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**WHEN RECORDED RETURN TO:**

Kevin Kiesel  
HBT of Rancho North LLC  
706 E. Bell Road, Suite 212  
Phoenix, AZ 85022

**CONDOMINIUM DECLARATION**

**FOR**

**RANCHO NORTH,  
A CONDOMINIUM**

**WHEN RECORDED RETURN TO:**

Kevin Kiesel  
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**CONDOMINIUM DECLARATION  
FOR  
RANCHO NORTH,  
A CONDOMINIUM**

THIS Condominium Declaration for Rancho North, a Condominium, (hereinafter termed the "Declaration") is made as of the 17<sup>th</sup> day of October , 2017, by HBT of Rancho North LLC, an Arizona limited liability company (hereinafter termed "Declarant").

**INTRODUCTION**

- A. Declarant is the owner of fee title to that certain real property situated in the City of Phoenix, Arizona which is more particularly described in Exhibit A ("the "Parcel"). The Declarant desires to submit the Parcel to a condominium form of ownership in accordance with the Condominium Act and this Declaration.
- B. Declarant has constructed or will construct on the Parcel certain improvements as shown on the Plat referred to below.
- C. Declarant intends that all Owners, Occupants, First Mortgagees and other Persons acquiring an interest in the Condominium shall at all times enjoy the benefits of, and shall hold their interest subject to this Declaration, which is Recorded in furtherance of establishing a general plan of condominium ownership for the Condominium, and for establishing rules for the use, occupancy, management, and enjoyment thereof, all for the purpose of enhancing and protecting the value, desirability and attractiveness of the Condominium and the quality of life for the Owners, Occupants and Lessees.
- D. Declarant and/or the Association may, without obligation, seek approval by the Federal Housing Administration (hereinafter termed "FHA"), the Veterans Administration (hereinafter termed "VA") and by any other governmental agencies or financial institutions whose approval Declarant deems necessary or desirable.

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

**ARTICLE 1  
DEFINITIONS**

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



1.1 **“Additional Property” or “Conditionally Annexed Units of Future Phases”** shall mean real property situated in the City of Phoenix, County of Maricopa, State of Arizona, , which is described on Exhibit B attached to this Declaration, together with all buildings and other Improvements that are or will be constructed thereon, along with all easements, rights and appurtenances belonging thereto .

1.2 **“Allocated Interests”** means the undivided interests in the Common Elements, the Common Expenses Liability and the votes in the Association allocated to each Unit by this Declaration.

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

1.4 **“Assessment”** shall mean Regular Assessments, Special Assessments, Individual Expense Assessments and Enforcement Assessments levied pursuant to Article 7.

1.5 **“Assessment Lien”** shall mean the lien created and imposed by the Arizona Condominium Act and this Declaration to secure the payment of Assessments, attorneys’ fees and costs, as well as other fees and charges owed to the Association pursuant to this Declaration.

1.6 **“Association”** shall mean Rancho North Condominium Association, the Arizona non-profit corporation organized by Declarant to administer and enforce this Declaration and to exercise the rights, powers and duties set forth in this Declaration, its successors and assigns.

1.7 **“Association Rules”** shall mean rules adopted by the Association pursuant to this Declaration, as amended from time to time.

1.8 **"Balcony"** means a limited common element allocated to second floor Units designated and intended for use as a balcony and is identified as a "Balcony" on the Plat. A Balcony is the second floor counterpart to a Patio.

1.9 **“Board”** shall mean the Board of Directors of the Association.

1.10 **“Building”** means a building in which Units are located as shown on the Plat.

1.11 **“Bylaws”** shall mean the Bylaws of the Association as the same may from time to time be amended or supplemented.

1.12 **“City”** shall mean the City of Phoenix, Arizona.

1.13 **“Collection Costs”** means all costs, fees, charges and expenditures (including, without limitation, demand fees, lien fees, attorneys’ fees, court costs, filing fees and recording fees) incurred by the Association in collection and/or enforcing payment of



Assessments, monetary penalties, late fees, attorneys' fees and costs, interest or other amounts payable to the Association pursuant to this Declaration.

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

1.15 **"Common Expenses"** means the actual or estimated costs or expenses incurred or to be incurred by the Association or financial liabilities of the Association including, but not limited to, the following:

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

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

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

1.15.4 the cost of fire, casualty, liability, worker's compensation and other insurance maintained by the Association as provided in this Declaration;

1.15.5 reasonable reserves as deemed appropriate by the Board or required by the Condominium Documents;

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

1.15.7 all real property taxes or assessments levied as a whole or separately against the Common Elements;

1.15.8 amounts paid by the Association for the discharge of any lien or encumbrance levied against the Common Elements or portions thereof; and

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

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

1.17 **"Condominium"** means the Parcel, together with the Building and all other Improvements located thereon, and any Additional Property annexed and subjected to this Declaration pursuant to Section 2.10.

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

1.19 **"Condominium Documents" or "Governing Documents"** means this Declaration and the Articles, Bylaws, and Rules, as amended from time to time.

1.20 **"Declarant"** shall mean HBT of Rancho North LLC, an Arizona limited liability company, and the successors and assigns of Declarant's rights and powers hereunder.

1.21 **"Declaration"** shall mean this Declaration of Condominium of Rancho North, a Condominium, as amended or supplemented from time to time.

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

1.22.1 Add real estate to the Condominium or annex any Additional Property;

1.22.2 Create easements, Units, Common Elements or Limited Common Elements within the Condominium;

1.22.3 Subdivide Units, convert Units into Common Elements or convert Common Elements into Units;

1.22.4 Make the Condominium part of another condominium or planned community;

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

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

1.23 **"Eligible Insurer or Guarantor"** means an insurer or governmental guarantor of a First Mortgage who has requested notice of certain matters in accordance with Article 11.

1.24 **"Eligible Mortgage Holder"** means a First Mortgagee who has requested notice of certain matters from the Association in accordance with Article 11.

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

1.26 **"Entry"** means the concrete landing that is allocated to a Unit designated and intended for use as an entrance to the Unit and is identified as an "Entry" on the Plat. The Entry on second floor Units includes the stairs leading up to the Unit.

1.27 **"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.

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

1.29 **"Garage"** means a portion of a Unit designated and intended for use as a garage for the parking of motor vehicles. The boundaries of the Garage are:

- (a) The vertical boundaries are vertical planes formed by the interior unfinished surfaces of the perimeter walls of the Garage;
- (b) The lower horizontal boundary shall be a horizontal plane formed by the unfinished floor of the Garage; and
- (c) The upper horizontal boundary shall be a horizontal plane formed by the finished ceiling of the Garage.

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

1.31 **"Individual Expense Assessments"** means an assessment levied by the Association pursuant to Section. 7.5.

1.32 **"Improvement"** means any physical structure, fixture or facility existing or constructed, placed, erected or installed on the land included in the Condominium, including, but not limited to, buildings, private drives, paving, fences, walls, sculptures, signs, landscaping, hedges, plants, trees and shrubs of every type and kind, lighting fixtures, sprinkler and irrigation systems, parking areas and sidewalks.

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

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

1.35 **"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.

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

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

1.38 **"Owner"** or **"Unit Owner"** means the record owner, whether one or more Persons, of beneficial or equitable title (and legal title if the same has merged with the beneficial or equitable title) to the fee simple interest of a Unit. Unit Owner shall not include Persons having an interest in a Unit merely as security for the performance of an obligation, or a lessee or tenant of a Unit. Unit Owner shall include a purchaser under a contract for the conveyance of real property, a contract for deed, a contract to convey, an agreement for sale or any similar contract subject to A.R.S. § 33-741, et seq. Unit Owner shall not include a

purchaser under a purchase contract and receipt, escrow instructions or similar executory contracts which are intended to control the rights and obligations of the parties to executory contracts pending the closing of a sale or purchase transaction. In the case of Units the fee simple title to which is vested in a trustee pursuant to A.R.S. § 33-801, et seq. the Trustor shall be deemed to be the Unit Owner.

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

1.40 **"Parking Area"** means a portion of the Common Elements intended for the parking of a single motor vehicle and identified on the Plat as a Parking Area. The term "Parking Area" shall not include any space within a Garage.

1.41 **"Patio"** means a limited common element allocated to first floor Units designated and intended for use as a patio and is identified as a "Patio" on the Plat. A Patio is the first floor counterpart to a Balcony.

1.42 **"Period of Declarant Control"** means the time period commencing on the date this Declaration is Recorded and ending on the earlier of: (a) one hundred twenty (120) days after the date by which seventy-five percent (75%) of the Units have been conveyed to Purchasers; or (b) four (4) years after all Declarants have ceased to offer Units for sale in the ordinary course of business.

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

1.44 **"Plat"** means the amended Condominium Plat for Rancho North Condominium recorded as Book 1346 of Maps, Page 28, in the records of the County Recorder of Maricopa County, Arizona, and any amendments, supplements or corrections thereto.

1.45 **"Purchaser"** means any Person (other than the Declarant) who becomes a Unit Owner, except for: 1) a Person who purchases a Unit and then leases it to the Declarant for use in connection with the sale of other Units, 2) a Person who, in addition to purchasing a Unit, is assigned any Special Declarant Right, or 3) an Affiliate of Declarant.

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

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

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

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

- 1.49.1 Construct Improvements provided for in this Declaration or shown on the Plat;
- 1.49.2 Exercise any Development Right;
- 1.49.3 Maintain sales offices, management offices, models, and signs advertising the Condominium;
- 1.49.4 Use easements through the Common Elements for the purpose of making Improvements within the Condominium;
- 1.49.5 Appoint or remove any officer of the Association or any member of the Board of Directors during the Period of Declarant Control; or
- 1.49.6 Exercise the rights described in Section 2.8.4, 2.10 and 3.4 herein.

1.50 **"Unit"** means a portion of the Condominium designated for independent ownership or occupancy. The boundaries of each Unit are described in Section 2.5, include any assigned Garage and are shown on the Plat. No Unit shown on the Plat (other than the Units described in Section 2.4) shall be subject to this Declaration until such Unit has been annexed and subjected to this Declaration in accordance with the provisions of Section 2.10.

## **ARTICLE 2**

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

2.1 **Submission of Parcel.** The Declarant hereby submits the Parcel to the provisions of the Condominium Act for the purpose of creating a condominium in accordance with the provisions of the Condominium Act and hereby declares that the Parcel shall be held and conveyed subject to the terms, covenants, conditions and restrictions set forth in this Declaration. The Declarant designates each Unit for separate ownership or occupancy. Declarant further declares that all of the easements, restrictions, conditions and covenants in this Declaration shall run with the Parcel and shall be binding upon and inure to the benefit of the Declarant and all Unit Owners, Lessees and Occupants and all other Persons having or acquiring any right, title or interest in the Condominium or any part thereof, their heirs, successors, successors in title and assigns. Each Person who acquires any right, title or interest in the Condominium, or any part thereof, agrees to abide by all of the provisions of the Condominium Documents. This Declaration shall be binding upon and shall be for the benefit of and enforceable by the Association. The Declarant makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of the Condominium Documents, or as to the compliance of any of the provisions of the Condominium Documents with public laws, ordinances and regulations applicable thereto.

2.2 **Name of Condominium.** The name of the Condominium created by this Declaration is Rancho North, a Condominium.

2.3 **Name of Association.** The name of the Association is Rancho North Condominium Association.



2.4 **Identifying: Numbers of Units.** The Condominium will initially contain a total of **five (5)** Units. The Identifying Numbers of the Units are 1001, 1002, 2001, 2002 and 2003. Additional Units may be added to the Condominium by the annexation of all or any part of the Additional Property pursuant to Section 2.10.

2.5 **Unit.**

2.5.1 The boundaries of each Unit shall be as follows:

- (a) The vertical boundaries are vertical planes formed by the interior unfinished surfaces of the perimeter walls, doors and windows of the Unit;
- (b) The lower horizontal boundary shall be a horizontal plane formed by the unfinished floor of the Unit;
- (c) The upper horizontal boundary shall be a horizontal plane formed by the unfinished ceiling of the Unit.

2.5.2 Additionally, the assigned Garages are part of the Unit (not a Limited Common Element) and each Unit, shall include openings and outlets of all utility installations in the Unit. All lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, doors, windows, frames, locks on windows or doors, Garage Doors, Garage Door Openers, and any other materials constituting any part of the finished surfaces of the walls or floor are part of the Unit, and all other portions of the walls and floor are part of the Common Elements. All spaces, interior partitions and other fixtures and improvements (including, but not limited to, chutes, flues, wires, conduits, heating and air conditioning unit, hot water heaters and gas, cable television, water and electric pipes, lines or meters) within the boundaries of a Unit and which serve only the Unit are part of the Unit, and any such fixtures or improvements located within the boundaries of a Unit but which serve more than one Unit are part of the Common Elements.

2.5.3 The location and dimensions of the boundaries of the Units, including Garages, as shown on the Plat are based on architectural drawings and are approximate. The actual location and dimensions may vary from the location and dimensions of the boundaries as shown on the Plat. The actual physical location and dimensions, as initially constructed, or as reconstructed following the damage or destruction of such walls, shall be considered the location and dimensions of the Units for purposes of this Declaration regardless of any variances from the location and dimensions of the boundaries as shown on the Plat, except for the allocation to each Unit of a percentage undivided interest in the Common Elements and in the Common Expenses pursuant to Section 2.6.

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

2.5.5 In the event of any inconsistency or conflict between the provisions of this Section 2.5.1 and the Plat in regard to the description of the boundaries of the Unit, this Section shall control.

**2.6 Allocation of Common Element Interest and Common Expense Liabilities.**

Each Unit is allocated a fraction of undivided interest in the Common Elements and in the Common expenses and the Common Elements shall be owned by the Unit Owners as tenants in common in accordance with their respective fraction of interest. The ownership of each Unit shall not be conveyed separate from the fraction of interest in the Common Elements allocated to the Unit. The undivided fraction of interest in the Common Elements allocated to any Unit shall always be deemed conveyed or encumbered with any conveyance or encumbrance of that Unit, even though the legal description in the instrument conveying or encumbering the Unit may refer only to the fee title to the Unit. Except as permitted by the Condominium Act, the Common Elements are not subject to partition, and any purported conveyance, encumbrance, judicial sale or other voluntary or involuntary transfer of an undivided interest in the Common Elements made without the Unit to which that interest is allocated is void. If any part of the Additional Property is annexed by the Declarant pursuant to Section 2.10, the fraction of undivided interests in the Common Elements and in the Common Expenses of each Unit shall be reallocated with one (1) as the numerator and the denominator being the total number of Units annexed into the Condominium at any given time.

**2.7 Allocation of Votes in the Association.** The total votes in the Association shall be equal to the number of Units subject to this Declaration. The votes in the Association shall be allocated equally among all 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 allocated to the exclusive use of one or more, but less than all, of the Units as follows:

- (a) Any chute, flue, pipe, duct, wire, conduit or other fixture (including, but not limited to, heating and air conditioning units and related equipment and natural gas, cable television, water and electric pipes, lines or meters), located outside of the boundaries of a Unit, which serve only one Unit are a Limited Common Element allocated solely to the Unit served;
- (b) If a chute, flue, pipe, duct, wire, conduit or other fixture (including, but not limited to, hot water heaters, heating and air conditioning units and related equipment and natural gas, cable television, water and electric pipes, lines or meters) lies partially within and partially outside the designated boundaries of a Unit, the portion outside the boundaries of the Unit which serve only the Unit is a Limited Common Element allocated solely to the Unit, the use of which is limited to the Unit served;
- (c) All doors and windows in the boundary walls of a Unit are Limited Common Elements allocated to the Unit. The glazing, sashes, frames,



sills, thresholds, hardware, flashing and other components of the doors and windows are part of the doors and windows allocated as Limited Common Elements.

