declaration.

1.2.11 "Common Expense Liability" means the liability for common expenses allocated to each Unit by this Declaration.

1.2.12 "Condominium" means the real property located in Navajo County, Arizona, submitted to the Declaration together with all Buildings and other Improvements located thereon and all easements, rights, and appurtenances belonging thereto. The name of the Condominium created by this Declaration is "Pinetop Crossing Condominium."

1.2.13 "Condominium Act" means the Arizona Condominium Act, A.R.S. Section 33-1201, *et seq.*, as amended from time to time.

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

1.2.15 "Declarant" means Pinetop Crossing Development, L.L.C., an Arizona limited liability company, and its successors and assigns, and any person or entity to whom it may transfer any Special Declarant Right.

1.2.16 "Declaration" means this Condominium Declaration, as amended from time to time.

1.2.17 "Development Rights" means the any right or combination of rights reserved by or granted to the Declarant in this Declaration to do any of the following:

- (a) Add real estate to the Condominium;
- (b) Create easements, Units, Common Elements, or Limited Common Elements within the Condominium;
- (c) Subdivide Units, convert Units into Common Elements, or convert Common Elements into Units;
- (d) Withdraw real estate from the Condominium;
- (e) Make the Condominium part of a larger condominium or planned community;
- (f) 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 or in any amendment which does not adversely affect the rights of any Unit Owner; and
- (g) Amend the Declaration during the Period of Declarant Control to comply with the rules or guidelines, in effect from time to time, of any governmental or quasi-governmental entity or federal corporation guaranteeing or insuring mortgage loans or governing transactions involving mortgage instruments, including, without limitation, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, or the Veterans Administration.

1.2.18 "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 9.1 of this Declaration.

1.2.19 "Eligible Mortgage Holder" means a First Mortgagee who has requested notice of certain matters from the Association in accordance with Section 9.1 of this Declaration.

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

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

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

1.2.23 "Limited Common Elements" means a portion of the Common Elements specifically designated in this Declaration as a Limited Common Element and allocated by this Declaration or by operation of the Condominium Act for the exclusive use of one or more but fewer than all of the Units.

1.2.24 "Member" means any Person who is or becomes a member of the Association and holds a membership thereof ("Membership").

1.2.25 "Period of Declarant Control" means the time period commencing on the date this Declaration is recorded with the County Recorder of Navajo County, Arizona, and ending on the earlier of: (i) ninety (90) days after the conveyance of seventy-five percent (75%) of the Units which may be conveyed to Unit Owners other than the Declarant; or (ii) four (4) years after Declarant has ceased to offer Units for sale in the ordinary course of business.

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

1.2.27 "Plat" means the condominium plat for Pinetop Crossing, which plat has been recorded in Book 23 of Maps, Page 29 thru 33, records of Navajo County, Arizona, and any amendments, supplements, or corrections thereto.

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

1.2.29 "Rules" means the rules and regulations adopted by the Association, as amended from time to time.

1.2.30 "Single Family" means a group of one or more persons each related to the other by blood, marriage, or legal adoption, or a group of not more than three (3) persons not all so related, together with their domestic servants, who maintain a common household in a Unit.

1.2.31 "Special Declarant Rights" means any right or combination of rights reserved by or granted to the Declarant in this Declaration or by the Condominium Act to do any of the following:

- (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 or within the Additional Property; and

(e) Appoint or remove any officer of the Association or any member of the Board of Directors during the Period of Declarant Control.

1.2.32 "Unit" means a portion of the Condominium designated for separate ownership or occupancy, the boundaries of which are described in Section 2.5 of this Declaration.

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

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

2.1 Submission of Property. Declarant hereby submits the Property, together with all Improvements situated thereon and all easements, rights, and appurtenances thereto, to the provisions of the Condominium Act for the purpose of creating a condominium in accordance with the provisions of the Condominium Act and hereby declares that the Property, together with all Improvements situated thereon, and all easements, rights, and appurtenances thereto, shall be held and conveyed subject to the terms, covenants, conditions, and restrictions set forth in this Declaration.

2.2 Name of Condominium. The name of the Condominium created by this Declaration is PINETOP CROSSING CONDOMINIUM.

2.3 Name of Association. The name of the Association is PINETOP CROSSING CONDOMINIUM ASSOCIATION, INC.

2.4 Identifying Numbers of Units. The identifying numbers of the Units are 1 through 9 and 11 through 69, inclusive.

2.5 Unit Boundaries.

2.5.1 The boundaries of each Unit are the interior unfinished surfaces of the exterior perimeter walls, middle of interior Unit demising walls, floor, ceilings, doors, and windows of the Unit, all as originally constructed. Except as provided in the foregoing sentence, all lath, furring, wallboard, drywall, plasterboard, plaster, paneling, tiles, wallpaper, interior paint, finished flooring, and any other materials constituting any part of the finished surfaces of the interior walls, floor, and ceiling are part of the Unit, and all other portions of the walls, floor, and ceiling/attic are part of the Common Elements.

2.5.2 Any air conditioning or heating units, chute, flue, duct, wire, conduit, bearing wall, bearing column, or other fixture, whether located within or outside of the boundaries of a Unit, which serve only that Unit, is a Limited Common Element allocated solely to that Unit, and any portion serving more than one Unit or any portion of the Common Elements is a part of the Common Elements.

2.5.3 Subject to the provisions of Subsection 2.5(b) of this Declaration, all spaces, interior partitions, and other fixtures and Improvements within the boundaries of a Unit are part of the Unit.

2.5.4 Any shutters, awnings, window boxes, doorsteps, stoops, porches, decks, balconies, entryways, or patios, and all exterior doors and windows or other fixtures designed to serve a single Unit, but located outside the Unit's boundaries, are Limited Common Elements allocated exclusively to that Unit.

2.5.5 In the event of any inconsistency or conflict between the provisions of this Section and the Plat, this Section shall control.

2.5.6 The physical boundaries of a Unit shall be considered to be the proper boundaries regardless of the settling, rising, or lateral movement of the Buildings and regardless of any variances between the boundaries shown on the Plat and the actual physical boundaries.

2.5.7 Declarant reserves the right to relocate the boundaries between adjoining Units owned by the Declarant to reallocate each such Unit's Common Element interest, votes in the Association, and Common Expense Liabilities subject to and in accordance with A.R.S. Section 33-1222.

2.6 Allocation of Common Element Interest and Common Expense Liabilities. The undivided interests in the Common Elements and in the Common Expenses of the Association shall be allocated equally among the Units. Accordingly, each Unit's percentage interest in the Common Elements and in the Common Expenses of the Association shall be allocated equally among the Units.