- (d) Each Balcony or Patio is allocated the Unit adjoining that Balcony or Patio. The boundaries of each Balcony or Patio are set forth on the Plat and described as follows:
  - i. the lower boundary shall be the unfinished floor of the Balcony;
  - ii. the upper boundary shall be the unfinished ceiling of the Balcony; and
  - iii. the vertical boundaries shall be vertical planes corresponding to the exterior wall of the Building and the inside surface of the railing of the Balcony extended to the upper and lower boundaries.
- (e) Each Unit is allocated the Entry adjoining the Unit. The boundaries of each Entry are set forth on the Plat.

2.8.2 Each Owner shall have the right to the exclusive use and possession of the Limited Common Elements allocated to his Unit, subject to the rights granted to the Declarant or the Association by the Condominium Documents. All Limited Common Elements must be used in accordance with the Declaration and the Rules.

2.8.3 A Limited Common Element may be reallocated by an amendment to this Declaration. The amendment shall be executed by the Owners between or among whose Units the allocation is made, shall state the manner in which the Limited Common Elements are to be reallocated and, before recording the amendment, shall be submitted to the Board of Directors. Unless the Board of Directors determines within thirty (30) days that the proposed amendment is unreasonable, which determination shall be in writing and specifically state the reasons for disapproval, the Association shall execute its approval and record the amendment.

2.8.4 So long as the Declarant owns any Unit, the Declarant shall have the right to allocate as a Limited Common Element any part of the Common Elements (including, but not limited to, Garages) which has not previously been allocated as a Limited Common Element. Any such allocation shall be made by an amendment to this Declaration executed by the Declarant. After the Declarant no longer owns any Unit, the Board of Directors shall have the right, with the approval of Members holding at least sixty-seven percent (67%) of the total number of votes entitled to be cast by Members, to allocate as a Limited Common Element any portion of the Common Elements not previously allocated as a Limited Common Element. Any such allocation by the Board of Directors shall be made by an amendment to this Declaration and an amendment to the Plat if required by the Condominium Act.

2.9 **Restricted Access.** An electronically activated access gate will be installed at the entrance to the Condominium in order to limit access and provide more privacy for the Unit Owners, Lessees, Occupants and the other Residents of the Units. The access gate shall be part

of the Common Elements and shall be maintained, repaired and replaced by the Association. Each Owner, Lessee and Resident acknowledges and agrees that the access gate does not guarantee the safety or security of the Owners, Lessees or Residents or their guests or guarantee that no unauthorized person will gain access to the Condominium. Each Owner, Lessee and Resident, and their families, guests and invitees, acknowledge that the access gate may restrict or delay entry into, or access to the Condominium by police, fire department, ambulances and other emergency vehicles or personnel and agree to assume the risk that the access gate or door will restrict or delay entry into, or access within the Condominium by police, fire department, ambulances or other emergency vehicles or personnel. Neither the Declarant, the Association nor any director, officer, agent or employee of the Declarant or the Association shall be liable to Owner, Lessee or Resident or their families, guests or invitees for any claims or damages resulting, directly or indirectly, from the existence, operation or maintenance of the access gate.

## **2.10 Expansion of the Condominium.**

2.10.1 Declarant hereby expressly reserves the right, but not the obligation, to expand the Condominium created by this Declaration, without the consent of the Association or any other Unit Owner, by annexing in Units for future phases and submitting to this Declaration all or any portion of the Additional Property. The Declarant shall exercise its right to expand the Condominium by executing and Recording an amendment to this Declaration containing the following:

- (a) a legal description of the portion of the Additional Property being annexed;
- (b) the number of Units being added by the annexation and the Identifying Number assigned to each new Unit;
- (c) a description of the Common Elements and Limited Common Elements created and, in the case of Limited Common Elements, a designation of the Unit to which each Limited Common Element is allocated;
- (d) a reallocation to each Unit of a percentage of undivided interests in the Common Elements and in the Common Expenses of the Association and in the votes in the Association; and
- (e) a description of any Special Declarant Rights or Development Rights reserved by the Declarant with respect to the Additional Property being annexed.

2.10.2 Unless otherwise provided in the amendment adding Additional Property, the effective date of the annexation and the date for reallocating to each Unit a percentage of undivided interests in the Common Elements and in the Common Expenses of the Association and in the votes in the Association shall be the date on which the amendment annexing additional Units is Recorded. An amendment annexing all or any portion of the Additional Property may divide the Additional Property being annexed into separate phases and may provide for different effective dates for the annexation of each phase.

2.10.3 The Additional Property may be added as a whole, at one time, or in one or more portions at different times, or it may never be added, and there are no limitations upon the order of addition or the boundaries thereof. The Additional Property submitted

to the Condominium need not be contiguous, and the exercise of the option as to any portion of the Additional Property shall not bar the further exercise of the option as to any other portions of the Additional Property. There are no limitations on the locations or dimensions of Improvements to be located on the Additional Property. No assurances are made as to what, if any, further Improvements will be made by Declarant on any portion of the Additional Property. Improvements to any Additional Property must be consistent with the Improvements to the Parcel in terms of quality of construction. All Improvements to the Additional Property must be substantially completed before the portion of Additional Property is added to the Condominium.

2.10.4 The Additional Property, when and if added to the Condominium, shall be subject to the use restrictions contained in this Declaration and shall be subject in all respect to the Condominium Documents.

2.10.5 Declarant makes no assurances as to the exact number of Units which shall be added to the Condominium by annexation of all or any portion of the Additional Property.

### **ARTICLE 3 EASEMENTS AND DEVELOPMENT RIGHTS**

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

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

### 3.3 Unit Owners' Easements of Enjoyment.

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

- (a) The Master Governing Documents, these Condominium Documents, as amended from time to time and any other applicable covenants;
- (b) The right of the Board to adopt rules, regulations or policies regulating the use and enjoyment of the Common Elements or the Units, which rules and regulations may require that guests of any Owner Lessee or Occupant entitled to use the Common Elements pursuant to this Section must be accompanied by a Member Lessee or Occupant entitled to use the Common Elements. The Rule may limit the number of guests who may use the Common Elements at any one time and may restrict the use of the Common Elements by guests to certain specified times;
- (c) The right of the Association to convey the Common Elements or subject the Common Elements to a mortgage, deed of trust, or other security interest, if such action is approved by Owners entitled to cast at least eighty percent (80%) of the votes in the Association. Any such action by the Association shall be done in the manner and subject to the limitations set forth in the Condominium Act;
- (d) The right of the Association to grant non-exclusive easements over all or a portion of the Common Elements if the Board of Directors determines that the granting of the easement is necessary for the development or maintenance of the Common Elements or beneficial to the Owners, Lessees and Occupants;
- (e) All rights and easements set forth in this Declaration including, but not limited to, the rights and easements granted to the Declarant by Section 3.4; and
- (f) The right of the Association to suspend the right of an Owner, Lessee or Occupant to use the Common Elements for any period during which the Owner, Lessee or Occupant is in violation of any provision of the Condominium Documents.

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

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



### **3.4 Declarants' Rights and Easements.**

3.4.1 So long as the Declarant is marketing Units for sale or lease in the Condominium, Declarant and its employees and agents shall have the right and an exclusive, transferable, easement over and on the Parcel to construct, locate, relocate and maintain sales and/or leasing offices, construction trailers and storage areas and related facilities on the Common Elements. This shall include the right to enclose and lock portions of the Common Elements upon which these rights are being exercised. Declarant reserves the right to maintain model Units, management offices, storage areas and sales and leasing offices in any Units owned or leased by Declarant and on any portion of the Common Elements in such number, of such size and in such locations as Declarant deems appropriate. Declarant and its employees and agents shall have the right and an easement to install or post advertising, marketing or directional signs, other signs, flags, awnings, lights and banners on the Common Elements in connection with its marketing of Units for sale or lease or to host events on the Common Elements designed to attract prospective tenants and/or purchasers to the Condominium.

3.4.2 So long as Declaration is marketing Units in the Condominium, Declarant may store materials and equipment in any Parking Area or Additional Property which has not been allocated as Limited Common Elements. Declarant shall also have the right to restrict the use of the Parking Area which are not allocated as Limited Common Elements. Such right shall include reserving such Parking Area for use by prospective Unit purchasers, Declarant's employees and others engaged in sales, leasing, maintenance, construction, or management activities. Declarant reserves the right to retain all personal property and equipment used in the sales, management, construction and maintenance of the Condominium that has not been represented to the Association as property of the Association. Declarant reserves the right to remove from the Condominium any and all goods and improvements used in development, marketing and construction, whether or not they have become fixtures.

3.4.3 Declarant and its employees, agents, contractors and subcontractors shall have the right and an easement on, over and across the Common Elements and the Units to erect and construct the Common Elements and the Units shown on the Plat and all other Improvements Declarant may deem appropriate and to use the Common Elements and by Units owned by Declarant for construction or renovation related purposes including the storage of tools, machinery, equipment, building materials, appliances, supplies and fixtures, and the performance of work in the Condominium.

3.4.4 The Declarant and its employees, agents, contractors and subcontractors shall have an easement through the Common Elements and the Units for the purpose of assessing, testing (including invasive testing), inspecting and evaluating any potential construction defect or need for maintenance on the Condominium, and completing any renovations, warranty work or modifications to the Common Elements or Units which Declarant deems necessary or desirable.

3.4.5 The Declarant and its employees, agents, contractors and subcontractors shall have the right and an easement on, over, and through the Common Elements as may be reasonably necessary for the purpose of performing the Declarant's obligations under the Condominium Act and the Condominium Documents and for the purpose of

exercising Special Declarant Rights whether arising under the Condominium Act or reserved in this Declaration. The rights granted to or reserved by the Declarant in this Section 3.4 are in addition to any rights granted to or reserved by the Declarant elsewhere in the Condominium Documents.

3.4.6 To the extent not expressly reserved by or granted to Declarant by other provisions of this Declaration, Declarant reserves all Development Rights and Special Declarant Rights. Except as expressly set forth in this Declaration, there is no time limit within which any Development Right or Special Declarant Right must be exercised or will lapse, and there are no conditions or limitations on the exercise of any Development Right or Special Declarant Right.

3.4.7 So long as any Declarant owns one or more Units, the Declarant shall have the right to the exclusive use, without charge, of any portion of any of the facilities within the Common Elements for employee meetings, administrative purposes, special events or any other purpose. The Declarant's rights under this Subsection shall have priority over the rights of any Owner, Lessee, or Occupant to use the Common Elements.

3.4.8 In the event of any conflict or inconsistency between this Section 3.4 and any other provision of the Condominium Documents, this Section 3.4 shall control and prevail over such other provisions. The rights of the Declarant set forth in this Section 3.4 shall be enforceable by injunction, by any other remedy available at law or in equity (including, but not limited to, the right to sue for damages) and/or by any means provided in this Declaration.

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

3.6 **Easements and Rights of the Association for Pest Control.** Each Unit shall be subject to an easement in favor of the Association and the agents, employees and contractors of the Association for the purpose of performing such pest control activities as the Association may deem necessary to control or prevent the infestation of the Condominium by insects, rodents or other pests or to eradicate insects, rodents or other pests from the Condominium. The Association may cause the temporary removal of any Owner, Lessee or Occupant for such periods and at such times as necessary for prompt, effective treatment of wood-destroying pests or organisms. The cost of the temporary relocation is to be borne by the Owner of the Unit affected. Not less than seven (7) days nor more than thirty (30) days' notice of the need to temporarily vacate shall be given to the Owners, Lessees and Occupants of the Units affected. The notice shall state: (1) the reason for the temporary relocation; (2) the date and time of the beginning of the treatment; (3) the anticipated date and time of termination of treatment; and (4) that the Owners, Lessees or Occupants will be responsible for their own accommodations during the temporary relocation.

### 3.7 **Common Elements Easement in Favor of Unit Owners.**

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

- (a) For the installation, repair, maintenance, use, removal or replacement of pipes, ducts, heating and air conditioning systems, electrical, telephone, cable television and other communication wiring and cables and all other utility lines and conduits which are a part of or serve any Unit and which pass across or through a portion of the Common Elements.
- (b) For the installation, repair, maintenance, use, removal or replacement of lighting fixtures, electrical receptacles, panel boards and other electrical installations which are a part of or serve any Unit but which encroach into a part of a Common Element; provided that the installation, repair, maintenance, use, removal or replacement of any such item does not unreasonably interfere with the common use of any part of the Common Elements, adversely affect either the thermal or acoustical character of the Building or impair or structurally weaken the Building.
- (c) For the performance of the Unit Owner's obligation to maintain, repair, replace and restore those portions of the Limited Common Elements that the Unit Owner is obligated to maintain under Section 5.2.

3.7.2 The exercise of the easements created by Section 3.7.1 shall be subject to the other provisions of this Declaration and the Rules. Notwithstanding any other provision of this Declaration to the contrary, no Owner, Lessee or Occupant or any other Person (except for the Association) shall install anything other than carpet in their Unit, without prior Board of Director approval. No Owner, Lessee or Occupant or any other Person (except for the Association) may penetrate, alter or damage any part of the Common Elements. Penetrating the perimeter building walls or any party wall between Units could damage the soundproofing of the Units, cause water intrusion into the Common Elements or the Units or damage the insulation in such walls.

**3.8 Units and Limited Common Elements Easement in Favor of Association.** The Units and the Limited Common Elements are hereby made subject to the following easements in favor of the Association and its directors, officer, agents, employees and independent contractors: (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 and in order to verify that the provisions of the Condominium Documents are being complied with by the Unit Owners, Lessees and Occupants of the Unit; (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) For correction of conditions (including, without limitation, broken or leaking water pipes, broken hot



water heaters or obstructed sewer lines) in one or more Units or Limited Common Elements which have damaged or if left uncorrected could damage, the Common Elements, the Limited Common Elements or other Units; and (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. Except in case of emergency, the Association shall only enter a Unit at reasonable times and upon reasonable notice to the Unit Owner or, if the Unit is leased, to the Lessee. In the event of an emergency, the Association may enter a Unit without prior notice to the Unit Owner or the Lessee, but promptly following the Association's entry into the Unit, the Association shall notify the Unit Owner or the Lessee of the nature of the emergency condition which required entry without notice. The Association shall be responsible for the repair of any damage to a Unit or the Common Elements caused by the Association's exercise of its rights under this Section.

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

**3.10 Easements for Utilities and Maintenance.** On behalf of all Owners, the Association may create and dedicate easements over the Common Elements for the following purposes: (1) for the benefit of all service providers for the installation, repair, replacement and maintenance of sanitary sewers, water, electric, gas and telephone lines and facilities, heating and air-conditioning facilities, cable, telephone or master television antenna or satellite lines or cables, and drainage facilities, and for ingress to and egress from the Condominium in connection therewith, and (2) for ingress to and egress from the Condominium for the benefit of all municipal, state and federal vehicles, including, without limitation, all emergency and service type vehicles as may be required from time to time to service the Condominium and the Owners, Lessees and Occupants including, without limitation, for U.S. Mail distribution and collection and private or municipal refuse collection without the joinder or consent of any First Mortgagee or other Person.