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) Each Unit is allocated any patio, porch, and deck adjoining the Unit as constructed with the initial construction of the Building of which it is a part or as shown on the Plat;

(b) Each Unit is allocated the off-street driveway area constructed therefor as determined or declared by the Declarant in its sole and absolute discretion or as shown on the Plat;

(c) Any chute, vertical extensions of ceilings, flue, pipe, duct, wire, conduit, bearing wall, bearing column, or other fixtures, whether located within or outside of the boundaries of a Unit, which serve only one Unit is a Limited Common Element allocated solely to the Unit served;

(d) If a chute, flue, pipe, duct, wire, conduit, bearing wall, bearing column, or other fixtures lies partially within and partially outside the designated boundaries of a Unit, the portion serving only the Unit is a Limited Common Element allocated solely to the Unit, the use of which is limited to that Unit, and any portion serving more than one Unit or a portion of the Common Elements is a part of the Common Elements;

(e) Any shutters, awnings, window boxes, doorsteps, stoops, porches, and exterior doors and windows or other fixtures designed to serve a single Unit, located outside the boundaries of the Unit, are Limited Common Elements allocated exclusively to the Unit, and their use is limited to that Unit.

2.9 Reallocation of Limited Common Elements.

2.9.1 A Limited Common Element may be reallocated by an amendment to this Declaration made in accordance with the provisions of Section 33-1218 (B) of the Condominium Act. All such proposed reallocations must be submitted to the Declarant, and the Declarant shall have authority during the Period of Declarant Control to approve or reject any and all reallocations of a Limited Common Element sought to be accomplished by amendment to the Declaration.

2.9.2 The Board of Directors shall have the right, without a vote of the Members, to allocate as a Limited Common Element any portion of the Common Elements not previously allocated as a Limited Common Element. Any such allocation by the Board of Directors shall be made by an amendment to this Declaration and an amendment to the Plat if required by the Condominium Act.

2.10 **Change in Number of Units.** To add or withdraw Units from the Condominium, Declarant shall, if required by law, prepare, execute, and record an amendment to the Declaration which shall comply with the Condominium Act and which reallocates the Common Element

Interest among all Units. The interest of each Unit in the Common Elements shall be equally apportioned among the Units in the Condominium.

3. EASEMENTS

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

3.2 Easements for Ingress and Egress. There is hereby created easements for ingress and egress for pedestrian traffic over, through, and across sidewalks, paths, walks, and lanes that from time to time may exist upon the Common Elements. There is also created an easement for ingress and egress for pedestrian and vehicular traffic over, through, and across such driveways and parking areas as from time to time may be paved and intended for such purposes 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 Unit Owners and occupants of the Units and their guests, families, tenants, and invitees.

3.3 Unit Owners' Easements of Enjoyment.

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

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

(b) The right of the Association to convey the Common Elements or subject the Common Elements to a mortgage, deed of trust, or other security interest, in the manner and subject to the limitations set forth in the Condominium Act;

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

(d) The right of the Association to suspend the right of a Unit Owner and any resident of his Unit to use the Common Elements for any period during which the Unit Owner is in violation of any provision of the Condominium Documents.

3.3.2 If a Unit is leased or rented, the lessee and the members of his family residing with the lessee shall have the right to use the Common Elements during the term of the

lease, and the Unit Owner shall have no right to use the Common Elements until the termination or expiration of the lease.

3.3.3 The guests and invitees of any member or other person entitled to use the Common Elements pursuant to Subsection 3.1 of this Declaration or of any lessee who is entitled to use the Common Elements pursuant to Subsection 3.2 of this Declaration may use the Common Elements provided they are accompanied by a Member, lessee, or other person entitled to use the Common Elements pursuant to Subsection 3.1 or 3.2 of this Declaration. The Board of Directors shall have the right to limit the number of guests and invitees who may use the Common Elements at any one time and may restrict the use of the Common Elements by guests and invitees to certain specified times.

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

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

3.4 Declarant's Use for Sales and Leasing Purposes.

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

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

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

3.4.4 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.

3.5 Declarant's Rights and Easements.

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

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

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

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

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

3.7 Common Elements Easement in Favor of the Association. The Common Elements shall be subject to an easement in favor of the Association and the agents, employees, and independent contractors of the Association for the purpose of the inspection, upkeep, maintenance, repair, and replacement of the Common Elements and for the purpose of exercising all rights of the Association and discharging all obligations of the Association.

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

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

3.8.2 For the installation, repair, maintenance, use, removal, or replacement of lighting fixtures, electrical receptacles, panel boards, and other electrical installations which are a part of or serve any Unit but which encroach into a part of a Common Element adjacent to such Unit; 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.

3.8.3 For driving and removing nails, screws, bolts, and other attachment devices into the Unit side surface of the stone, block, brick, or other masonry walls bounding the Unit and the Unit side surface of the studs which support the dry wall or plaster perimeter walls bounding the Unit, the bottom surface of floor joists above the Unit, and the top surface of the floor joists below the Unit to the extent such nails, screws, bolts, and other attachment devices may encroach into a part of a Common Element adjacent to such Unit; provided that any such action will 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.

3.8.4 For the maintenance of any lighting devices, outlets, medicine cabinets, exhaust fans, ventilation ducts, registers, grilles, and similar fixtures which serve only one Unit but which encroach into any part of the Common Elements.

3.8.5 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 of this Declaration.

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

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

3.9.2 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;

3.9.3 For correction of emergency conditions in one or more units or Limited Common Elements or casualties to the Common Elements, the Limited Common Elements, or the Units;

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

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

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

4. USE AND OCCUPANCY RESTRICTIONS AND OBLIGATIONS

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

4.2 Antennas. 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 erected, used, or maintained outdoors on any portion of the Condominium, whether attached to a Building or structure or otherwise, unless approved by the Board of Directors. The Board of Directors shall have the right of placement approval and to establish screening requirements regarding the placement of all reception devices protected through the Federal Telecommunications Act of 1996, together with any amendments to the Act.

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

4.4 Improvements and Alterations. Any Unit Owner may make nonstructural additions, alterations, and improvements within his Unit without the prior written approval of the

Board of Directors, but such Unit Owner shall, to the extent permitted under Arizona law, be responsible for any damage to other Units and to the Common Elements which results from any such alterations, additions, or improvements. No Unit Owner shall make any structural additions, alterations, or improvements within a Unit unless, prior to the commencement of each addition, alteration, or improvement, the Unit Owner receives the prior written approval of the Board of Directors and an architect or engineer, licensed in Arizona, certifies that such addition, alteration, or improvement will not impair the structural integrity of the Building within which such addition, alteration, or improvement is to be made. The Unit Owner shall, to the extent permitted by Arizona law, be responsible for any damage to other Units and to the Common Elements which results from any such additions, alterations, or improvements. Notwithstanding the foregoing, no addition, alteration, or improvement within a Unit or within any Limited Common Element allocated to the exclusive use of a Unit, whether structural or not, which would be visible from the exterior of the Building in which the Unit is located or from the exterior of the Limited Common Element, shall be made without the prior written approval of the Board of Directors, which approval shall only be granted if the Board of Directors affirmatively finds that the proposed addition, alteration, or improvements is aesthetically pleasing and in harmony with the surrounding Improvements. No Unit Owner shall make any addition, alteration, or improvement to the Common Elements without the prior written approval of the Board of Directors.