**3.11 Association's Right to Use Common Elements.** The Association shall have an easement to make such use of the Common Elements as may be necessary or convenient to person the duties and functions that is obligated or permitted to perform pursuant to this Declaration, including without limitation the right to construct and maintain in the Common Elements (other than Limited Common Elements) facilities for use by Owners generally or by the Association and its agents exclusively.

## **ARTICLE 4**

### **USE AND OCCUPANCY RESTRICTIONS**

**4.1 Units.** All Units shall be used, improved and devoted exclusively to residential use. No trade or business may be conducted on any Unit or in or from any Unit, except that an Owner, Lessee or Occupant of a Unit may conduct a business activity within a Unit so long as:

(1) the existence or operation of the business activity is not apparent or detectable by sight, sound, vibration or smell from outside the Unit; (2) the business activity conforms to all applicable zoning ordinances or requirements for the Condominium; (3) the business activity is conducted solely in the Unit; (4) the business activity does not involve persons coming to the Unit or the door-to-door solicitation of Owners, Lessees or Occupants; and (5) the business activity is consistent with the residential character of the Condominium and does not constitute a nuisance or a hazardous or offensive use or threaten the security or safety of other Owners, Lessees or Occupants, as may be determined from time to time in the sole discretion of the Board of Directors. The terms "business" and "trade" as used in this Section shall be construed to have ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether: (1) such activity is engaged in full or part time; (2) such activity is intended or does generate a profit; or (3) a license is required for such activity. The leasing of a Unit by the Owner thereof shall not be considered a trade or business within the meaning of this Section.

4.2 **Antennas.** Except for antennas, satellite dishes and other over-the-air receiving devices covered by the FCC rules governing Over-the-Air Reception Devices; Television Broadcast Service and Multi-channel Multipoint Distribution Service (the "FCC Rule"), no antenna for the transmission or reception of television or radio signals or for access to the internet shall be erected in a Unit or in any Limited Common Element allocated to the Unit. Any antenna, satellite dish or other receiving device covered by the FCC Rule may be installed in a Unit or in a Limited Common Element allocated to the Unit provided the antenna, satellite dish or receiving device is placed inside the Unit or in the portion of a Limited Common Element which is the least visible from the outside of the Building and does not interfere with the viewer's ability to install, maintain or use the antenna, satellite dish or receiving device. Any satellite dish or antenna installed on a Patio must be placed on a tripod, and the satellite dish or antenna shall not extend above the wall or railing of the Patio. No wire for the satellite dish or antenna shall be run through or placed on the perimeter wall of the Building. The Board of Directors shall have the right to adopt rules and regulations with respect to the installation and placement of antennas, satellite dishes and other receiving devices; provided, however, that the Board of Directors shall not impose or enforce any rule or regulation which is inconsistent with or prohibited by the FCC Rule.

4.3 **Improvements and Alterations.**

- (a) No Owner, Lessee, Occupant or other Person shall construct or install any Improvements on the Common Elements or alter, modify or remove any Common Element, including Limited Common Element, without the prior written approval of the Board of Directors.
- (b) No Unit Owner shall, without the prior written consent of the Board of Directors, make any improvements or alterations to the Owner's Unit that impair the structural integrity, or mechanical systems, or that lessen the support or sound proofing of any portion of the Condominium. Except as permitted by the first sentence of this Subsection, no Owner, Lessee or Occupant shall make any additions, alterations or improvements within a

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

- (c) No interior or exterior structural changes of any kind shall be constructed, erected or made within the Project other than those approved by the Board of Directors. No partition walls shall be installed, altered or removed without the approval of the Board of Directors. Nothing shall be hung from or installed in any ceiling, bearing wall or partition walls bounding or within any Unit without the approval of the Board of Directors; provided, however, the hanging from ceilings, bearing walls and partition walls bounding or within Units of light fixtures, plants, paintings, mirrors and other customary fixtures and decorating items shall be permitted so long as the same do not impair the structural integrity or acoustical soundness (such as in-wall speakers) of any such ceiling, bearing wall or partition wall. Nothing shall be installed, kept or maintained within the Common Elements, Limited Common Elements or a Unit or any part thereof, that would impair the structural soundness or integrity of the Buildings or mechanical systems and improvements or jeopardize the safety of persons or property or impair any easement or hereditament appurtenant to the Project. Any approval required or permitted by this Section may be granted or withheld within the sole discretion of the Board of Directors.
- (d) Notwithstanding Section 4.3(b), no addition, alteration or improvement within a Unit, whether structural or not, which would be visible from the exterior of a Building or from the exterior of any Limited Common Element shall be made without the prior written approval of the Board of Directors, which approval shall only be granted if the Board of Directors

- affirmatively finds that the proposed addition, alteration or improvement is aesthetically pleasing and in harmony with the surrounding Improvements.
- (e) No Owner, Lessee or Occupant shall overload the electric wiring in the Building, or operate machines, appliances, accessories or equipment in such manner as to cause, in the judgment of the Board of Directors, an unreasonable disturbance to others or connect any machines, appliances, accessories or equipment to the heating or plumbing system, without the prior consent of the Board of Directors, acting in accord with the direction of the Board of Directors. No Owner, Lessee or Occupant shall overload the floors of any Unit. No water bed or aquariums holding in excess of thirty (30) gallons of water may be installed or kept in any Unit or any Limited Common Element.
  - (f) The Board of Directors may condition the approval of any proposed additions, alterations or improvements to a Unit or the Common Elements in any manner, including, without limitation: (1) retaining approval rights of the contractor to perform the work; (2) restricting the time during which such work may be performed or the length of time during which the work must be completed; (3) requiring the placement of a security deposit in an amount determined by the Board of Directors in an account controlled by the Board of Directors; (4) requiring the provision to the Board of Directors of plans and specifications prepared and sealed by a professional engineer or architect duly licensed by the State of Arizona; and (5) requiring that the Owner requesting the change obtain, prior to commencing any work, and maintain until completion of such work, comprehensive general liability insurance in such amounts as may be required by the Board of Directors. The Owner shall be obligated to designate Declarant, the Association, the Board of Directors and any other person designated by the Board of Directors as additional insureds under the policies.
  - (g) The Board of Directors may establish a non-refundable review fee that shall be paid by each Owner, Lessee or Occupant who requests approval of any proposed additions, alterations or improvements to a Unit or the Common Elements. Such review fee shall be payable to the Association at the time the application for approval is submitted to the Board of Directors. The Owner, Lessee or Occupant also shall be responsible for all costs incurred by the Board of Directors in connection with the Board of Director's review of proposed changes to a Unit or the Common Elements, including, without limitation, all costs of architects, engineers and other professionals which may be retained by the Board of Directors to assist in their review. Any such costs not timely paid shall be deemed an Individual Expense Assessment against the Owner of the applicable Unit.
  - (h) Proposed additions, alterations and improvements to a Unit or the Common Elements shall be made in compliance with all laws, rules, ordinances and regulations of all governmental authorities having jurisdiction, may only be made once all required permits have been obtained and must be in compliance with any conditions imposed by the



Association with respect to design, structural integrity, sound attenuation, water-proofing, construction details, lien protection or otherwise. The Owner of a Unit to which additions, alterations or improvements are made shall defend, indemnify and hold harmless the Association and its directors, officers, employees and agents, the Declarant and all other Owners, Lessees or Occupants for, from and against any and all liability, loss or damage resulting from such additions, alterations or improvements and shall be solely responsible for the maintenance, repair and insurance of such additions, alterations and improvements from and after their date of installation or construction as may be required by the Association.

- (i) In addition to all other remedies provided in the Condominium Documents or at law or in equity, the Association shall have the right to (1) stop any work that is not in compliance with the terms contained in this Section 4.3 or any rules of the Association governing additions, alterations or improvements to the Units or the Common Elements, (2) deny access to contractors performing such work, and (3) levy reasonable monetary penalties against the Owner or Occupant who caused such work to be performed. The Association's rights of review and approval of plans and other submissions under this Declaration are intended solely for the benefit of the Association. Neither Declarant, the Association nor any of the officers, directors, employees, agents, contractors, consultants or attorneys shall be liable to any Owner or any other Person by reason of mistake in judgment, failure to point out or correct deficiencies in any plans or other submissions, negligence, or any other misfeasance, malfeasance or nonfeasance arising out of or in connection with the approval or disapproval of any plans or submissions. Without limiting the generality of the foregoing, the Association shall not be responsible for reviewing, nor shall its review of any plans be deemed approval of, any plans from the standpoint of structural safety, soundness, workmanship, materials, usefulness, conformity with building or other codes or industry standards, or compliance with governmental requirements. Further, each Owner agrees to indemnify and hold Declarant, the Association and their respective directors, officers, managers, agents and employees harmless from and against any and all costs, claims (whether rightfully or wrongfully asserted), damages, expenses or liabilities whatsoever (including, without limitation, reasonable attorneys' fees and court costs at all trial and appellate levels), arising out of any review, approval or disapproval by the Board of Directors of plans submitted by the Owner or any Lessee or Occupant of the Owner's Unit.

**4.4 Trash Containers and Collection.** No garbage or trash shall be placed or kept on the Common Elements except in covered containers of a type, size and style, which are approved by the Board of Directors. The Board of Directors shall have the right to subscribe to a trash service for the use and benefit of the Association and all Unit Owners, and to adopt and promulgate rules and regulations regarding garbage, trash, trash containers and collection. 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. All trash, garbage or rubbish must be kept in sanitary containers and must be bagged and deposited in designated trash receptacles. No rubbish, trash or garbage shall be kept on any Patio. The Rules may contain provisions governing the disposal of trash, garbage and rubbish in the Condominium.

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

**4.6 Animals.** 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 a reasonable number of Permitted Pets may be kept or maintained in a Unit. For purposes of this Section, a "Permitted Pet" shall mean a dog, cat, household bird or other generally recognized household pet kept or raised solely as a domestic pet and not for commercial purposes. Notwithstanding the foregoing, the Board of Directors is authorized to determine, in its discretion and on a case-by-case basis, whether any particular animal or pet is to be considered as a "generally recognized household pet". Furthermore, no Permitted Pet which the Board of Directors determines, in its sole and absolute discretion, is of a breed which has a propensity to attack persons or other animals or otherwise constitutes a threat to the safety of persons or other animals shall be kept in a Unit or on any other portion of the Condominium.

- (a) 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 any neighboring Units.
- (b) No Permitted Pet shall be allowed to make an unreasonable amount of noise, cause an odor, or 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 control of the human being at all times. Each Owner, Lessee, Occupant or other Person bringing or keeping a Permitted Pet within the Condominium shall be absolutely liable to other Owners, Lessees, and Occupants and their invitees for any damage to Persons or Property caused by such Permitted Pet. Any Person bringing a Permitted Pet onto the Common Elements shall immediately remove any feces deposited on the Common Elements by the Permitted Pet, and such Person shall be liable to the Association for the cost of any cleaning of the Common Elements or the repair of any damage to the Common Elements caused or required by the Permitted Pet.
- (c) The Board of Directors shall have the right to determine whether, for the purposes of this Section, (i) the number of Permitted Pets kept in a Unit is reasonable, (ii) a Permitted Pet has a propensity to attack persons or other animals or otherwise constitutes a threat to the safety of persons or other

animals in the Property, and (iii) a Permitted Pet is a nuisance, or is making an unreasonable amount of noise, or causing an odor. Any such Permitted Pet shall be removed from the Condominium by the Owner of the Permitted Pet within the timeframe given to the Owner by the Board of Directors.

- (d) The Board of Directors shall have the right in its sole and absolute discretion to adopt, amend and repeal Rules governing the keeping of Permitted Pets in the Condominium, and such Rules may include limitations on the breeds, height and/or weight of Permitted Pets.

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

**4.8 Motor Vehicles.**

- (a) As used in this Section the term "Authorized Vehicles" means motorized land vehicles designed and used primarily for non-commercial passenger transport, such as automobiles, sport utility vehicles, passenger vans which:
  - i. are designed to accommodate ten (10) or fewer people;
  - ii. have a manufacturers rating or payload capacity of one ton or less;
  - iii. do not display commercial signage;
  - iv. do not have stored equipment, tools, supplies or other materials exposed, unless these items are covered by a permanently installed shell or cover; and
  - v. are parked in compliance with this Declaration and the Rules and Regulations and are used on a regular and recurring basis for basic transportation.
- (b) Authorized Vehicles must be first parked in the Unit's assigned Garage and then only if the maximum number of Authorized Vehicles is parked in their Garage, the Authorized Vehicle may be parked in the designated Parking Area. No Authorized Vehicle of an Owner, Lessee or Occupant of a Unit shall be parked in Garage other than the Garage assigned as part of their Unit. No vehicles of any kind other than Authorized Vehicles shall be parked, stored or kept on any other part of the Common Elements or Parking Area.
- (c) No Authorized Vehicle is allowed on the Parcel unless it is of the size that can be parked in a Garage and it completely and clearly fits within the roofed area of the Garage with the Garage door closed. Garages shall be used solely for the parking of Authorized Vehicles and shall not be used for storage. No maintenance, repair, restoration or construction of any Authorized Vehicle shall be conducted in a Garage or any other part of the Common Elements.



- (d) No mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, recreational vehicle, boat, boat trailer, or other similar equipment or vehicle may be parked, kept, maintained, constructed, reconstructed or repaired on any part of the Condominium.
- (f) The Board of Directors shall have the right to have any automobile, sport utility vehicle, van, truck, recreational vehicle, motorcycle, motorbike, or other motor vehicle parked, kept, maintained, constructed, reconstructed or repaired in violation of this Declaration or any Rules and Regulations towed away at the sole cost and expense of the owner of the vehicle. Any expense incurred by the Association in connection with the towing of any vehicle shall be paid to the Association upon demand by the owner of the vehicle and shall be considered an Enforcement Expense as set forth in Section 7.4 and a lien against the Unit.

4.9 **Signs.** Except for signs which are authorized under applicable law, no signs shall be permitted on any vehicles, the exterior of a Building, or in the interior of a Unit if the signs would be visible from the exterior of the Building, or on any other portion of the Condominium without the prior written approval of the Board of Directors.

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

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

4.12 **Window Coverings.** No reflective materials, including, but without limitation, aluminum foil, reflective screens or glass, mirrors or similar items, shall be installed or placed upon the outside or inside of any windows of a Unit. No enclosures, drapes, blinds, shades, screens or other items affecting the exterior appearance of a Unit shall be constructed or installed without the prior written consent of the Board of Directors. No tinting or film may be installed on any windows of a Unit without the prior written approval of the Board of Directors.

4.13 **Balconies/Patios and Entries.** Furniture, furnishings, umbrellas, pots and plants kept and maintained on any Balcony, Patio or Entry shall be of a neutral color harmonious with and not in conflict with the color scheme of the exterior walls of the Building in which the Unit is located and must be approved in writing by the Board of Directors unless expressly permitted by the Rules. No furniture, furnishings, umbrellas, pots, plants or other items which extend above the wall or railing of a Balcony or Patio shall be kept and maintained on any Balcony or

Patio unless expressly permitted by the Rules or approved in writing by the Board of Directors. No Balcony or Patio shall be used as a storage area for items or materials that are not customarily intended for use on a Balcony or Patio, such as the use of a Balcony or Patio to store bicycles or exercise equipment. No items may be hung from any Balcony or Patio ceiling, wall or railing enclosing the Balcony or Patio, and no items shall be affixed to any wall or railing enclosing the Balcony or Patio. The Rules may govern and regulate the nature and extent of plants, shrubs, flowers and other landscaping that may be installed or kept in Balconies, Patios or Entries. No Owner, Lessee or Occupant shall remove or alter any flooring installed in a Balcony or Patio as part of the original construction. No spas or hot tubs shall be installed or kept on any Balcony or Patio. No barbecue grill or other open flame device and no fixed or portable gas burners or barbecues shall be operated or used on any Balcony or Patio.

**4.14 Leasing Restrictions.** No Unit shall be leased by a Unit Owner for an initial term of less than thirty (30) days. No portion of a Unit which is less than the entire Unit shall be leased. The Association may establish Rules concerning the procedure to be utilized by Unit Owners that seek to rent or lease their Units to ensure compliance with this Section. All leases must be in writing and must provide that the terms of the lease are subject in all respects to the provisions of this Declaration and the Rules and that any violation of this Declaration or the Rules by the Lessee or the other occupants shall be in default under the lease. There shall be no subleasing of the Units or assignment of leases. At least ten (10) days before executing a lease, the Unit Owner shall provide the Association with a copy of the proposed lease and the following information: (1) the commencement date and expiration date of the lease term; (2) the names of each of the Lessees and each other Person who will reside in the Unit during the lease term; (3) the telephone number at which the Lessee can be contacted; (4) the address and telephone number at which the Owner can be contacted by the Association during the lease term; and (5) the name, address and telephone number of a person whom the Association can contact in the event of an emergency involving the Unit. Any Owner who leases his Unit must provide the Lessee with copies of this Declaration and the Rules. A Unit Owner shall be liable for any violation of this Declaration or the Rules by the Lessees or other occupants of the Unit and their guests and invitees and, in the event of any such violation, the Unit Owner, upon demand of the Association, shall immediately take all necessary steps to correct any such violations or, if demanded by the Board of Directors, immediately take all necessary action (including, but not limited to, legal action) to remove from the Unit the Lessees and all other persons residing in the Unit pursuant to the lease. The provisions of this Section shall not apply to the leasing or subleasing of a Unit by the Declarant or the Association.

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

**4.16 Hazardous Materials.** No Owner, Lessee or Occupant shall use or keep in a Unit or any Limited Common Element allocated to the Unit any propane, kerosene, gasoline. Additionally, No Owner, Lessee or Occupant shall use or keep in a Unit or any Limited

Common Element allocated to the Unit any inflammable or combustible fluid or material or other hazardous materials, other than those required, in limited quantities, for normal cleaning of the Unit and the Limited Common Element.

4.17 **Construction and Sales, Period Exemption.** During the course of the construction and sale of any permitted structures or improvements within the Project, the provisions, covenants, conditions and restrictions contained in this Declaration shall be deemed waived to the extent necessary or convenient to permit such construction and sale. As used herein, "sale" shall include the sale and closing of Units.

4.18. **Hard Surface; Sound Transmission Limitations.** Installation of hard and/or heavy surface floor coverings, such as tile, marble, wood ("Hard Surfaces") are expressly prohibited on second floor Units except in the kitchens, laundry rooms, baths and entryways. Additionally, prior to any installation of said Hard Surfaces in the kitchens, laundry rooms, baths and entryways, prior written Board approval is required as set forth in Section 4.3; provided, however, this exception shall not apply to A Units.

4.19 **Noise Reduction.** In order to maintain the highest level of acoustical privacy possible, each Owner, Lessee, Occupant and other Resident shall comply with the provisions of Exhibit C attached to this Declaration. In addition, the Board of Directors may, from time to time, adopt rules and regulations to reduce levels of noise emission from Units. No loudspeakers shall be affixed to any wall, ceiling, shelving or cabinets so as to cause vibrations discernable between Units. The use of stereo equipment, televisions and musical instruments shall be subject to and must be used in accordance with the Rules. All Owners, Lessees and Occupants shall take all reasonable precautions to lower noise transference between Units and to abide by the rules and regulations of the Association and any noise reduction ordinance of the City. Each Owner, Lessee and Occupant acknowledges that Declarant has not made any written or oral representation or warranty concerning the insulation capabilities of the Units and that in any multi-family dwelling sound may be audible between Units, particularly where the sound level of the source is sufficiently high and the background noise in an adjacent Unit is very low.

4.20 **Garages.** No Garage shall be converted to living space or altered or used for storage of material or other purposes which would prevent the use of the Garage for the parking of the number of vehicles for which it was designed. The interior of all Garages shall be maintained and kept in a neat, clean and sightly condition, free of debris or unsightly objects. Garage doors shall be kept closed except when the opening of the door is necessary to permit ingress or egress.

4.21 **Drainage.** No Owner may interfere with or obstruct the drainage pattern over the Project from or to any other Units, or the Common Elements, as may be established by the Declarant.

4.22 **Outside Lights.** Except as initially installed by Declarant, no spotlights, flood lights or other high intensity lighting shall be placed or utilized upon any building, structure, balcony, or patio or parking space which in any manner will allow light to be directed or reflected to the Project.

4.23 **Air Conditioners.** No window air conditioners or portable units visible from outside the Unit shall be installed in any Unit.

4.24 **Charcoal or Gas Grill.** Charcoal, smokers, and gas grills are prohibited within the Condominium Parcel except for those grills that are provided by the Association in the Common Elements for Owner, Lessee, Occupant and other Resident's use.

4.25 **Rules and Regulations.** Each Owner shall comply strictly with all Rules and Regulations adopted by the Association for the governance of the Units, the Common Elements and the Project, as such Rules and Regulations may be modified, amended and construed by the Association in the sole discretion of its Board of Directors.

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

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

**5.1 Duties of the Association.**

The Board of Directors, acting on behalf of the Association and, subject to the rights and duties of the Owners as set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Elements and all improvements thereon and shall keep the same in a good, clean, attractive, safe and sanitary condition, order and repair; provided, however, that unless otherwise stated herein, each Owner shall keep the Limited Common Elements designated for use in connection with his Unit, if any, in a clean, sanitary, safe and attractive condition and in good order and repair. The Association shall be responsible for the maintenance and repair of the exterior of the Buildings, other improvements and grounds, including, without limitation, painting thereof, repair and replacement of exterior trim, roofs and fences and maintenance of landscaping, walkways, driveways, parking areas, pool and spas. The Board of Directors shall also be responsible for maintenance, repair and replacement of Common Elements within the Buildings, including, without limitation, landings, stairways, utility lines, and all improvements and other items located within or used in connection with the Common Elements. The specification of duties of the Board of Directors with respect to the Common Elements shall include, but not necessarily be limited to, the following:

(a) **Painting Repairs and Replacement.** The Board shall cause all improvements in the Common Elements to be repaired, replaced and/or repainted as necessary to maintain the original appearance thereof (normal wear and fading excepted).

(b) **Utilities.** The Board shall cause to be maintained properly and in good condition and repair all utilities and utility systems in the Common Elements. The Board shall cause all water and/or sewer infrastructure, as set forth herein, to be inspected at least quarterly, and at least one



such inspection each year shall be done by a licensed and qualified contractor or architect with expertise in the construction and maintenance of such water/sewer infrastructure, who shall provide a written report to the Board. Common Element sewer lines shall be cleaned annually (or on such other periodic frequency as deemed reasonably prudent by the Board), from each building to the street. Common Element water lines shall be "exercised" once each year (or on such other periodic frequency as deemed reasonably prudent by the Board), by turning each valve off and on several times in succession. The Board shall cause any and all necessary or prudent repairs to be undertaken and completed without delay in a manner and to the extent necessary to prevent avoidable deterioration or property damage.

**(c) Drainage; Landscaping; Irrigation.** The Board shall cause all drainage systems, landscape installations, and irrigation systems within the Common Elements to be inspected at least monthly. In particular, the Board shall inspect for any misaligned, malfunctioning or nonfunctional sprinklers, or blocked drainage grates, basins, lines, and systems, which could cause damage to the Project. At least one such inspection each year shall be done by a licensed and qualified contractor or architect with expertise in the construction and maintenance of such drainage and landscape installations, who shall be required to promptly provide a written report to the Board. The written reports shall identify any items of maintenance or repair which either require current action by the Association, or will need further review and analysis, and shall specifically include a review of all irrigation and drainage systems on the Project. The Board shall cause any and all necessary or prudent repairs to be promptly undertaken and completed, to prevent avoidable deterioration or property damage. Without limiting the following, all landscaping shall be maintained as per the following minimum maintenance standards:

- (1) lawn and ground cover shall be kept mowed and/or trimmed regularly;
- (2) plantings shall be kept in a healthy and growing condition; fertilization, cultivation, spraying and tree pruning shall be performed as part of a regular landscaping program;
- (3) stakes, guys and ties on trees shall be checked regularly, to ensure the correct function of each; ties shall be adjusted to avoid creating abrasions or girdling of the trunk or stem;
- (4) damage to plantings shall be ameliorated; and
- (5) irrigation systems shall be kept in sound working condition; adjustment, replacement of malfunctioning parts, and cleaning of systems, shall be an integral part of the regular landscaping program.

Notwithstanding the foregoing guidelines, the Board shall be entitled to modify the existing landscaping on the Common Elements as to quantity, type and location of both plant and nonplant landscape materials by adding or removing those materials.

**(d) Hardscape; Private Streets.** The Board shall cause all hardscape, paved areas, and Private Streets within the Project to be inspected at least quarterly. At least one such inspection each year shall be done by a licensed and qualified contractor or architect with expertise in the construction and maintenance of such hardscape and paved areas, who shall be required to promptly provide a written report to the Board. The written reports shall identify any items of maintenance or repair which either require current action by the Association, or will need further

review and analysis. The Board shall cause any and all necessary or prudent repairs to be promptly undertaken and completed, to prevent avoidable deterioration or property damage. Without limiting the foregoing, the Board shall cause all asphalt to be sealed and restriped at least once every four (4) to five (5) years, or more frequently, if so required.

(e) **Water Features and Swimming Pool.** The Board shall cause all waterscape and water features within the Common Elements (including, but not necessarily limited to, the swimming pool and spa) to be inspected at least monthly. At least one such inspection each year shall be done by a licensed and qualified contractor with expertise in the construction and maintenance of such waterscape and water features, who shall be required to promptly provide a written report to the Board. The written reports shall identify any items of maintenance or repair which either require current action by the Association, or will need further review and analysis. The Board shall cause any and all necessary or prudent repairs to be promptly undertaken and completed, to prevent avoidable deterioration or property damage. Without limiting the foregoing, the Board shall cause all caulking and grout to be maintained, as needed, around the coping and decking of the swimming pool and any other water features.

(f) **Structures and Roofs.** The Board shall cause the structures and roofs of all Buildings and other improvements within the Project to be inspected at least quarterly. At least one such inspection each year shall be done by a licensed and qualified contractor or architect with expertise in the construction and maintenance of such structures and roofs, who shall be required to promptly provide a written report to the Board. The written reports shall identify any items of maintenance or repair which either require current action by the Association, or will need further review and analysis. The Board shall cause any and all necessary or prudent repairs to be promptly undertaken and completed, to prevent avoidable deterioration or property damage.

(g) **Inspections.** After the end of Declarant's control of the Board, the Board shall conduct inspections of the Common Elements as set forth above, and shall provide Declarant with at least ten days' prior written notice of each such inspection. Declarant shall have the option, in its sole discretion, without obligation, to attend each such inspection.

(h) **Reports.** For a period of ten (10) years from the date of this Declaration, the Board shall promptly deliver to Declarant information copies of all written inspections and reports rendered pursuant to the Association's maintenance and repair responsibilities hereunder (without any obligation whatsoever of Declarant to review such documents or to take any action in connection therewith).

(i) **Preventive Maintenance Workbooks.** At the option of the Board, the Association may, but shall not be required to, prepare and maintain preventive maintenance workbooks setting forth the minimum requirements and additional requirements suggested to be deemed necessary by the Board for the continuing upkeep and maintenance of the Common Elements, including the Limited Common Elements (including, but not necessarily limited to, the items set forth in this Section 5.1). Such Preventive Maintenance Workbooks shall also include requirements for periodic maintenance, repairs and improvements, not required to be performed monthly, quarterly, or annually in which Association funds may be used.

## 5.2 Duties of Unit Owners.

(a) Each Owner shall maintain, repair and replace, at his own expense, all portions of the Owner's Unit in a good, clean and sanitary condition. In addition, each Owner shall be responsible for the maintenance, repair and replacement of the Limited Common Elements allocated to his Unit pursuant to Section 2.8 or the Plat. Each Owner shall be responsible for maintaining the interior of the Balcony/Patio or Entry allocated to the Owner's Unit as a Limited Common Element in a good, clean and sanitary condition. Each Owner shall be responsible for maintaining in a good, clean, working and sanitary condition, the interior of their assigned Garage, as well as the Garage doors, windows, locks and openers, if any.

(b) Any Owner, Lessee or Occupant that leaves their Unit unoccupied for more than seven (7) consecutive days shall turn off the water main located in the garage, in addition to the water valve for all toilets and the clothes washer in the Unit. Each Unit Owner shall (1) regularly inspect the Owner's Unit and any part of the Common Elements that the Owner is obligated to maintain, and which are visible and accessible without having to first remove building components or conduct invasive testing, for the existence of mold, mildew, and/or water intrusion (except when the water intrusion is part of the normal functioning of improvements and appliances such as showers, sinks, dishwashers, and other similar appliances and improvements) and/or water damage; (2) upon discovery, immediately repair in a good and workmanlike condition the source of any water intrusion in the Owner's Unit and any part of the Common Elements that the Owner is obligated to maintain; (3) remediate or replace, in accordance with the current industry accepted methods, any building material located in the Owner's Unit and any part of the Common Elements that the Owner is obligated to maintain that has absorbed water or moisture as a result of water intrusion; and (4) promptly and regularly remediate in accordance with current industry accepted methods all mold and/or mildew discovered in the Owner's Unit and any part of the Common Elements that the Owner is obligated to maintain. Each Owner, Lessee and Occupant further agrees not to block or cover any of the heating, ventilation or air-conditioning ducts located in the Unit.

5.3 **Repair or Restoration Necessitated by Owner.** Each Owner shall be liable to the Association for any insurance deductible of the Association and/or for damage to the Common Elements or the Improvements, landscaping or equipment thereon which results from the negligence or willful conduct of the Owner or of the Owner's Lessees, Occupants or Invitees or from any violation of this Declaration or the Rules by an Owner or by the Owner's Lessees, Occupants or Invitees. The cost to the Association of any such repair, maintenance or replacements required by such act of an Owner or of the Owner's Lessees, Occupants or Invitees shall be assessed against the Owner as provided in Section 7.2(d). In addition, each Owner shall be liable to the other Unit Owners for any damage caused to such Owner's Unit which results from the negligence or willful misconduct of the Owner or the Owner's Lessees, Occupants or Invitees.

5.4 **Owner's Failure to Maintain.** If an Owner fails to maintain in good condition and repair the Owner's Unit or any Limited Common Element which the Owner is obligated to



maintain under this Declaration and the required maintenance, repair or replacement is not performed within fifteen (15) days after written notice has been given to the Owner by the Association, the Association shall have the right, but not the obligation, to perform the required maintenance, repair or replacement. The cost of any such maintenance, repair or replacement, plus an administrative fee equal to fifteen percent (15%) of such costs, shall be assessed against the non performing unit Owner pursuant to Section 7.2(d).