4.5 Trash Containers and Collection. No garbage or trash shall be placed or kept on the Condominium except in covered containers of a type, size, and style which are approved by the Board of Directors. The Board of Directors shall have the right to adopt and promulgate rules and regulations regarding garbage, trash, trash containers, and collection. The Board of Directors shall have the right to require all Owners to place trash and garbage in containers located in areas designated by the Board of Directors. No incinerators shall be kept or maintained in any Unit. In the event the municipality within which the Condominium is located does not provide residential trash service to the Unit Owners through a municipal contract, the Association, through the Board of Directors, shall have the authority to identify a single source refuse service provider for the entire Condominium and all of the Unit Owners. Upon notice from time to time from the Board of Directors to the Unit Owners, the Unit Owners shall only utilize the refuse service provider identified by the Board of Directors, and each Unit Owner shall pay for the services therefrom directly to said service provider and be responsible for all charges relating thereto; and no other refuse service provider shall be allowed onto the Condominium in such event.

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

4.7 Animals. No animals, birds, fowl, poultry, or livestock shall be maintained or kept in any Units or on any other portion of the Condominium, except that no more than two Permitted Pets may be kept or maintained in a Unit if they are kept, bred, or raised solely as domestic pets and not for commercial purposes. For purposes of this Section, a "Permitted Pet"

shall mean a dog, cat, or household bird. No Permitted Pet shall be allowed to make an unreasonable amount of noise, cause an odor, or to become a nuisance. All dogs shall be kept on a leash not to exceed six (6) feet in length when outside a Unit or any Limited Common Elements allocated to the Unit, and all dogs shall be directly under the Unit Owner's control at all times. No Unit Owner or any lessee or guest of a Unit Owner shall permit any dog being kept in the Unit or the Limited Common Elements allocated to the Unit to relieve itself on any portion of the Common Elements. Any Unit or Limited Common Element 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 animal or 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 in which the Unit is located. Upon the written request of any Unit Owner, the Board of Directors shall determine whether, for the purposes of this Section, a Permitted Pet is a nuisance or is making an unreasonable amount of noise or causing an odor. The Board of Directors shall have the right to adopt, amend, and repeal rules and regulations governing the keeping of Permitted Pets in the Condominium, and such rules and regulations may include limitations on the height and/or weight of Permitted Pets.

4.8 Temporary Occupancy. No trailer, basement of any incomplete building, tent, shack, garage, barn, or other structure, and no temporary Improvement of any kind, shall be used at any time for a residence, either temporarily or permanently. Temporary buildings or structures used during the construction of buildings or structures approved by the Board of Directors shall be permitted but must be removed promptly upon completion of the construction of the building or structure.

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

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

4.11 Diseases and Insects. No Unit Owner shall permit any thing or condition to exist upon the Condominium which could induce, breed, or harbor infectious diseases or noxious insects.

4.12 Trucks, Trailers, Campers and Boats. No truck greater than twenty feet six inches (20'6"), mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, recreational vehicle, boat, boat trailer, or other similar equipment or vehicle may be parked, kept, maintained, constructed, reconstructed, or repaired on any part of the Condominium except in the garages which are part of the Units, if any.

4.13 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 except in garages which are part of the Units, if any, and no inoperable vehicle may be stored or parked on any portion of the Condominium except in garages which are part of the Units, if any. No automobile, motorcycle, motorbike, or other motor vehicle shall be parked upon any part of the Condominium except (a) in garages which are

part of Units, if any, (b) in such parking spaces as may exist from time to time on the Common Elements, or (c) the off-street driveway areas referred to in Section 2.8(a) of this Declaration so long as the automobile, motorcycles, motorbike or other motor vehicle does not extend into the streets of the Condominium or other portions of the Common Elements.

4.14 Garage Doors (if any). Garage doors, if any, shall be kept closed at all times when a vehicle is being repaired or serviced.

4.15 Towing of Vehicles. The Board of Directors shall have the right to have any truck, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, recreational vehicle, boat, boat trailer, or similar equipment or vehicle or any automobile, motorcycle, motorbike, or other motor vehicle parked, kept, maintained, constructed, reconstructed, or repaired, in violation of the Condominium Documents, towed away at the sole cost and expense of the owner of the vehicle or equipment. Any expense incurred by the Association in connection with the towing of any vehicle or equipment shall be paid to the Association upon demand by the owner of the vehicle or equipment.

4.16 Signs. No signs (including, but not limited to, "For Sale" or "For Rent" signs) other than a name and address sign not exceeding any limitations or restrictions imposed by the Board of Directors from time to time, shall be permitted on the exterior of any Unit or Building or any other portion of the Condominium without the prior written approval of the Board of Directors except for: (i) signs used by the Declarant to advertise the Units for sale or lease; (ii) signs on the Common Elements as may be placed or approved by the Declarant during the Period of Declarant Control; and (iii) any signs as may be required by legal proceedings.

The foregoing restrictions shall be subject to such limitations and privileges as are established at law, including for the placement of political signs and signs pertaining to candidates for political office or to other such protected matters

4.17 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.

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

4.19 Window Coverings. No reflective materials, including, but without limitation, aluminum foil, reflective screens or glass, mirrors, or similar items, shall be installed or placed upon the outside or inside of any windows of a Unit without the prior written approval of the Board of Directors. No enclosures, drapes, blinds, shades, screens, or other items affecting the

exterior appearance of a Unit or any Limited Common Elements allocated to the Unit shall be constructed or installed without the prior written consent of the Board of Directors.

4.20 Limitation on Leasing of Units. No Unit Owner may lease less than his entire Unit. Unit Owners leasing their Units must satisfy and otherwise comply with all applicable governmental laws, rules, regulations, restrictions, and codes, all at the Unit Owner's sole cost and expense. All leases shall be in writing and shall provide that the terms of the lease shall be subject in all respects to the provisions of the Condominium Documents, and any failure by the lessee to comply with the terms of the Condominium Documents shall be a default under the lease.

4.21 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.

4.22 No Landscaping or Irrigation. In light of the soil composition of the Condominium and surrounding properties, there shall be no landscaping of any portion of the Condominium except by the Association in its sole and absolute discretion. The foregoing restriction shall expressly include the prohibition of any irrigation system or equipment.

5. MAINTENANCE AND REPAIR OF COMMON ELEMENTS AND UNITS

5.1 Duties of the Association. The Association shall maintain, repair, and replace all Common Elements, whether located inside or outside the Units, except for the Limited Common Elements which the Unit Owners are obligated to maintain, repair, and replace pursuant to Section 5.2 of this Declaration. The cost of all such maintenance, repairs, and replacements shall be a Common Expense and shall be paid for by the Association.