## **ARTICLE 6**

### **THE ASSOCIATION**

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

6.2 **Directors and Officers.** During the Period of Declarant Control, the Declarant shall have the right to appoint and remove the members of the Board of Directors and the officers of the Association, and such directors and officers do not have to be Unit Owners. The initial directors and officers of the Association shall be designated in the Articles, and such designation shall constitute the appointment of such directors and officers by the Declarant. When the Period of Declarant Control expires, the Unit Owners shall elect the Board of Directors, all of whom must be Unit Owners. The number of Board Members shall be established by the Board of Directors. The Board of Directors elected by the Unit Owners shall then elect the officers of the Association. For the limited purpose of determining whether a natural person is a Unit Owner and therefore eligible to serve on the Board of Directors, any member, manager, shareholder, partner, director, officer or other authorized representative of a corporation, general partnership, limited partnership, limited liability company, limited liability partnership or other legal entity that is a Unit Owner shall be considered a eligible to serve. The Declarant may voluntarily surrender the right to appoint and remove the members of the Board of Directors and the officers of the Association before the expiration 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 **Miscellaneous Goods and Services.** The Board of Directors may, on behalf of the Association, obtain and pay for such goods or services of such personnel as the Board of Directors shall determine to be necessary or desirable for the proper operation of the Project,

whether such personnel are furnished or employed directly by the Association or by any person or entity with whom or which it contracts. The Board of Directors may, in behalf of the Association, obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Project or the enforcement of this Declaration. In addition to the foregoing, the Board of Directors may, in behalf of the Association, acquire and pay for out of the Common Expense Fund water, sewer, garbage collection, electrical, gas and other necessary or desirable utility services for the Common Elements insurance, bonds and other goods and services common to the Units.

**6.4. Right of Board of Directors to Bind Association.** A contract for any of the following, if entered into before the Period of Declarant Control expires, shall contain a provision in the contract that the contract may be terminated without penalty by the Association at any time after the Board of Directors elected by the Unit Owners takes office:

- (a) Any management contract or employment contract.
- (b) Any other contract or lease between the Association and Declarant or affiliate of a Declarant.
- (c) Any contract or lease that is not bona fide or was unconscionable to the Owners at the time thereto and under the circumstances then prevailing.

The Board of Directors shall notify the appropriate contractual party of the termination in not fewer than thirty (30) days before termination. If a contract covered by this Section 6.4 fails to contain the provisions required by this Section, the contract shall be voidable at the option of the Association.

**6.5. Real and Personal Property.** The Board of Directors may acquire and hold on behalf of the Association real, personal and mixed property of all types for the use or benefit of all of the Owners and may dispose of such property by sale or otherwise, provided that any acquisition or disposition of value of any real, personal or mixed property by the Board of Directors wherein such property exceeds Ten Thousand Dollars (\$10,000) must be approved by a majority vote of those voting at a meeting duly called for that purpose. All such property shall be paid for out of the Common Expense Fund and the disposition thereof shall be part of such fund. This member vote requirement does not apply to any foreclosure proceedings or Sheriff Sale authorized in Section 7.7.

**6.6 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 behavior on the Parcel, use of any part of the Parcel, the Units and the Common Elements.

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

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

6.9 **Utility Service.** The Association shall pay for the water and sewer utility services, along with trash pickup which shall be part of the Common Expenses.

## **ARTICLE 7** **ASSESSMENTS**

### **7.1 Preparation of Budget.**

(a) At least thirty (30) days before the beginning of each fiscal year of the Association commencing with the fiscal year in which the first Unit is conveyed to a Purchaser, the Board of Directors shall adopt a budget for the Association containing an estimate of the total amount of funds which the Board of Directors believes will be required during the ensuing fiscal year to pay all Common Expenses including, but not limited, to: (1) 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; (2) the cost of wages, materials, insurance premiums, services, supplies and other expenses required for the administration, operation, maintenance and repair of the Condominium; (3) the amount required to render to the Unit Owners all services required to be rendered by the Association under the Condominium Documents; and (4) such amounts as may be necessary to provide reserves for contingencies and replacements. The budget shall separately reflect any Common Expenses to be assessed against less than all of the Units. The Board of Directors is expressly authorized to adopt and amend budgets for the Association, and no ratification of any budget by the Unit Owners shall be required.

(b) Within fifteen (15) days after the adoption of the budget for each fiscal year of the Association (except for the first fiscal year), the Board of Directors shall send to each Owner a summary of the budget and a statement of the amount of the Regular Assessment assessed against the Owner's Unit in accordance with Section 7.2. The failure or delay of the Board of Directors to adopt a budget for any fiscal year or to send each Owner a summary of the budget or a notice of the amount of the Regular Assessment for any fiscal year as required by this Subsection shall not constitute a waiver or release in any manner of an Owner's obligation to pay his allocable share of the Common Expenses as provided in Section 7.2, and each Owner shall continue to pay the Regular Assessment for his Unit as established for the previous fiscal year until notice of the Regular

Assessment for the new fiscal year has been given to the Owners by the Board of Directors.

**7.2 Regular Assessment.**

(a) 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 shall be assessed equally against each Unit subject to this Declaration. If the Board of Directors determines during any fiscal year that its funds budgeted or available for that fiscal year are, or will become, inadequate to meet all Common Expenses for any reason, including, without limitation, nonpayment of Assessments by Members, the Board of Directors may increase the Regular Assessment for that fiscal year and the revised Regular Assessment shall commence on the date designated by the Board of Directors.

(b) The Regular Assessments shall commence as to all Units subject to this Declaration on the day that the first Unit is conveyed to a Purchaser. The first Regular Assessment shall be adjusted according to the number of months remaining in the fiscal year of the Association. The Board of Directors may require that the Regular Assessments or Special Assessments be paid in installments. After the Regular Assessment commences, the Declarant shall pay a reduced assessment of 25% of the Regular Assessment on the Units that are subject to this Declaration and not substantially completed. While paying the reduced assessment, the Declarant is obligated to pay any deficiency in monies due to the Declarant having paid a reduced common assessment and necessary for the Association to be able to timely pay all Common Expenses(c) Except as otherwise expressly provided for in Section 5.1 or elsewhere 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 Section 7.2(a).

(d) If any Common Expense is caused by the misconduct of any Owner, the Association shall assess that Common Expense exclusively against such Owner's Unit. Assessments to pay a judgment against the Association may be made only against the Units in the Condominium at the time the judgment was entered, in proportion to their Common Expense Liabilities. If the use of any Unit increases the cost to the Association of the insurance maintained by the Association pursuant to Article 8, the increased cost shall be assessed solely to such Unit.

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



(f) The Association shall acquire and pay for the following: (1) water, sewer, electric, and other utility service for the Common Elements; (2) refuse and rubbish collection for the Common Elements and the Units; and (3) water and sewer service for the Units. Each Unit will be separately metered for electric service, and all charges for electric service to a Unit shall be billed directly to the Unit Owner by the electric company and shall be paid by the Unit Owner. The Units are not separately metered for water service.

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

7.4 **Enforcement Assessment.** The Association may assess against a Unit Owner as an Enforcement Assessment any of the following expenses: (1) any Collection Costs incurred by the Association in attempting to collect Assessments or other amounts payable to the Association by the Owner; (2) any attorneys' fees (whether or not a lawsuit is filed) incurred by the Association with respect to any violation of the Condominium Documents by the Owner or the Owner's Lessees, Occupants or Invitees; (3) any monetary penalties levied against the Owner; or (4) any amounts (other than Assessments) which become due and payable to the Association because of the exercise of any enforcement authority granted to the Association pursuant to the Condominium Documents (e.g. towing expense).

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

7.6 **Purposes for which Association's Funds May be Used.** The Association may use the funds and property collected and received by the Association (including, but not limited to, all Assessments, fees, loan proceeds, surplus funds and all funds and property received from any other source) for the purpose of: (1) discharging and performing the Association's duties and obligations under the Condominium Documents or applicable law; (2) exercising the rights and powers granted to the Association by the Condominium Documents or applicable law; (3) providing or promoting activities and services the Board of Directors deems appropriate,



necessary or desirable to foster or promote the common good and general welfare of the Condominium and the Owners, Lessees and Occupants; (4) contracting for services (including, without limitation, trash collection or cable television) to be provided to Owners, Lessees and Occupants; and (5) taking such other action as the Board of Directors deems necessary, appropriate or desirable for the management and administration of the Association or the benefit of the Association or the Condominium.

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

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

(b) The Association shall have a lien on each Unit for any Assessment levied against that Unit from the time the Assessment becomes due and for charges for late payment of those Assessments, for reasonable collection fees and for reasonable attorney fees and costs incurred with respect to those Assessments. The Association's lien for Assessments, for charges for late payment of those Assessments, for reasonable collection fees and for reasonable attorney fees and costs incurred with respect to those Assessments may be foreclosed in the same manner as a mortgage on real estate. Fees, charges, late charges, monetary penalties and interest charged pursuant to Section 33-1242, Paragraphs 10, 11 and 12 of the Arizona Revised Statutes, other than charges for late payment of Assessments, are not enforceable as Assessments under this Section 7.7. If an Assessment is payable in installments, the full amount of the Assessment is a lien from the time the first installment of the Assessment becomes due. The Association has a lien for fees, charges, late charges (other than charges for late payment of Assessments), monetary penalties or interest charged pursuant to Section 33-1242, Paragraphs 10, 11 and 12 of the Arizona Revised Statutes after the entry of a judgment in a civil suit for those fees, charges, late charges, monetary penalties or interest from a court of competent jurisdiction and the recording of that judgment in the records of the County Recorder of Maricopa County, Arizona, as otherwise provided by law. The Association's lien for monies other than for Assessments, for charges for late payment of those Assessments, or reasonable collection fees and for reasonable attorney fees and costs incurred with respect to those Assessments may not be foreclosed and is effective only on conveyance of any interest in the Unit. The recording of this Declaration constitutes record notice and perfection of the Association's lien for Assessments, for charges for late payment of those Assessments, for reasonable collection fees and for reasonable attorney fees and costs incurred with respect to those Assessments, and no further recordation of any claim of lien shall be required. Although not required in order to perfect the Association's lien, the Association shall have the right but not the obligation, to record a notice setting forth the

amount of any delinquent Assessments, for charges for late payment of those Assessments, for reasonable collection fees and for reasonable attorney fees and costs incurred with respect to those Assessments which are secured by the Association's lien.

(c) The Association's Lien for Assessments, for charges for late payment of those Assessments, for reasonable collection fees and for reasonable attorney fees and costs incurred with respect to those Assessments shall have priority over all liens, other interests and encumbrances except for: (1) liens and encumbrances Recorded before the recording of this Declaration; (2) liens for real estate taxes and other governmental assessments and charges; and (3) the lien of any First Mortgage or seller's interest in a first contract for sale recorded prior to the Assessment Lien. Any First Mortgagee or any other Person acquiring title or coming into possession of a Unit through foreclosure of the First Mortgage, purchase at a foreclosure sale or trustee's sale, or through any equivalent proceedings, such as, but not limited to, the taking of a deed in lieu of foreclosure shall acquire title free and clear of any claims for unpaid Assessments and charges against the Unit which became payable prior to the acquisition of such Unit by the First Mortgagee or other Person. Any assessments and charges against the Unit which accrue prior to such sale or transfer shall remain the obligation of the defaulting Unit Owner.

(d) 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: (1) 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 (2) bringing an action to foreclose the Association's lien for Assessments, for charges for late payment of those Assessments, for reasonable collection fees and for reasonable attorney fees and costs incurred with respect to those Assessments in the manner provided by law for the foreclosure of a realty mortgage. The Association shall have the power to bid in at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any and all Units purchased at such sale.

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

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

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

**7.10 Reserve Contribution.**

- (a) Except as provided in this Section 7.10(a), each Purchaser shall pay to the Association, immediately upon becoming the Owner of the Unit, a contribution (the "Reserve Contribution") to the reserves to be established pursuant to Section 7.12. The amount of the initial Reserve Contribution shall be \$500.00. The Board of Directors may from time to time thereafter increase or decrease the amount of the Reserve Contribution.
- (b) No Reserve Contribution shall be payable with respect to: (1) the transfer or conveyance of a Unit by devise or intestate succession; (2) a transfer or conveyance of a Unit to a family trust, family limited partnership or other Person for bona fide estate planning purposes; and (3) a transfer or conveyance of a Unit to a corporation, partnership or other entity in which the grantor owns a majority interest unless the Board determines, in its sole discretion, that a material purpose of the transfer or conveyance was to avoid payment of the Reserve Contribution in which event a Reserve Contribution shall be payable with respect to such transfer or conveyance.
- (c) All Reserve Contributions shall be deposited in the Reserve Account established pursuant to Section 7.12. Reserve Contributions shall be non-refundable and shall not be considered as an advance payment of Assessments.

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

**7.12 Reserves.**

- (a) The Board of Directors shall establish reserves for the future periodic maintenance, repair or replacement of the major components of the Common Elements which the Association is obligated to maintain, repair and replace. The reserves may be funded from Regular Assessments, the Reserve Contributions paid pursuant to Section 7.10, or any other revenue of the Association. All amounts designated as reserves shall be deposited by the Board of Directors in a separate bank account (the "Reserve Account") to be held for the purposes for which they are collected and are to be segregated from and not commingled with any other funds of the

Association. The Board of Directors periodically shall obtain a reserve study, which study shall at a minimum include (1) identification of the major components of the Common Elements which the Association is obligated to repair, replace, restore or maintain which, as of the date of the study, have a remaining useful life of less than thirty (30) years; (2) identification of the probable remaining useful life of the identified major components as of the date of the study; (3) an estimate of the cost of repair, replacement, restoration, or maintenance of the identified major components during and at the end of their useful life; (4) an estimate of the total annual contribution necessary to defray the cost to repair, replace, restore, or maintain the identified major components during and at the end of their useful life, after subtracting total reserve funds as of the date of the study. The Reserve Study should be updated at least every four (4) years and a copy of any new, updated or modified Reserve Study shall be provided to the Declarant for ten (10) years following the expiration of the Period of Declarant Control.

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

## **ARTICLE 8** **INSURANCE**

**8.1 Scope of Coverage.** 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:

- (1) A “master” or “blanket”, all-risk policy of property insurance, insuring the Common Elements. The Board of Directors, in its discretion, may elect to have the property insurance also cover the Units or Additional Property; except for (i) additional, alterations and improvements supplied or installed by the Unit Owners; and (ii) furniture, furnishings or other personal property of the Unit Owners. Such property insurance shall cover the interests of the Association, the Declarant, the Board of Directors and all Unit Owners and their mortgagees, as their interests may appear (subject, however, to the loss payment adjustment provisions in favor of an Insurance Trustee), in an amount equal to one hundred percent (100%) of the then current replacement cost of the Common Elements (exclusive of the land, excavations, foundations and other items normally excluded from such coverage), without deduction for depreciation. Such policy must be consistent with state and local insurance laws and at least equal to such coverage as is commonly required by prudent institutional mortgage investors in the area in which the Condominium is



located. The Board of Directors may also insure any other property, whether real or personal, owned or maintained by the Association, as the Association may deem desirable, with the Association as the owner and beneficiary of such insurance for and on behalf of itself and all Owners.

The Declarant and its Lenders, if any, as their interests may appear, shall be named as additional insured on all such policies of property insurance obtained by the Association.

The Association hereby waives and releases all claims against the Board, the Unit Owners, Declarant and the agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by negligence of or breach of any agreement by said persons, but only to the extent that insurance proceeds are received in compensation for such loss.