5.2 Duties of Unit Owners.

5.2.1 Each Unit Owner shall maintain, repair, and replace, at his own expense, all portions of his Unit, including, without limitation, all lath, furring, wallboard, drywall, plasterboard, plaster, paneling, tiles, wallpaper, interior paint, finished flooring, and any other materials constituting any part of the finished surfaces of the interior walls, floor, or ceiling of the Unit.

5.2.2 Each Unit Owner shall be responsible for the maintenance and repair of the following portions of the Common Elements: (i) the Limited Common Elements allocated to his Unit pursuant to Subsections 2.5(b) of this Declaration; (ii) the glass windows allocated to the Unit as Limited Common Elements pursuant to Section 2.8 (a) (5) of this Declaration; (iii) all mechanical equipment and fixtures which only serve the Unit; and (iv) the concrete slab and all other Improvements within the interior of the patio, deck, or porch allocated to the Unit as a Limited Common Element pursuant to Section 2.8 (a) (1) of this Declaration.

5.3 Repair or Restoration Necessitated by Owner. Each Unit Owner shall be liable to the Association, to the extent permitted by Arizona law, for any damage to the Common Elements or the Improvements, landscaping, or equipment thereon which results from the

negligence or willful conduct of the Unit Owner or any of his licensees, invitees, employees, agents, contractors, or tenants. The cost to the Association of any such repair, maintenance, or replacements required by such act of a Unit Owner shall be paid by the Unit Owner, upon demand, to the Association. The Association may enforce collection of any such amounts in the same manner and to the same extent as provided for in this Declaration for the collection of Assessments.

5.4 Unit Owner's Failure to Maintain. If a Unit Owner fails to maintain in good condition and repair his Unit or any Limited Common Element which he is obligated to maintain under this Declaration, and the required maintenance, repair, or replacement is not performed within fifteen (15) days after written notice has been given to the Unit Owner by the Association, the Association shall have the right, but not the obligation, to perform the required maintenance, repair, or replacement. The cost of any such maintenance, repair, or replacement shall be assessed against the nonperforming Unit Owner pursuant to Subsection 7.2(d) of this Declaration.

5.5 Responsibility for Landscaping. The Association shall maintain, repair and replace all landscaping planted by the Declarant and any equipment related thereto which is located on the Common Elements (including any Limited Common Elements). Water charges for such landscaping shall be the responsibility of the Unit Owner whose Unit is closest thereto or to whose water meter any equipment therefor is connected. An easement and right of use in favor of the Association on, in and over each Limited Common Elements for such purposes is hereby granted and conveyed to the Association by this Declaration. No Unit Owner shall disconnect or otherwise preclude or interfere with the delivery of water to such areas of the Condominium. Each Unit Owner shall be responsible for their own water service and bills therefor notwithstanding the inclusion of water for such landscaping. Each Unit Owner shall pay such charges as they are billed by the applicable utility or water company or provider.

6. THE ASSOCIATION; RIGHTS AND DUTIES, MEMBERSHIP

6.1 Rights, Powers, and Duties of the Association. No later than the date on which the first Unit is conveyed to a Purchaser, the Association shall be organized as a nonprofit Arizona corporation. The Association shall be the entity through which the Unit Owners shall act. The Association shall have such rights, powers, and duties as are prescribed by law and as are set forth in the Condominium Documents, together with such rights, powers, and duties as may be reasonably necessary in order to effectuate the objectives and purposes of the Association as set forth in this Declaration and the Condominium Act. The Association shall have the right to finance capital improvements in the Condominium by encumbering future Assessments if such action is approved by the written consent or affirmative vote of Unit Owners representing more than fifty percent (50%) of the votes in the Association. Unless the Condominium Documents or the Condominium Act specifically require a vote of the Members, approvals or actions to be given or taken by the Association shall be valid if given or taken by the Board.

6.2 Directors and Officers.

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

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

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

6.3 **Rules.** The Board of Directors, from time to time and subject to the provisions of this Declaration and the Condominium Act, may adopt, amend, and repeal rules and regulations. The Rules may, among other things, restrict and govern the use of any area by any Unit Owner, by the family of such Unit Owner, or by any invitee, licensee, or lessee of such Unit Owner.

6.4 **Composition of Members.** Each Unit Owner shall be a Member of the Association. The membership of the Association at all times shall consist exclusively of all the Unit Owners.

7. ASSESSMENTS

7.1 Preparation of Budget.

7.1.1 At least sixty (60) days before the beginning of each fiscal year of the Association, commencing with the fiscal year in which the first Unit is conveyed to a Purchaser, the Board of Directors shall adopt a budget for the Association containing an estimate of the total amount of funds which the Board of Directors believes will be required during the ensuing fiscal year to pay all Common Expenses, including, but not limited to: (i) the amount required to pay the cost of maintenance, management, operation, repair, and replacement of the Common Elements and those parts of the Units, if any, which the Association has the responsibility of maintaining, repairing, and replacing; (ii) the cost of wages, materials, insurance premiums, services, supplies, and other expenses required for the administration, operation, maintenance, and repair of the Condominium; (iii) the amount required to render to the Unit Owners all services required to be rendered by the Association under the Condominium Documents; and (iv) such amounts as may be necessary to provide general operating reserves and reserves for contingencies and replacements. The budget shall separately reflect any Common Expenses to be assessed against less than all of the Units pursuant to Subsection 7.2 (d) or 7.2 (e) of this Declaration.

7.1.2 Within thirty (30) days after the adoption of a budget, the Board of Directors shall send to each Unit Owner a summary of the budget and a statement of the amount of the Common Expense Assessment assessed against the Unit of the Unit Owner in accordance

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

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

7.2 Common Expense Assessment.

7.2.1 For each fiscal year of the Association, commencing with the fiscal year in which the first Unit is conveyed to a Purchaser, the total amount of the estimated Common Expenses set forth in the budget adopted by the Board of Directors (except for the Common Expenses which are to be assessed against less than all of the Units pursuant to this Section or Subsections 7.2 (d) and 7.2 (e) of this Declaration) shall be assessed against each Unit in proportion to the Unit's Common Expense Liability as set forth in Section 2.6 of this Declaration. The amount of the Common Expense Assessment assessed pursuant to this Subsection 7.2 (a) shall be in the sole discretion of the Board of Directors. If the Board of Directors determines during any fiscal year that its funds budgeted or available for that fiscal year are, or will, become inadequate to meet all Common Expenses for any reason, including, without limitation, nonpayment of Assessments by Members, it may increase the Common Expense Assessment for that fiscal year, and the revised Common Expense Assessment shall commence on the date designated by the Board of Directors. Notwithstanding the foregoing, at the discretion of the Board of Directors from time to time, any Common Expenses or portions of a Common Expenses benefiting fewer than all of the Units shall be assessed exclusively against the Units benefited.

7.2.2 The Common Expense Assessments shall commence as to all Units on the first day of the month following the conveyance of the first unit to a Purchaser. The first Common Expense Assessment shall be adjusted according to the number of months remaining in the fiscal year of the Association. Unless otherwise required by the Board of Directors from time to time, Common Expense Assessments shall be paid in advance in one annual installment. Special Assessments shall be paid as the Board of Directors may require from time to time.

7.2.3 Except as otherwise expressly provided for in this Declaration, all Common Expenses, including, but not limited to, Common Expenses associated with the maintenance, repair, and replacement of a Limited Common Element, shall be assessed against all of the Units in accordance with Subsection 7.2 (a) of this Declaration.

7.2.4 If any Common Expense is caused by the misconduct of any Unit Owner or any of his licensees, invitees, employees, agents, contractors, or tenants, the Association shall assess that Common Expense exclusively against his Unit.

7.2.5 Assessments to pay a judgment against the Association may be made only against the Units in the Condominium at the time the judgment was entered, in proportion to their Common Expense Liabilities.

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

7.3 Special Assessments. In addition to Common Expense Assessments, Special Assessments may be levied by the Board of Directors from time to time for (a) the cost of any construction, reconstruction, repair, or replacement of a capital improvement of the Common Elements, including fixtures and personal property related thereto; (b) correcting an inadequacy in the current operating account of the Association; (c) defraying, in whole or in part, the cost of any construction, reconstruction, unexpected repair, or replacement of Common Elements, including fixtures and personal property related thereto; (d) paying for such other matters as the Board of Directors may deem appropriate by a vote of a majority of the Members who are voting in person or by proxy at a meeting duly called for this purpose; and (e) the services and facilities provided for and described in Section 10.19 below. Unless otherwise specified by the Board of Directors, Special Assessments shall be due thirty (30) days after they are levied and notice of the Special Assessment is given to the Unit Owners.

7.4 Assessments for Incomplete Units. The Common Expense Assessment for any unit on which construction has not been substantially completed shall be twenty-five percent (25%) of the Common Expense Assessment for units which have been substantially completed. Declarant shall be responsible to pay to the Association any deficiency in monies due to the Declarant having paid a reduced Common Expense Assessment and necessary for the Association to be able to timely pay all Common Expenses.

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

7.5.1 Any Assessment, or any installment of an Assessment, which is not paid within five (5) days after the Assessment first became due shall be deemed delinquent and shall bear interest from the date of delinquency at the rate of interest established from time to time by the Board of Directors.

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

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

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

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

7.8 Certificate of Payment. The Association, on written request, shall furnish to a lien holder, 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 twenty (2) business 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. In addition, the Association shall furnish such statements as may be required under A.R.S. §33-1260 within the time frames set forth therein for compliance.

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

7.10 Surplus Funds. Surplus funds of the Association remaining after payment of or provisions for Common Expenses and any prepayment of reserves may, in the discretion of the Board of Directors, either be returned to the Unit Owners pro rata in accordance with each Unit Owner's Common Expense Liability or be credited on a pro rata basis to the Unit Owners to reduce each Unit Owner's future Common Expense Assessments.

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

7.12 Transfer Fee. Each Purchaser of a Unit shall pay to the Association, immediately upon becoming the Owner of the Unit, a transfer fee in such amount as is established from time to time by the Board of Directors.

7.13 Working Capital Funds. To ensure that the Association shall have adequate funds to meet its expenses or to purchase necessary equipment or services, each purchaser of a Unit from the Declarant shall pay to the Association, immediately upon becoming the Unit Owner of the Unit, a sum equal to one-fourth (1/4th) of the Common Expense Assessment for the Unit as of the closing thereof, which Common Expense Assessment shall be based upon the Unit being owned by the Purchaser and not by the Declarant. Funds paid to the Association pursuant to this Section may be used by the Association for payment of operating expenses or any other purpose permitted hereunder or pursuant to the Articles or Bylaws. Payments made pursuant to this Section shall be non-refundable and shall not be considered as an advance payment of any Assessments levied by the Association pursuant to this Declaration.

8. INSURANCE

8.1 Scope of Coverage.

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

(a) Property insurance on the Common Elements and Units, exclusive of improvements and betterments installed in Units by Unit Owners, issued under a standard form "All Risk of Direct Physical Loss Form" in an amount equal to the maximum insurable replacement value of the Common Elements and Units, as determined by the Board of Directors; provided, however, that the total amount of insurance after application of any deductibles shall not be less than one hundred percent (100%) of the current replacement cost of the insured property, exclusive of land, excavations, foundations, and other items normally excluded from a property insurance policy.

(b) Broad Form Comprehensive general liability insurance, for a limit to be determined by the Board, but not less than \$2,000,000.00 for any single occurrence. Such insurance shall cover all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the Common Elements. Such policy shall include (i) a cross liability clause to cover liabilities of the Unit Owners as a group to a Unit Owner; (ii) medical payments insurance and contingent liability coverage arising out of the use of hired and non-owned automobiles; and (iii) coverage for any legal liability that results from lawsuits related to employment contracts in which the Association is a party.

(c) Workmen's compensation insurance to the extent necessary to meet the requirements of the laws of Arizona.

(d) Directors' and officers' liability insurance covering all the directors and officers of the Association in such limits as the Board of Directors may determine from time to time.

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

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

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

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

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

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

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

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

(vii) For policies of hazard insurance, a standard mortgagee clause providing that the insurance carrier shall notify the Association and each First Mortgagee named in the policy at least ten (10) days in advance of the effective date of any substantial change in coverage or cancellation of the policy.

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

(g) If there is a steam boiler used in connection with the Condominium, boiler explosion insurance evidenced by the standard form of boiler machinery insurance policy and providing coverage in the minimum amount of \$50,000.00 per accident per location.

(h) If the Condominium is located in an area identified by the Secretary of Housing & Urban Development as an area having special flood hazards, a "blanket policy" of flood insurance on the Condominium in the lesser of one hundred percent (100%) of the current replacement cost of the buildings and any other property covered on the required form of policy or the maximum limit of coverage available under the National Insurance Act of 1968, as amended.

(i) "Agreed Amount" and "Inflation Guard" endorsements.

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.

8.2 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.

8.3 Insurance Obtained by Unit Owners. The issuance of insurance policies to the Association pursuant to this Article shall not prevent a Unit Owner from obtaining insurance for his own benefit and at his own expense covering his unit, his personal property, and providing personal liability coverage.

8.4 Payment of Insurance Proceeds. Any loss covered by property insurance obtained by the Association in accordance with this Article shall be adjusted with the Association and the insurance proceeds shall be payable to the Association and not to any mortgagee or beneficiary under a deed of trust. The Association shall hold any insurance proceeds in trust for Unit Owners and lien holders as their interests may appear, and the proceeds shall be disbursed and applied as provided for in A.R.S. Section 33-1253.