- (2) Commercial general liability insurance, for a limit to be determined by the Board, but not less than \$1,000,000 for any single occurrence and \$2,000,000 in aggregate for any annual policy term insuring the Association, the Board of Directors, the manager or management agent and their respective agents and employees, and the Unit Owners from liability arising out of or in connection with the use, ownership, maintenance or operation of the Common Elements. Such insurance shall cover all occurrences commonly insured against resulting in death, bodily injury, property damage and/or personal and advertising injury. The Declarant shall be included as an additional insured, as applicable. Such policy shall include (i) a separation of insureds clause to cover liabilities of the Owners as a group to an Owner; (ii) medical payments insurance; (iii) blanket contractual liability coverage; and (iv) contingent liability coverage arising out of the use of hired and non-owned automobiles.
- (3) Worker's compensation insurance to the extent necessary to meet the requirements of the laws of Arizona and, if the Association has any employees, a policy of employer's liability insurance with coverage limits determined by the Board of Directors, but not less than the limits required for excess coverage under the Umbrella Liability Policy.
- (4) Directors' and officers' liability insurance in an amount not less than \$1,000,000 covering all the directors and officers of the Association and naming the managing agent of the Association as an additional insured.
- (5) Such other insurance as the Association shall determine from time to time to be appropriate to protect the Association, the members of the Board of Directors, the members of any committee or the Unit Owners.
- (6) The insurance policies purchased by the Association shall, to the extent reasonably available, contain the following provisions:



- (i) Each Unit Owner shall be an insured under the policy with respect to liability arising out of his ownership of an undivided interest in the Common Elements or his membership in the Association.
  - (ii) There shall be no subrogation with respect to the Association, its agents, servants, and employees against Unit Owners and members of their household, except for claims against Unit Owners by members of their households for employee dishonesty or forgery.
  - (iii) No act or omission by any Unit Owner 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) A standard mortgagee clause providing that the insurance carrier shall notify the Association and each First Mortgagee named in the policy at least thirty (30) days in advance of the effective date of any substantial change in coverage or cancellation of the policy.
  - (viii) To the extent obtainable at reasonable rates, the insurance policy(ies) maintained by the Association shall contain provisions, or be accompanied by endorsements, for agreed amount and inflation guard, demolition costs, contingent liability from operation of building laws and increased costs of construction.
- (7) If required by any governmental or quasi-governmental agency (including, without limitation, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation) flood insurance in accordance with the applicable regulations of such agency.
- (8) 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.

- (9) The Board of Directors may select deductibles applicable to the insurance coverage to be maintained by the Association pursuant to this Section 8.1 in order to reduce the premiums payable for such insurance. The deductible, if any, on any insurance policy obtained by the Association shall be a Common Expense, but the Association may assess to a Unit Owner any deductible amount necessitated by the negligence, misuse or neglect for which such Unit Owner is responsible.
- (10) Notwithstanding any of the other provisions of this Article 8 to the contrary, there may be named as an insured, on behalf of the Association, the Association's authorized representative or an Insurance Trustee who shall have exclusive authority to negotiate losses under any policy providing such property or liability insurance and to perform such other functions as are necessary to accomplish such purpose. Each Unit Owner appoints the Association, or any representative designated by the Association, as attorney-in-fact for the purpose of purchasing and maintaining such insurance, including: (1) the collection and appropriate disposition of the proceeds thereof; (2) the negotiation of losses and execution of releases of liability; (3) the execution of all documents; and (4) the performance of all other acts necessary to accomplish such purpose.
- (11) The Association and its directors and officers shall have no liability to any Owner or First Mortgagee or other Person having a lien on a Unit if, after a good faith effort, (1) the Association is unable to obtain insurance required hereunder because the insurance is no longer available; (2) if available, the insurance can be obtained only at a cost that the Board, in its sole discretion, determines is unreasonable under the circumstances; or (3) the Owners fail to approve any increase in the Regular Assessment needed to pay the insurance premiums.
- (12) The Board of Directors shall determine annually whether the amounts and types of insurance the Association has obtained provide adequate coverage in light of increased construction costs, inflation, practice in the area in which the Condominium is located, or any other factor which tends to indicate that either additional insurance policies or increased coverage under existing policies are necessary or desirable to protect the interests of the Owners and of the Association.
- (13) All insurance policies obtained by the Association pursuant to this Article 8 shall be obtained from generally acceptable insurance carriers.
- (14) At such time as the Declarant no longer has an ownership interest in any of the Units, Additional Property, Common Areas and

furniture, furnishings or other personal property, the Association may terminate the insurance coverages herein provided for the Declarant.

**8.2 General Requirements** All insurance provided for in this Article 8 shall be written under valid and enforceable policies issued by insurance companies authorized and licensed to transact business in the State of Arizona. All such policies shall provide for a minimum of thirty (30) days advance written notice to the Association prior to the cancellation or material change of any insurance coverage under the policy.

**8.3 Fidelity Bonds or Insurance.**

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

- (a) The fidelity bonds shall name the Association as an obligee, and fidelity insurance shall name the Association as the named insured;
- (b) The bonds or the insurance policies shall contain waivers by the issuers of the bonds or the insurers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expressions;
- (c) The bonds or insurance policies shall provide that they may not be canceled or substantially modified without at least thirty (30) days prior written notice (ten (10) days for cancellation from nonpayment of premium) to the Association and each First Mortgagee.

8.3.2 The Association shall require any management agent of the Association to maintain its own fidelity bond or fidelity insurance in an amount equal to or greater than the amount of the fidelity bond or fidelity insurance to be maintained by the Association pursuant to Subsection 8.3.1. The fidelity bond or fidelity insurance maintained by the management agent shall cover funds maintained in bank accounts of the management agent and need not name the Association as an obligee or an insured.

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

**8.5 Payment of Deductible on Association Insurance Policies.** Any Owner(s) that is responsible for damage that occurred precipitating an Association insurance claim is

responsible to pay the Association's deductible and such expense is a lien on that Unit(s) and collectible in the same manner as an Assessment.

**8.6 Insurance Obtained by Unit Owners.** Each Unit Owner shall obtain and maintain (1) property insurance covering the Owner's Unit, Garage and all additions, alterations, and improvements (whether installed by such Unit Owner or any prior Unit Owner or whether originally in such Owner's Unit), as well as all furniture, furnishings and other personal property in such Owner's Unit; (2) liability insurance covering, to the extent not covered by the policies of liability insurance obtained by the Board of Directors for the benefit of all Unit Owners, such Unit Owner's liability for bodily injury, including death, and property damage arising out of the ownership, maintenance or use of the Owner's Unit. If requested to do so by the Board of Directors each Unit Owner shall provide the Board of Directors with a certificate of insurance evidencing such insurance coverage at least ten (10) days prior to the conveyance of the Unit to the Unit Owner, and thereafter at least thirty (30) days prior to the expiration of any policy.

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

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

## **ARTICLE 9**

### **DESTRUCTION OF IMPROVEMENTS**

**9.1 Automatic Reconstruction.** Any portion of the Condominium for which insurance is maintained by the Association which is damaged or destroyed shall be repaired or replaced promptly by the Association unless: (1) the Condominium is terminated; (2) repair or replacement would be illegal under any state or local health or safety statute or ordinance; or (3) eighty percent (80%) of the Unit Owners, including every Owner of a Unit or allocated Limited Common Element which will not be rebuilt, vote not to rebuild. The cost of repair or replacement of the damaged or destroyed portion of the Condominium in excess of insurance proceeds and reserves shall be a Common Expense and shall be assessed to the Members as a Special Assessment pursuant to Section 7.3.

9.2 **Determination Not to Reconstruct Without Termination.** If eighty percent (80%) of the Unit Owners (including every Owner of a Unit or an allocated Limited Common Element which will not be rebuilt) vote not to rebuild, and the Condominium is not terminated in accordance with the Condominium Act, the insurance proceeds shall be distributed in proportion to their interests in the Common Elements to the Owners of those Units and the Owners to which those Limited Common Elements were allocated, or to lienholders as their interests may appear. The remainder of the proceeds shall be distributed to all Unit Owners or lienholders as their interests may appear in proportion to Common Element interests of all the Units. If the Unit Owners vote not to rebuild any Unit, that Unit's allocated interests in the Common Elements and in the Common Expenses shall be automatically reallocated as if the Unit had been condemned under A.R.S. § 33-1206A, and the Association shall prepare, execute and record an amendment to this Declaration reflecting the reallocation.

9.3 **Distribution of Insurance Proceeds in the Event of Termination of the Condominium.** Notwithstanding any provisions of this Article 9 to the contrary, the distribution of insurance proceeds resulting from the damage or destruction of all or any part of the Common Elements shall be distributed as provided in the Condominium Act in the event of a termination of the Condominium.

9.4 **Negotiations with Insurer.** The Association shall have full authority to negotiate in good faith with representatives of the insurer of any totally or partially destroyed building or any other portion of the Common Elements, and to make settlements with the insurer for less than full insurance coverage on the damage to such building or any other portion of the Common Elements. Any settlement made by the Association in good faith shall be binding upon all Owners and First Mortgagees. Insurance proceeds for any damage or destruction of any part of the Condominium covered by property insurance maintained by the Association shall be paid to the Association and not to any First Mortgagee or other lienholder. The Association shall hold any proceeds in trust for the Unit Owners and lienholders as their interests may appear. Except as otherwise provided in Sections 9.1 and 9.2 all insurance proceeds shall be disbursed first for the repair or restoration of the damaged Common Elements, and Unit Owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the damaged or destroyed Common Elements have been completely repaired or restored or the Condominium is terminated.

9.5 **Repair of Units.** Installation of improvements to, and repair of any damage to, the interior of a Unit not covered by property insurance maintained by the Association shall be made by and at the individual expense of the Owner of that Unit and shall be completed as promptly as practicable and in a lawful and workmanlike manner. Any installation or repair of improvements by an Owner shall be subject to the provisions of Section 4.3.

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



**ARTICLE 10**  
**EMINENT DOMAIN**

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

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

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

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

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

**ARTICLE 11**  
**RIGHTS OF FIRST MORTGAGEES**

11.1 **Notification to 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 of address of the Unit to which the request relates, the Association shall provide such Eligible Mortgage Holder or Eligible Insurance Or Guarantor with timely written notice of the following:

- (a) Any condemnation or any casualty loss that affects either a material portion of the Condominium or the Unit securing its First Mortgage;
- (b) Any 60-day delinquency in the payment of Assessments or charges owed by the Owner of any Unit on which the Eligible Mortgage Holders or Eligible Insurer Or Guarantor holds a First Mortgage;
- (c) Any lapse, cancellation or material modification of any insurance policy maintained by the Association; and (d) Any proposed action which requires the consent of a specified percentage of Eligible Mortgage Holders or Eligible Insurers Or Guarantors as set forth in Section 11.2.

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

11.2.1 Except in cases of amendments that may be executed by a Declarant in the exercise of its Development Rights or under Section 33-1220 of the Condominium Act, by the Association under Section 33-1206 or 33-1216(D) of the Condominium Act, or by certain Unit Owners under Section 33-1218(B), Section 33-1222, Section 33-1223 or Section 33-1228(B) of the Condominium Act, any amendments to the Condominium Documents of a material adverse nature to First Mortgagees must be agreed to by Eligible Mortgage Holders or Eligible Insurers or Guarantors that represent at least fifty-one percent (51 %) of the votes in the Association allocated to Units that are subject to First Mortgages held or insured by Eligible Mortgage Holders or Eligible Insurers Or Guarantors.

11.2.2 Any action to terminate the legal status of the Condominium after substantial destruction or condemnation occurs or for other reasons must be agreed to by the Eligible Mortgage Holders or Eligible Insurers Or Guarantors that represent at least fifty-one percent (51 %) of the votes of Units subject to First Mortgages held or insured by Eligible Mortgage Holders or Eligible Insurers Or Guarantors.

11.2.3 Any Eligible Mortgage Holder or Eligible Insurance Or Guarantor who receives a written proposal for an amendment to the Condominium Documents who fails to submit a response to the proposal within sixty (60) days after the Eligible Mortgage holder or Eligible Insurer Or Guarantor receives proper notice of the proposal shall be deemed to have approved the proposed amendment, provided the notice was delivered by certified or registered mail, with a "return receipt" requested.

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

or other sponsor, developer or builder of the Condominium) of the Units have given their prior written approval, the Association shall not be entitled to:

- (a) By act or omission, seek to abandon or terminate this Declaration or the Condominium;
- (b) Change the pro rata interest or obligations of any individual Unit for the purpose of: (i) levying Assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or (ii) determining the pro rata share of ownership of each Unit and Common Elements;
- (c) Partition or subdivide any Unit;
- (d) By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Elements. The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements shall not be deemed a transfer within the meaning of this Subsection;
- (e) Use Hazard insurance proceeds for losses to any Units or the Common Elements for any purpose other than the repair, replacement or reconstruction of such Units or the Common Elements.

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

**11.4 Prohibition Against Right of First Refusal.** Any right of first refusal in the Condominium Documents will not apply to/adversely impact the rights of a First Mortgagee to:

- (a) foreclose or take title to a Unit pursuant to the remedies in the Mortgage;
- (b) accept a deed or assignment in lieu of foreclosure in the event of default by a mortgagor; or
- (c) sell or lease a Unit acquired by the First Mortgagee.

**11.5 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 or Eligible Mortgage Holders or Eligible Insurers Or Guarantors, that must consent to (a) an amendment of the Condominium Documents, (b) a termination of the

Condominium, or (c) certain actions of the Association as specified in Sections 11.2 and 11.3, the provision requiring the consent of the greatest number or percentage of Unit Owners or Eligible Mortgage Holders or Eligible Insurers Or Guarantors shall prevail; provided, however, that the Declarant shall have the right to unilaterally amend this Declaration, the Articles or the Bylaws during the Period of Declarant Control in order to (a) comply with the Condominium Act or any other applicable law if the amendment does not adversely affect the rights of any Unit Owner, (b) correct any error or inconsistency in the Declaration, the Articles or the Bylaws if the amendment does not adversely affect the rights of any Unit Owner, (c) exercise Declarant's Rights named herein; or (d) comply with the requirements or guidelines in effect from time to time of any governmental or quasigovernmental entity or federal corporation guaranteeing or insuring mortgage loans or governing transactions involving mortgage instruments including, without limitation, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Department of Veterans Affairs.

**ARTICLE 12**  
**DISPUTE RESOLUTION AND MANDATORY BINDING ARBITRATION OF**  
**CONSTRUCTION DEFECT CLAIMS**

**12.1 Dispute Resolution and Mandatory Binding Arbitration.** Any and all disputes arising out of claims or causes of actions alleging Construction Defects (as defined in Arizona Revised Statutes Section 12-1361.4.(a) through (c) herein "Construction Defects") in and/or relating to the Rancho North Condominium Units and/or Common Elements asserted against the Declarant and/or its General Contractor, HBT Construction of Arizona, Inc. ("Contractor"), by the Association and/or any of the Unit Owners shall be resolved by the dispute resolution and mandatory binding arbitration process and procedures herein provided for.

The term "party" or "parties" hereinafter referred to in this Article 12 shall include as applicable the Seller, Contractor, the Contractor's subcontractors, the Association, and the Owners. Reference to party shall include parties where applicable.

If the claimant is an Owner, such claimant shall first comply with Arizona's Right to Cure Law, Arizona Revised Statutes Sections 12-1361 through 12-1363, and/or if the claimant is the Association, then the Association shall first comply with Arizona Revised Statutes Sections 33-2001 through 33-2003, and then the Association must comply with Arizona Revised Statutes Sections 12-1361 through 12-1363.