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

9. RIGHTS OF FIRST MORTGAGEES

9.1 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:

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

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

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

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

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

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

- (a) Voting rights;
- (b) Assessments, assessment liens, or subordination of assessment liens;
- (c) Reserves for maintenance, repair, and replacement of Common Elements;
- (d) Insurance or fidelity bonds;
- (e) Responsibility for maintenance and repairs;
- (f) Expansion or contraction of the Condominium, or the addition or annexation of property to the Condominium;
- (g) Boundaries of any Unit;
- (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) 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 action to terminate the legal status of the Condominium after substantial destruction or condemnation occurs;

(o) Any provisions which expressly benefit First Mortgagee's Eligible Mortgage Holders or Eligible Insurers or Guarantors.

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

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

9.2.4 The approvals required by this Section shall not apply to amendments that may be executed by the Declarant in the exercise of its Development Rights.

9.3 **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.

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

9.5 **Prior Written Approval of First Mortgagees.** Except as provided by statute in case of condemnation or substantial loss to the units or the Common Elements, unless at least two-thirds (2/3) of all First Mortgagees (based upon one vote for each First Mortgage owned) or Unit Owners (other than the Declarant or other sponsor, developer, or builder of the Condominium) of the Units have given their prior written approval, the Association shall not be entitled to:

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

9.5.2 Change the pro rata interest or obligations of any individual Unit for the purpose of: (i) levying Assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or (ii) determining the pro rata share of ownership of each Unit in the Common Elements;

9.5.3 Partition or subdivide any Unit;

9.5.4 By act or omission, seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Elements. The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements shall not be deemed a transfer within the meaning of this Subsection;

9.5.5 Use Hazard insurance proceeds for losses to any Units or the Common Elements for any purpose other than the repair, replacement, or reconstruction of such Units or the Common Elements.

Nothing contained in this Section or any other provisions of this Declaration shall be deemed to grant the Association the right to partition any Unit without the consent of the Unit Owners thereof. Any partition of a Unit shall be subject to such limitations and prohibitions as may be set forth elsewhere in this Declaration or as provided under Arizona law.

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

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

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

9.9 **Conflicting Provisions.** In the event of any conflict or inconsistency between the provisions of this Article and any other provision of the Condominium Documents, the provisions of this Article shall prevail; provided, however, that in the event of any conflict or inconsistency between the different Sections of this Article or between the provisions of this Article and any other provision of the Condominium Documents with respect to the number or percentage of Unit Owners, First Mortgagees, Eligible Mortgage holders, or Eligible Insurers or Guarantors that must consent to: (i) an amendment of the Declaration, Articles, or Bylaws; (ii) a termination of the Condominium; or (iii) certain actions of the Association as specified in Sections 9.2 and 9.5 of this Declaration, the provision requiring the consent of the greatest number or percentage of Unit Owners, First Mortgagees, Eligible Mortgage holders, or Eligible Insurers or Guarantors shall prevail; provided, however, that the Declarant, without the consent of any Unit Owner being required, shall have the right to amend this Declaration, the Articles, or the Bylaws during the Period of Declarant Control in order to: (i) comply with the Condominium Act or any other applicable law if the amendment does not adversely affect the rights of any Unit Owner; (ii) correct any error or inconsistency in the Declaration, the Articles,

or the Bylaws if the amendment does not adversely affect the rights of any Unit Owner; or (iii) comply with the requirements or guidelines in effect from time to time of any governmental or quasi-governmental entity or federal corporation guaranteeing or insuring mortgage loans or governing transactions involving mortgage instruments, including, without limitation, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, or the Veterans Administration.

10. GENERAL PROVISIONS

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

10.2 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.

10.3 Duration. The covenants and restrictions of this Declaration shall run with and bind the Condominium, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years.

10.4 Termination of Condominium. The Condominium may be terminated only in the manner provided for in the Condominium Act.

10.5 Amendment.

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

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

10.5.3 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.

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

10.5.5 Any amendment adopted by the Unit Owners pursuant to Subsection 10.5(a) of this Declaration shall be signed by the President or Vice President of the Association and shall be recorded with the County Recorder of each County in which any portion of the Condominium is located. 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 10.5(d) of this Declaration or the Condominium Act shall be executed by the Declarant and shall be recorded with the County Recorder of each County in which any portion of the Condominium is located.

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

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

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

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

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

10.10 Topic Headings. The marginal or topical headings of the sections contained in this Declaration are for convenience only and do not define, limit, or construe the contents of the sections or of this Declaration.

10.11 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.

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

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

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

10.15 Attorney' 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.

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

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

10.17 Notice of Violation. The Association shall have the right to record a written notice of a violation by any Unit Owner of any restriction or provision of the Condominium Documents. The notice shall be executed and acknowledged by an officer of the Association and shall contain substantially the following information: (i) the name of the Unit Owner; (ii) the legal description of the Unit against which the notice is being recorded; (iii) a brief description of the nature of the violation; (iv) a statement that the notice is being recorded by the Association pursuant to this Declaration; and (v) a statement of the specific steps which must be taken by the Unit Owner to cure the violation. Recordation of a Notice of Violation shall serve as a notice to the Unit Owner and to any subsequent purchaser of the Unit that there is a violation of the provisions of the Condominium Documents. If, after the recordation of such notice, it is determined by the Association that the violation referred to in the notice does not exist or that the actual violation referred to in the notice has been cured, the Association shall record a notice of compliance which shall state the legal description of the Unit against which the Notice of Violation was recorded, the recording data of the Notice of Violation, and shall state that the violation referred to in the notice of violation has been cured, or if such be the case, that it did not exist.

10.18 High Power Transmission Lines. Each Unit Owner, by accepting a deed to a Unit, or by otherwise acquiring title to a Unit, acknowledges and agrees that: (a) the Condominium includes, or may include or be adjacent to or in the vicinity of, property which is subject to easements for high power transmission lines and related towers, systems, and other equipment (some of which may be on or over Common Elements and/or other open space or recreational areas); (b) some studies have suggested links between such high power transmission lines, or similar systems or equipment, and increased incidents of various illnesses in persons residing nearby (including, without limitation, some forms of cancer); (c) Declarant has made no representations, warranties, or statements regarding such easements or such high power transmission lines or related towers, systems, or equipment (except to note their existence), or any health or other risks related (or potentially related) thereto; and (d) such Unit Owner (for such Unit Owner and his family members, other residents, tenants, successors, and assigns) hereby accepts and assumes any and all health and other risks as may now or hereafter be or become associated with such high power transmission lines, or similar systems or equipment, or any new or replacement equipment or systems, and agrees not to assert and hereby waives any and all claims against Declarant, its successors and assignees, and the Association, and any director, officer, member, manager, employee, beneficiary, agent, representative, or contractor of any of them or related thereto.

10.19 Bulk Service Agreements.

10.19.1 The Board of Directors, acting on behalf of the Association, shall have the right, power, and authority to enter into one or more Bulk Service Agreements with one or more Bulk Providers (each of which terms is defined below), for such term(s), at such rate(s), and on such other terms and conditions as the Board of Directors deems appropriate, all with the primary goals of providing to Unit Owners, residents, and tenants of Units, cable television,

community satellite television, or other electronic entertainment, information, or communication services: (a) which might not otherwise be generally available to such Unit Owners, residents, and tenants; (b) at rates or charges lower than might otherwise generally be charged to Unit Owners, residents, and tenants for the same or similar services; (c) otherwise on terms and conditions which the Board of Directors believes to be in the interests of Unit Owners, residents, and tenants generally; or (d) any combination of the foregoing.

10.19.2 If all Units are to be served by a particular Bulk Service Agreement, the Board of Directors shall have the option either to: (a) include the Association's costs under such Bulk Service Agreement in the budget for each applicable fiscal year and thereby include such costs in the Common Expense Assessments for each such applicable year, or (b) separately bill to each Unit Owner his, her, or its proportionate share of the Association's costs under such Bulk Service Agreement (as reasonably determined by the Board of Directors, and with such frequency as may be determined by the Board of Directors, but no more often than monthly). If not all Units will be served by a particular Bulk Service Agreement, the Board of Directors shall have only the billing option described in clause (b) above.

10.19.3 Declarant, for each Unit, hereby covenants and agrees, and each Unit Owner other than Declarant, by becoming the Unit Owner of a Unit, is deemed to covenant and agree, to pay all amounts levied or charged against or to him, her, or it (or his, her, or its Unit) by the Board of Directors pursuant to this Section 10.19, and all such amount: (a) shall be deemed to be a part of the Common Expense Assessments against the Units against or to which they are levied or charged (or against or to whose Unit Owners they are levied or charged); (b) with interest, late charges, and all costs, including, but not limited to, reasonable attorneys fees, incurred by the Association in collecting or attempting to collect delinquent amounts, shall be secured by the lien for Common Expense Assessments established by this Declaration; and (c) as with other Assessments, shall also be the personal obligation of each person or entity who was a Unit Owner of the Unit at the time such amount became due (which personal obligation for delinquent amounts shall not pass to the successors in title of the Unit Owner unless expressly assumed by them unless title is transferred to one or more such successors for purposes of avoiding payment of such amounts or other Assessments or is transferred to a person or entity controlling, controlled by, or under common control with the Unit Owner transferring title).

10.19.4 No Unit Owner of a Unit covered by a Bulk Service Agreement shall be entitled to avoid or withhold payment of amounts charged by the Board of Directors to such Unit Owner or such Unit Owner's Unit under this Section 10.19, whether on the basis that such Unit Owner does not use, accept, or otherwise benefit from the services provided under such Bulk Service Agreement, or otherwise. However, the Board of Directors shall have the right, at its option, to exempt from payment of such amounts any Unit upon which no Unit has been completed.

10.19.5 "Bulk Provider" means a private, public, or quasi-public utility or other entity which provides, or proposes to provide, cable television, community satellite television, or other electronic entertainment, information, or communication services to Units pursuant to a "Bulk Service Agreement" (as defined below).

10.19.6 "Bulk Service Agreement" means an agreement between the Association and a Bulk Provider pursuant to which the Bulk Provider would provide cable television, community satellite television, or other electronic entertainment, information, or communication services to Units.

10.19.7 During the period of Declarant Control, the Board of Directors shall be entitled to enter into a Bulk Service Agreement which imposes on the Association or its Members (other than Declarant, unless it shall agree in writing thereto) any obligation to pay the direct costs of construction of any cables, lines, or other facilities or equipment for any such cable television, community satellite television, or electronic entertainment, information, or communication services. After the Period of Declarant Control, the Board of Directors shall not, without the approval of Unit Owners representing at least fifty-one percent (51%) of the votes in the Association who are voting in person or by proxy at an annual or special meeting of the Members of the Association, enter into a Bulk Service Agreement which imposes on the Association or its Members (other than Declarant, unless it shall agree in writing thereto) any obligation to pay the direct costs of construction or any cables, lines, or other facilities or equipment for any such cable television, community satellite television, or electronic entertainment, information, or communication services, but nothing in this paragraph 10.19(g) shall prevent the Board of Directors from entering into, or require approval of the Members of, any Bulk Service Agreement which imposes on the Association or its Members installation, connection, service charge, or similar charges or fees which do not exceed those generally prevailing at the time within the greater Tucson, Arizona, area, or which includes as a component of the monthly fee charged by the Bulk Provider amortization of some or all of its capital costs and related costs in providing services under the Bulk Service Agreement.

10.20 Limitations on Actions. Any action or arbitration brought by any Unit Owner against the Declarant or any agent, employee, officer, director, member, or contractor thereof, or any combination thereof, may be brought by the Unit Owner individually only, and not as part of a group or class. The Declarant and all of such agents, employees, officers, directors, members, and contractors, are expressly made a third party beneficiary of this provision.

10.21 Arbitration Disclosures and Agreements. The following terms and conditions shall govern and control in the event of a conflict with any other terms, conditions, or provisions of this Declaration.

ARBITRATION IS FINAL AND BINDING ON THE PARTIES AND SUBJECT TO ONLY VERY LIMITED REVIEW BY A COURT.

IN ARBITRATION, THE PARTIES ARE WAIVING THEIR RIGHT TO LITIGATE IN COURT, INCLUDING THEIR RIGHT TO A JURY TRIAL.

DISCOVERY IN ARBITRATION IS MORE LIMITED THAN DISCOVERY IN COURT.

ARBITRATORS ARE NOT REQUIRED TO INCLUDE FACTUAL FINDINGS OR LEGAL REASONING IN THEIR AWARDS. THE RIGHT TO APPEAL OR SEEK MODIFICATION OF ARBITRATORS' RULINGS IS VERY LIMITED.

A PANEL OF ARBITRATORS MIGHT INCLUDE AN ARBITRATOR WHO IS OR WAS AFFILIATED WITH THE HOUSING OR CONSTRUCTION INDUSTRY.

THE ARBITRATION WILL APPLY TO ALL DISPUTES BETWEEN ANY OWNER OR THE ASSOCIATION, OR BOTH, AND THE DECLARANT OR ANY AGENT, BENEFICIARY, EMPLOYEE, OFFICER, DIRECTOR, MEMBER, OR CONTRACTOR THEREFOR, OR ANY COMBINATION THEREOF; AND NOT JUST THOSE CONCERNING THIS DECLARATION.

IF YOU HAVE QUESTIONS ABOUT ARBITRATION, CONSULT YOUR ATTORNEY OR THE AMERICAN ARBITRATION ASSOCIATION.