If such Construction Defect disputes are not resolved pursuant to the foregoing statutory process and procedures, then any party may demand the parties participate, in a mediation, in good faith, prior to and as an express condition precedent of, invoking mandatory binding arbitration as set forth below. The party electing to invoke mediation shall serve the other party with written notice of that election and include the names of at least two mediators that party consents to serve as mediator. The other party shall respond in writing within ten (10) calendar days to the notice of election to mediate and either consent to at least one of the proposed mediators or provide the names of two (2) other mediators to which the responding party consent to serve as mediator. If within ten (10) additional calendar days the parties are unable to agree



on a mediator, each party will designate one (1) mediator and those mediators will confer and select a third mediator to conduct the mediation as sole mediator.

Unless otherwise expressly agreed to by the parties, the mediator conducting the mediation will be a current member of the State Bar of Arizona and have at least ten (10) years of active Arizona litigation experience with firsthand involvement in construction cases. Failure of any party to designate two (2) proposed mediators who meet these criteria (or not agreeing to the other parties' otherwise qualified proposed mediators) will be deemed a failure to participate in good faith.

The mediation will take place in the Phoenix, Arizona metropolitan area, and without the express agreement of all of the parties, last no longer than twelve (12) hours in one (1) calendar day. The parties agree to abide by the process and procedures for the mediation as established by the mediator. In the event the parties reach a resolution of their dispute during mediation, any such agreement shall be memorialized in writing, and if there is any dispute in the terms of such agreement, either in formalizing the agreement or interpreting the agreement, such dispute will be resolved solely and conclusively by the mediator.

The parties will bear their own attorneys' fees, costs and other expenses associated with the mediation, and equally share the amount of the mediator's fee. If the mediator requires payment of some, or all, of the mediation fees upfront, a party who fails to make such payment will be deemed to have not participated in good faith.

In the event that none of the foregoing process and procedures have resolved all of the parties' Construction Defect claims, then the parties agree that mandatory binding arbitration shall be the sole and exclusive procedure for resolving any and all remaining claims, disputes, disagreements and controversies relating to Construction Defects. No later than sixty (60) days following completion of the mediation required above, any party who seeks resolution of any remaining claims, disputes, disagreements or controversies relating to Construction Defects shall notify the other party in writing of its intent to invoke this arbitration provision.

The arbitration shall take place in the Phoenix, Arizona metropolitan area and Arizona law shall apply to all such disputes. The arbitration shall be conducted by a single arbitrator, agreed upon by the parties. The arbitrator designated by the parties shall be selected from a list of those arbitrators who are current members of The Arizona Academy of Mediators and Arbitrators ("AAMA"), designated by the AAMA as possessing experience with construction litigation and have no less than ten (10) years' experience practicing law in the State of Arizona

In its initial correspondence notifying the other parties of its intent to invoke mandatory binding arbitration, the moving party shall include a designation of no less than three (3) individuals from AAMA it accepts as serving as the arbitrator. No later than ten (10) days thereafter, the responding party shall either indicate agreement to have the arbitration conducted by one of the three (3) individuals designated by the moving party or submit a list of three (3) individuals from AAMA, which such responding party is agreeable to serve as the arbitrator. If within five (5) business days the parties still have not agreed on an arbitrator, then each party shall designate one (1) arbitrator from the AAMA and those individuals shall meet and confer



within five (5) business days to select the individual who will serve as the sole arbitrator. Unless the selected arbitrator notifies the parties of a conflict of interest impacting the ability to serve as arbitrator in a fair and impartial capacity, this arbitrator designation shall be binding on the parties.

No later than ten (10) calendar days following the designation of an arbitrator, the moving party shall serve a Complaint on the responding party and the arbitrator in a format substantially similar to that required by the Arizona Rules of Civil Procedure. Within ten (10) calendar days after receiving the Complaint, the responding parties shall serve an Answer or other responsive pleading upon the moving party and arbitrator. Within thirty (30) days after the submission of the responsive pleading, the arbitrator shall hold a scheduling conference with the parties. Going forward, the arbitrator shall substantially follow the Arizona Rules of Civil Procedure and Arizona Rules of Evidence, unless otherwise agreed by the parties. The arbitration shall be conducted no later than 180 days following the moving party serving of the Complaint and a decision rendered not later than thirty (30) days following the last day of the arbitration. The arbitrator's decision and award must be in writing and contain findings of fact and conclusions of law supporting the decision and award.

The parties shall share equally the arbitrator's fees and any other costs or expenses imposed by the arbitrator. The parties shall bear their own attorneys' and consultants' fees and other costs or expenses incurred leading up to and during the arbitration, and no party shall be entitled to an award against any of the other parties of attorneys' or consultants' fees or other costs or expenses as part of the arbitration award.

The arbitration award may be confirmed and/or enforced in any court of competent jurisdiction.

**12.2 Waiver of Right to Trial by Jury. THE PARTIES HEREBY WAIVE THEIR RIGHT TO A TRIAL BY JURY WITH RESPECT TO ANY CLAIMS OR CAUSES OF ACTION FOR CONSTRUCTION DEFECTS.**

**12.3 Required Approval of Construction Defect Action by the Association.** The Association shall not commence any statutory procedures or arbitration proceedings provided for in Section 12.1 hereof or commence any action, including but not limited to arbitration, or incur legal expenses (including without limitation, attorneys' and consultants' fees) in connection with any alleged Construction Defect without the written approval of Unit Owners entitled to cast more than eighty percent (80%) of the total votes in the Association, excluding the votes of any Unit Owner and/or the Declarant who would be a defendant(s) in such proceedings. The Association shall not use reserve funds to pay attorneys' or consultants' fees or any other costs or expenses which will be incurred by the Association in any statutory or other arbitration proceedings provided for in Section 12.1.

**ARTICLE 13**  
**EXPRESS WARRANTY; DISCLAIMER OF WARRANTIES**

13.1 **Express Warranty.** Declarant warrants to the Owners, whether they have purchased their Units directly from the Declarant or from a subsequent purchaser of the Units and to the Association that the Units and the Common Elements have been constructed in a good workmanlike manner and are free from Construction Defects, and the Declarant agrees to make good to the reasonable satisfaction of the Owners and/or the Association any portion of the Units and/or Common Elements which prove to be rendered or constructed in an unworkmanlike or defective manner (“**Express Warranty**”). The period of the Declarant’s Express Warranty hereunder to the Association shall be for one (1) year for materials and two (2) years for labor from the date of issuance of Certificates of Occupancy covering all of the Project Units and the Project Common Elements. The period of the Declarant’s express warranty hereunder to the Owners shall be for one (1) year for materials and two (2) years for labor from the dates the initial Owners closed on the acquisition of their respective Units with the Declarant or on the dates such Owners took occupancy of their respective Units if earlier than the closing dates.

Notwithstanding the foregoing provisions of this Section 13.1, the commencement date(s) of the Express Warranties herein provided for shall not be deemed in any manner to extend the commencement date(s) for the running of the Arizona Statute of Limitations and Repose with respect to such Project Units and Common Elements, which date(s) commence on the date(s) of substantial completion of the respective Units and related Common Elements.

13.2 **Disclaimer of Warranties.** OTHER THAN THE DECLARANT’S EXPRESS WARRANTY SET FORTH IN SECTION 13.1 ABOVE AND IN THE PURCHASE CONTRACTS OF THE INITIAL PURCHASERS FROM THE DECLARANT, THE DECLARANT, TO THE FULLEST EXTENT PERMITTED BY LAW, MAKES NO WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT, OR ANY OF THE COMMON ELEMENTS, OR CONSUMER PRODUCTS OR OTHER THINGS THAT MAY BE INSTALLED OR THAT ARE CONTAINED IN OR RELATE TO THE UNITS AND/OR COMMON ELEMENTS, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, HABITABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE. THERE ARE NO OTHER EXPRESS OR IMPLIED WARRANTIES BEING GIVEN BY DECLARANT TO THE ASSOCIATION OR UNIT OWNERS, AND, BY TAKING TITLE TO A UNIT, EACH UNIT OWNER, ON BEHALF OF ITSELF AND ITS SUCCESSORS AND ASSIGNS (INCLUDING SUCCESSOR OWNERS OF THE UNIT), AND THE ASSOCIATION SPECIFICALLY WAIVES, TO THE FULL EXTENT ALLOWED BY LAW, ANY IMPLIED WARRANTIES OF HABITABILITY, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE WITH RESPECT TO THE UNIT, COMMON ELEMENTS AND/OR ANY PERSONAL PROPERTY OR FIXTURES BEING PROVIDED TO THE UNIT OWNER AND THE ASSOCIATION BY DECLARANT.

**ARTICLE 14**  
**GENERAL PROVISIONS**

**14.1 Enforcement.**

(a) The Association may enforce the Condominium Documents against the Unit Owners in any manner provided for in the Condominium Documents or by law or in equity, including, but not limited to:

- (1) imposing reasonable monetary penalties after notice and an opportunity to be heard is given to the Unit Owner or other violator. A Unit Owner shall be responsible for payment of any fine levied or imposed against a Lessee or Occupant of the Owner's Unit or by any Invitee of the Unit Owner or any Lessee or Occupant;
- (2) suspending a Unit Owner's right to vote;
- (3) suspending any Person's right to use any facilities within the Common Areas; provided, however, nothing herein shall authorize the Board to limit ingress or egress to or from a Unit;
- (4) suspending any services provided by the Association to a Unit Owner or the Owner's Unit if the Unit Owner is more than fifteen (15) days delinquent in paying any assessment or other charge owed to the Association;
- (5) exercising self-help or taking action to abate any violation of the Condominium Documents provided, however, that judicial proceedings must be instituted before any items of construction can be altered or demolished;
- (6) requiring a Unit Owner, at the Unit Owner's expense, to remove any Improvement installed or constructed in such Owner's Unit or in any Limited Common Element allocated to the Owner's Unit in violation of this Declaration and to restore the Unit or the Limited Common Elements to its previous condition and, upon failure of the Unit Owner to do so, the Board of Directors or its designee shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as previously existed and any such action shall not be deemed a trespass and all costs incurred by the Association shall be paid to the Association by the Unit Owner upon demand by the Association;
- (7) without liability to any person, prohibiting any contractor, subcontractor, agent, employee or other invitee of a Unit Owner who fails to comply with the terms and provisions of the Condominium Documents from continuing or performing any further activities of the Community;
- (8) filing a suit at law or in equity to enjoin a violation of the Condominium Documents, to compel compliance with the Condominium Documents, to recover monetary penalties or money damages or to obtain such other relief as to which the Association may be entitled;
- (9) recording a written notice of a violation of any restriction or provision of the Condominium Documents. The notice shall be executed and acknowledged by an officer of the Association and shall contain substantially the following information: (i) the legal description of the

Unit against which the notice is being recorded; (ii) a brief description of the nature of the violation; and (iii) a statement of the specific steps which must be taken by the Unit Owner to cure the violation. Recordation of a Notice of Violation shall serve as a notice to the Unit Owner and to any subsequent purchaser of the Unit that there is a violation of the provisions of the Condominium Documents.

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

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

(d) All rights and remedies of the Association under the Condominium Documents or at law or in equity are cumulative, and the exercise of one right or remedy shall not waive the Association's right to exercise another right or remedy. The failure of the Association or an Owner to take enforcement action with respect to a violation of the Condominium Documents shall not constitute or be deemed a waiver of the right of the Association or any Owner to enforce the Condominium Documents in the future. If the Association takes any action to enforce the provisions of the Governing Documents, whether or not a lawsuit is filed, the Association shall be entitled to recover from the Owner against whom enforcement is sought all costs of enforcement, including, but not limited, to attorney's fees incurred by the Association. Said amounts shall be collectible in the same manner as Assessments. If, however, a lawsuit is filed, and the Owner is the prevailing party in such lawsuit, the Owner shall not be required to pay the Association's attorney's fees, court costs, costs of investigation and other related expenses incurred therewith. The Owners and the Association acknowledge and agree that this Section 14.1(d) is not applicable to the Declarant.

**14.2 Severability.** Invalidation of anyone 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.

**14.3 Amendment.**

(a) Except in cases of amendments that may be executed solely by the Declarant in the exercise of its Development Rights, including any amendment to the Plat, or pursuant to Article 2 herein, and except as expressly prohibited under this Section 14.3, the Declaration, may be amended with the affirmative, written consent of at least sixty-seven percent (67%) of the Unit Owners.



(b) Except to the extent expressly permitted or required by the Condominium Act and the Development Rights set forth in Article 2, an amendment to this Declaration shall not create or increase Special Declarant Rights, nor shall an amendment, after initial construction of condominium building is complete, increase the number of Units or change the boundaries of any Unit, the Allocated Interest of a Unit, in the absence of unanimous consent of the Unit Owners. Any amendment to this Declaration adopted by the Unit Owners during the Period of Declarant Control must be approved in writing by the Declarant.

(c) 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. No amendment to Articles 12 or 13 and Section 14.3(b) or this Section 14.3(c) shall be effective unless the Declarant approves the amendment in writing even if the Period of Declarant Control has expired.

(d) During the Period of Declarant Control, the Declarant shall have the right to amend the Declaration, including the Plat, to: (1) comply with the Condominium Act or any other applicable law if the amendment does not adversely affect the rights of any Unit Owner; (2) correct any error or inconsistency in the Declaration if the amendment does not adversely affect the rights of any Unit Owner; or (3) comply with the rules or guidelines in effect from time to time of any governmental or quasi-governmental entity or federal corporation guaranteeing or insuring mortgage loans or governing transactions involving mortgage instruments, including without limitation, the Department of Veterans Affairs, the Federal Housing Administration, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.

(e) Any amendment adopted by the Unit Owners pursuant to Section 15.3(a) shall be signed by the President or Vice President of the Association and shall be Recorded within thirty (30) days after the adoption of the amendment. Any amendment made by the Declarant pursuant to Section 15.3(d) or the Condominium Act shall be executed by the Declarant and shall be Recorded.

**14.4 Notices.** All notices, demands, statements or other communications required to be given to or served on the Association, a Unit Owner or the Declarant under this Declaration shall be in writing and shall be deemed to have been duly given and served if delivered in any manner approved in writing by the Association, Unit Owner and the Declarant, or if no specific delivery method has been approved, delivered personally or sent by United States mail, postage prepaid, addressed or emailed to the Association, Unit Owner or the Declarant, at the mailing or email address which the Association, Unit Owner or the Declarant shall designate in writing and file with the Association or, if no such address is designated by a Unit Owner, at the mailing or email address of the Unit of such Owner. The Association, a Unit Owner or the Declarant may change their mailing or email address on file with the Association for receipt of notices by delivering a written notice of change of address to the Association. A notice given by mail, whether regular, certified, or registered, shall be deemed to have been received by the entity or person to whom the notice was addressed on the earlier of the date the notice is actually received or three (3) days after the notice is mailed. A notice given by email shall be deemed to have been received by the entity or person to whom the notice was emailed on the first business day after the email was sent. If a Unit is owned by more than one person, notice to one of the Owners shall constitute



notice to all Owners of the same Unit. Each Unit Owner shall file his correct mailing address with the Association, and shall promptly notify the Association in writing of any subsequent change of address. The initial mailing address of the Association and Declarant for purposes of giving notice to them is 706 East Bell Road, Suite 212, Phoenix, Arizona 85054. Their initial email address is KKiesl@HBTAZ.com.

14.5 **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.

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

14.7 **Survival of Liability.** The termination of membership in the Association shall not relieve or release any 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.