10.21.1 Any claim or action ("Dispute") by any Unit Owner or the Association against the Declarant, or any agent, beneficiary, employee, officer, director, member, or contractor thereof, or any combination thereof (all of whom are made a third party beneficiary hereof), including, but not limited to, Disputes arising out of or relating to this Declaration, any Unit, any Common Element, this arbitration provision ("arbitration clause"), or any related agreements or instruments relating hereto ("Related Agreements"), and including, but not limited to, a Dispute based on or arising from an alleged tort, shall at the request of any party be resolved by binding arbitration in accordance with the application arbitration rules of the American Arbitration Association (the "Administrator").

10.21.2 The arbitration proceedings shall be conducted in a city mutually agreed by the parties. Absent such an agreement, arbitration will be conducted in Tucson, Arizona, or such other place as may be determined by the Administrator. The Administrator and the arbitrator(s) shall have the authority to the extent practicable to take any action to require the arbitration proceeding to be completed and the arbitrator(s)' award issued within 150 days after the filing of the Dispute with the Administrator. The arbitrator(s) shall have the authority to impose sanctions on any party that fails to comply with time periods imposed by the Administrator or the arbitrator(s), including the sanction of summarily dismissing any Dispute or defense with prejudice. The arbitrator(s) shall have the authority to resolve any Dispute regarding the terms of this Declaration, any Unit, any Common Element, this arbitration clause, or Related Agreements, including any claim or controversy regarding the arbitrability of any Dispute. All limitations periods applicable to any Dispute or defense, whether by statute or agreement, shall apply to any arbitration proceeding hereunder, and the arbitrator(s) shall have the authority to decide whether any Dispute or defense is barred by a limitations period and, if so, to summarily enter an award dismissing any Dispute or defense on that basis. The doctrines of compulsory counterclaim, res judicata, and collateral estoppel shall apply to any arbitration proceeding hereunder so that a party must state as a counterclaim in the arbitration proceeding any claim or controversy which arises out of the transaction or occurrence that is the subject matter of the Dispute. The arbitrator(s) may not consolidate or administer multiple arbitration claims or controversies as a class action.

10.21.3 The arbitrator(s) shall be selected in accordance with the rules of the Administrator from panels maintained by the Administrator. A single arbitrator shall have expertise in the subject matter of the Dispute. Where three arbitrators conduct an arbitration proceeding, the Dispute shall be decided by a majority vote of the three arbitrators, at least one

of whom must have expertise in the subject matter of the Dispute and at least one of whom must be a practicing attorney. The arbitrator(s) shall award to the prevailing party recovery of all costs and fees (including attorneys' fees and costs, expert witness fees and costs, arbitration administration fees and costs, and arbitrator(s) fees).

10.21.4 Judgment upon an arbitration may be entered in any court having jurisdiction.

10.21.5 Any party may initiate arbitration with the Administrator. If any party desires to arbitrate a Dispute asserted against such party in a complaint, counterclaim, cross-claim, or third-party complaint thereto, or in an answer or other reply to any such pleading, such party must make an appropriate motion to the trial court seeking to compel arbitration, which motion must be filed with the court within 45 days of service of the pleading, or amendment thereto, setting forth such Dispute. If arbitration is compelled after commencement of litigation of a Dispute, the party obtaining an order compelling arbitration shall commence arbitration and pay the Administrator's filing fees and costs within 45 days of entry of such order. Failure to do so shall constitute an agreement to proceed with litigation and waiver of the right to arbitrate.

10.21.6 Notwithstanding the applicability of any other law to this Declaration, this arbitration clause, or Related Agreements between or among the parties, the Federal Arbitration Act, 9 U.S.C. Section 1, *et seq.*, shall apply to the construction and interpretation of this arbitration clause if this Declaration falls within the scope of the coverage of said Act. If any provision of this arbitration clause should be determined to be unenforceable, all other provisions of this arbitration clause shall remain in full force and effect.

11. DISCLOSURE AND TREATMENT OF TRACTS C, D, E, F, I AND J

11.1 **Tracts C, D, E, F, I and J Excluded.** Tracts C, D, E, F, I and J shown on the Plat (collectively, the "Excluded Tracts") are not a part of the Property. Such property may be used for any purpose permitted by applicable zoning, as such zoning may from time to time be changed. Without limitation, the Excluded Tracts may eventually be improved for residential purposes or commercial purposes (including offices, retail, professional, warehousing, or any other use permissible under then applicable zoning), and all Owners of Units and Members of the Association are deemed hereby to have full knowledge of the possibility that the Excluded Tracts may be developed for such purposes or for any other purpose allowed by law.


11.2 **Perpetual Easements in Favor of Tracts I and J.** A perpetual non-exclusive easement for ingress, egress and underground utilities in favor of Tracts I and J is reserved over and across Tract K shown upon the Plat which easement shall be appurtenant to Tracts I and J. Tracts I and J shall not be subject to architectural control, assessments or any other provision hereof.

11.3 **Amendment of Article.** The provisions of this Article may only be amended with the written approval of the owner of Tracts I and J, and if there are multiple owners, then by all owners. Any purported amendment or revocation without such approval shall be void, provided that amendments or any revocation may be made by Declarant at any time while Declarant owns any portion of Tracts I and J.

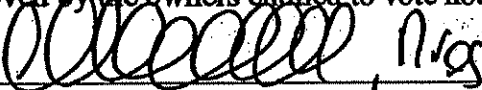
"DECLARANT"

Pinetop Crossing Development, L.L.C.,
an Arizona limited liability company

By: Standard Pacific of Tucson, Inc., as Manager

By:  Pres,
Name: Christopher L. Kemmerly
Title: President

The undersigned hereby certifies that this Amended and Restated Declaration of Condominium and of Covenants, Conditions and Restrictions for Pinetop Crossing Condominium has been approved by the owners entitled to vote not less than 67% of the votes in the Association.

 Pres,
President, Pinetop Condominium Association, Inc.

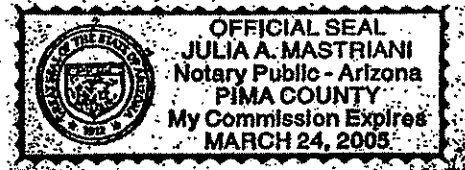
State of Arizona)
) ss.
County of Pima)

Acknowledged before me this 16th day of March, 2005 by Christopher Kemmerly,
the Division President of Standard Pacific of Tucson, Inc., as Manager of Pinetop
Crossing Development, L.L.C.

Julia A. Mastriani
Notary Public

My Commission expires:

March 24, 2005



State of Arizona)
) ss.
County of Pima)

Acknowledged before me this 16th day of March, 2005 by Christopher Kemmerly,
President of Pinetop Condominium Association, Inc.

Julia A. Mastriani
Notary Public

My Commission expires:

March 24, 2005