14.8 **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.

14.9 **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.

14.10 **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.

14.11 **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.

IN WITNESS WHEREOF, the Declarant has executed this Declaration as of the date first written above.

**HBT OF RANCHO NORTH LLC**, an Arizona limited liability company

By: Towne Realty, Inc., a Wisconsin corporation,  
Manager

By: *Kevin G. Kiesl*  
Kevin G. Kiesl, Authorized Agent

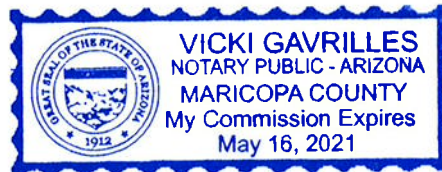
STATE OF ARIZONA            )  
  ) ss.  
COUNTY OF MARICOPA    )

Personally came before me this 17 day of October, 2017, Kevin G. Kiesl, on behalf of HBT of Rancho North LLC, and as Authorized Agent of Towne Realty, Inc., its Manager, to me known to be the person who executed the instrument and acknowledged the same.

*Vicki Gavrilles*

Notary Public, State of Arizona  
My Commission Expires:

JB4807 Rancho North Condo Declaration 10.17.17.docx



## EXHIBIT A

### LEGAL DESCRIPTION OF PARCEL

Along with the limited common elements assigned to each Unit and each Unit's undivided interest in the common elements as set forth in the Declaration and/or shown on the Plat of Rancho North recorded as Book 1346 of Maps Page 28 in the Records of the County Recorder of Maricopa County, Arizona.

EXCEPT FOR Units 1004, 1005, 2004, 2005, 2006 in Building 2,  
Units 1007, 1008, 2007, 2008, 2009 in Building 3,  
Units 1010, 1011, 2010, 2011, 2012 in Building 4,  
Units 1013, 1014, 2013, 2014, 2015 in Building 5,  
Units 1016, 1017, 2016, 2017, 2018 in Building 6,  
Units 1019, 2020, 2019, 2020, 2021 in Building 7,  
Units 1022, 1023, 2022, 2023, 2024 in Building 8,  
Units 1025, 1026, 2025, 2026, 2027 in Building 9,  
Units 1028, 1029, 2028, 2029, 2030 in Building 10,  
Units 1031, 1032, 2031, 2032, 2033 in Building 11,  
Units 1034, 1035, 2034, 2035, 2036 in Building 12,  
Units 1037, 1038, 2037, 2038 2039 in Building 13,  
Units 1040, 1041, 2040, 2041, 2042 in Building 14,  
Units 1043, 1044, 2043, 2044, 2045 in Building 15,  
Units 1046, 1047, 2046, 2047, 2048 in Building 16,  
Units 1049, 1051, 2049, 2050, 2051 in Building 17,  
Units 1052, 1053, 2052, 2053, 2054 in Building 18,  
Units 1055, 1056, 2055, 2056, 2057 in Building 19,  
Units 1053, 1059, 2058, 2059, 2060 in Building 20,  
Units 1061, 1062, 2061, 2062, 2063 in Building 21,  
Units 1064, 1065, 2064, 2065, 2066 in Building 22,  
Units 1067, 1068, 2067, 2068, 2069 in Building 23,  
Units 1070, 1071, 2070, 2071, 2072 in Building 24,  
Units 1073, 1074, 2073, 2074, 2075 in Building 25,  
Units 1076, 1077, 2076, 2077, 2078 in Building 26,  
Units 1079, 1080, 2079, 2080, 2081 in Building 27,  
Units 1082, 1083, 2082, 2083, 2084 in Building 28,  
Units 1085, 1086, 2085, 2086, 2087 in Building 29,  
Units 1088, 1089, 2088, 2089, 2090 in Building 30,  
Amenity in Building 31.

## EXHIBIT B

### DESCRIPTION OF ADDITIONAL PROPERTY SECTION

Along with the limited common elements assigned to each Unit and each Unit's undivided interest in the common elements as set forth in the Declaration and/or shown on the Plat of the Rancho North recorded as Book 1346 of Maps, Page 28, in the records of the County Recorder of Maricopa County, Arizona.

Units 1004, 1005, 2004, 2005, 2006 in Building 2,  
Units 1007, 1008, 2007, 2008, 2009 in Building 3,  
Units 1010, 1011, 2010, 2011, 2012 in Building 4,  
Units 1013, 1014, 2013, 2014, 2015 in Building 5,  
Units 1016, 1017, 2016, 2017, 2018 in Building 6,  
Units 1019, 2020, 2019, 2020, 2021 in Building 7,  
Units 1022, 1023, 2022, 2023, 2024 in Building 8,  
Units 1025, 1026, 2025, 2026, 2027 in Building 9,  
Units 1028, 1029, 2028, 2029, 2030 in Building 10,  
Units 1031, 1032, 2031, 2032, 2033 in Building 11,  
Units 1034, 1035, 2034, 2035, 2036 in Building 12,  
Units 1037, 1038, 2037, 2038 2039 in Building 13,  
Units 1040, 1041, 2040, 2041, 2042 in Building 14,  
Units 1043, 1044, 2043, 2044, 2045 in Building 15,  
Units 1046, 1047, 2046, 2047, 2048 in Building 16,  
Units 1049, 1051, 2049, 2050, 2051 in Building 17,  
Units 1052, 1053, 2052, 2053, 2054 in Building 18,  
Units 1055, 1056, 2055, 2056, 2057 in Building 19,  
Units 1053, 1059, 2058, 2059, 2060 in Building 20,  
Units 1061, 1062, 2061, 2062, 2063 in Building 21,  
Units 1064, 1065, 2064, 2065, 2066 in Building 22,  
Units 1067, 1068, 2067, 2068, 2069 in Building 23,  
Units 1070, 1071, 2070, 2071, 2072 in Building 24,  
Units 1073, 1074, 2073, 2074, 2075 in Building 25,  
Units 1076, 1077, 2076, 2077, 2078 in Building 26,  
Units 1079, 1080, 2079, 2080, 2081 in Building 27,  
Units 1082, 1083, 2082, 2083, 2084 in Building 28,  
Units 1085, 1086, 2085, 2086, 2087 in Building 29,  
Units 1088, 1089, 2088, 2089, 2090 in Building 30,  
Amenity in Building 31.

## EXHIBIT C

### ACOUSTICAL REQUIREMENTS

#### **Airborne Sound Isolation**

##### 1.0 Introduction

In any multi-family dwelling, sounds may be audible from one Unit to the next, especially when the sound level of the source is sufficiently high and if the background noise in the adjacent Unit is very low. Examples may include loud music reproduction equipment, musical instruments, very loud conversations, etc.

##### 2.0 Preservation of Airborne Sound Isolation

A. No holes shall be made in the floor ceiling assemblies without permission of the Board of Directors.

B. No materials shall be hung or hang from the Garage ceiling.

C. Any replacement or modification of the Garage door opener shall require written approval from the Board.

D. Any replacement or modification to the Unit entry door shall require written approval from the Board.

E. No modifications to the construction of the Unit which is in common with another Unit shall be made by the Unit Owner without the written approval of the Board.

F. No modifications to the construction of the Unit, including HVAC, plumbing and electrical shall be made by the Unit Owner without the written approval of the Board.

##### 3.0 Impacts from Improvements-Airborne Sound Isolation

Any change to the construction the Unit Owner desires that may have an impact to another Unit shall be required to maintain the existing design isolation between Units. Namely, the demising party walls and floor ceiling assembly must maintain a field tested Noise Isolation Class (“NIC”) rating consistent with the remainder of the Buildings. In the event of a complaint after modification of a building element, the provisions set forth in the Impact Insulation portion of the document shall be followed. If the performance of the existing Building construction is unknown, then the acoustical testing shall be extended to include 2 assemblies in addition to the one or concern that contain substantially the same adjacency, same wall area, etc. All tests shall be completed in accordance with ASTM E336, using NIC as the metric of choice for occupied spaces and Normalized Noise Isolation Class (“NNIC”) for unoccupied spaces.

#### **Impact Isolation Requirements for Finish Flooring**

##### 1.0 Background Information

The requirements set forth in this Exhibit C are subject to amendment by the Board. In the event of any conflict between or among the provisions of the Declaration, the Building Code or applicable municipal code requirement and this Exhibit C, as the same may be amended from time to time, the most restrictive of said requirements shall be controlling.

In selecting flooring for a Unit, it is important for a Unit Owner to realize that not only is the Unit Owner limited in where hard flooring may be located, the Unit Owner acknowledges that



the material the Unit Owner selects may have an impact on what the neighbor, below the Unit or adjacent to the Owner's Unit, will hear as the Owner, his family and guests walk, move or drop items within the Owner's Unit.

## 2.0 Preservation of Impact Insulation

A. Any flooring modifications shall retain a Field Impact Insulation Class (FIIC) consistent with the original condition, tested in accordance with ASTM E1007.

B. Any replacement or modification of the Garage door opener shall require written approval from the Board.

C. Any replacement or modification to the Unit entry door shall require written approval from the Board.

D. Any furniture, like a chair, that will be moved across a hard surface floor shall have resilient material (e.g. felt or rubber) on its feet such that it can glide over the hard surface floor.

E. The floor coverings applied to the Unit are required to meet the impact insulation for this project.

F. Carpet and pad equal to the Unit as delivered by the builder will be required when replaced.

## 3.0 Submission of Design Approach and Laboratory Impact Isolation Tests

Any Owner who desires to change any of the flooring in his Unit and has selected the type of flooring which the Owner desires to install in their Unit, the Owner, well in advance of the Owner's contractor purchasing materials or beginning construction, must submit to the Board for the Board's written approval the following information: **NOTE – refer to Section 4.18 of the Declaration – Hard Surface; Sound Transmission Limitations, for allowed hard surface placement locations for 2<sup>nd</sup> floor units.**

1. A construction drawing clearly indicating the type of flooring to be installed and the resilient matting to be provided to mitigate against impact noises such as foot-falls. The drawing must clearly identify all materials, their composition and thickness. This drawing must be approved by the resilient underlayment manufacturer for acoustical, structural integrity and performance, if utilized.

2. If a resilient mat of any kind will be utilized, the Owner must submit a laboratory test report showing that the underlayment meets the current code requirements and is allowed to be installed with the finish floor selected.

3. A plan view drawing of the hard surface flooring area indicating the location of all adjacent partitions, cabinets, etc., with referenced section details indicating the method of isolating the hard surface flooring along the entire perimeter. An air space at these perimeter conditions will not be accepted. In the submitted material, the contractor shall indicate, through an attached letter from the contractor, proof of the perimeter isolation material that the contractor is approved to install the floor assembly.

4. Where applicable, a copy of the installation instructions from the resilient floor underlayment manufacturer.

5. The name qualifications and experience of the contractor who will install the hard surface flooring and, where applicable, the resilient underlayment with a listing of his experience in the installation of floors utilizing impact insulation materials.

6. The proposed individual(s) who will oversee the installation in order to verify that the installation is in accordance with the manufacturer's requirements.

No construction shall be permitted until appropriate information is submitted to and approved by the Board. In the event that construction has commenced prior to approval, and it does not meet the Building requirements, materials shall be removed at the Owner's expense.

#### 4.0 Safety Considerations

An Owner must ensure that proper safety consideration is given towards minimizing finish floor elevation differences between different flooring materials as occur at door thresholds and elsewhere as determined by the interior design of the Unit. As a general rule, to avoid creation of tripping hazards, such elevation differences should be no greater than one quarter inch (1/4 inch) at abutting materials (elevation differences greater than 1/4 inch shall be accomplished according to code requirements), with the softer surface higher at joints not receiving a transition strip or threshold. Door undercuts may require appropriate adjustment for swinging clearance and ventilation.

#### 5.0 Complaints

Where a complaint as to noncompliance with the Impact Insulation Requirements cited above is received by the Board, a Field Impact Insulation Class (FIIC) or Noise Isolation Class (NIC or NNIC for Airborne complaints) test shall be performed by an approved Acoustical Engineer approved by the Board. Tests shall be conducted according to ASTM EI 007. Testing agency shall test in the room directly below, adjacent to or above the floor system in question. The standard shall apply in all directions.

Impact Complaints. The complainant and Owner of the modified floor shall post a bond or adequate funds with the Board for the cost of said testing. Such costs shall be chargeable to the complainant if the field tests indicate a performance rating of FIIC consistent with the original condition or better. If the tests show a FIIC rating of less than the original condition, the cost of the tests shall be borne by the Owner of the hard surface flooring material. In the event, that the FIIC equal to or greater than the original conditions is not achieved, the Owner of the floor shall be responsible for any modifications to the floor that are required to meet the FIIC equal to the original conditions. Once modifications are completed, the Association may require another test; the cost of the test shall be borne by the Owner of the floor with the funds being deposited with the Board prior to testing.

Airborne Sound Complaints. The complainant and Owner of the modified construction (wall or floor) shall post a bond or adequate funds with the Board for the cost of said testing. Such costs shall be chargeable to the complainant if the field tests indicate a performance rating of NIC consistent with the original condition or better for the floor and NIC consistent with the original condition or better for a wall. If the tests show a NIC rating of less than the original conditions for a floor or NIC less than the original condition for a wall, the cost of the tests shall be borne by the Owner of the modified construction. In the event, that the NIC rating is not achieved, the Owner of the modified construction shall be responsible to alter the construction to meet the applicable NIC rating. Once modifications are completed, the Association may require another test; the cost of the test shall be borne by the Owner of the modified constructions with the funds being deposited with the Board prior to testing.

## **General Provisions**

### **1.0 Introduction**

This section has been developed to provide general preservation of the sound isolating properties from potential airborne and structure borne sources.

### **2.0 General Requirements**

A. Pianos shall have neoprene pads under the supports to minimize vibration transmission into the structure. Suggested pads are equal to Mason Industries type BM mounts.

B. Consideration shall be given to one's neighbors with respect to the playing of musical instruments or other potential noises that may affect another property (e.g. home theater systems). Hours shall be limited to 8 a.m. to 10 p.m.

C. Consideration shall be given to one's neighbors with respect to parties and loud activity within the Unit.

D. Activity within the Unit shall not exceed the provisions of the local municipal code or County code.

E. Resilient pads must be placed under all washing machines and dishwashers in order to avoid transmitting vibration to other Units.

F. All furniture shall contain rubber castors or felt pads.

### **3.0 Home Theater Systems and Stereo Systems**

A. Additional loudspeakers for music reproduction shall not be supported from or contact demising walls (party walls) or ceilings.

B. Since audio, stereo and home theater systems have different capabilities for control among system components, Declarant has attempted to provide a requirement that is fair to all occupants of the Building during the operation hours.

(1 ). No amplified audio shall be measured within a receiving space that is 5 dB above the prevailing ambient noise level (L<sub>90</sub>) in any octave band (31-8000 Hz).

To meet the requirements, the Owners may require a professional in the field of Acoustical Consulting.

If a complaint occurs, and there is reasonable doubt that the audio system is causing noise levels that exceed the standards, a qualified acoustical consultant shall perform measurements under similar audio settings to determine compliance or non-compliance.

### **4.0 Other Devices**

This shall include any other systems that may be modified by the Unit Owner. This would include, but not be limited to, plumbing systems, mechanical systems, spa tubs, etc. No other noise sources shall be measured within a receiving space that is 5 dB above the prevailing ambient noise level (L<sub>90</sub>) in any octave band (31.5-8000 Hz). No other system may cause feelable vibration within any other Unit.