

When recorded, mail to:

40

John A. Hink, Esq.  
Ryley, Carlock & Applewhite  
One North Central Avenue  
Suite 1200  
Phoenix, Arizona 85004

1e

400116

STEWART TITLE & TRUST OF PHOENIX

**DECLARATION OF CONDOMINIUM AND  
COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR  
ARTISAN VILLAGE, A CONDOMINIUM**

**DECLARATION OF CONDOMINIUM AND  
COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR  
ARTISAN VILLAGE, A CONDOMINIUM**

**Table of Contents**

|                                                                                  |              |
|----------------------------------------------------------------------------------|--------------|
| <b>ARTICLE 1 - DEFINITIONS.....</b>                                              | <b>1</b>     |
| 1.1 Act.....                                                                     | 1            |
| 1.2 Adjoining Unit .....                                                         | 1            |
| 1.3 Alleged Defect .....                                                         | 1            |
| 1.4 Articles .....                                                               | 2            |
| 1.5 Assessment, assessment, annual assessment, and special assessment.....       | 2            |
| 1.6 Association.....                                                             | 2            |
| 1.7 Association Rules.....                                                       | 2            |
| 1.8 Board and Board of Directors .....                                           | 2            |
| 1.9 Building.....                                                                | 2            |
| 1.10 Bylaws.....                                                                 | 2            |
| 1.11 Claimant .....                                                              | 2            |
| 1.12 Common Elements .....                                                       | 2            |
| 1.13 Condominium.....                                                            | 2            |
| 1.14 Condominium Documents.....                                                  | 2            |
| 1.15 Declarant .....                                                             | 2            |
| 1.16 Declaration .....                                                           | 2            |
| 1.17 Development Rights .....                                                    | 2            |
| 1.18 Easement Rights .....                                                       | 3            |
| 1.19 Fractional Interest.....                                                    | 3            |
| 1.20 Institutional Guarantor .....                                               | 3            |
| 1.21 Inventory Unit.....                                                         | 3            |
| 1.22 Limited Common Elements .....                                               | 3            |
| 1.23 Live-Work Permittees .....                                                  | 3            |
| 1.24 Live-Work Unit.....                                                         | 3            |
| 1.25 Member .....                                                                | 3            |
| 1.26 Mortgage .....                                                              | 3            |
| 1.27 Mortgagee .....                                                             | 3            |
| 1.28 Mortgagor.....                                                              | 3            |
| 1.29 Nonrecurring And Temporary Basis .....                                      | 3            |
| 1.30 Owner.....                                                                  | 4            |
| 1.31 Person.....                                                                 | 4            |
| 1.32 Plat .....                                                                  | 4            |
| 1.33 Single Family .....                                                         | 4            |
| 1.34 Single Family Residential Use .....                                         | 4            |
| 1.35 Special Declarant Rights .....                                              | 4            |
| 1.36 Residential Unit.....                                                       | 4            |
| 1.37 Tract T.....                                                                | 4            |
| 1.38 Unit .....                                                                  | 4            |
| <br><b>ARTICLE 2 - UNIT BOUNDARIES, PROPERTY RIGHTS IN COMMON ELEMENTS .....</b> | <br><b>5</b> |
| 2.1 Condominium Description .....                                                | 5            |
| 2.2 Unit Boundaries .....                                                        | 5            |
| 2.3 Allocation of Fractional Interest in Common Elements .....                   | 5            |
| 2.4 Allocation of Limited Common Elements .....                                  | 6            |
| 2.5 Exclusive Use.....                                                           | 6            |
| 2.6 Reallocation of Boundaries Between Adjoining Units.....                      | 6            |
| 2.7 Restricted Limited Common Elements and Live-Work Units .....                 | 7            |

|                                                                              |    |
|------------------------------------------------------------------------------|----|
| <b>ARTICLE 3 - EASEMENTS AND DEVELOPMENT RIGHTS</b>                          | 7  |
| 3.1 Owners' Easements of Enjoyment/Limitation on Live-Work Units             | 7  |
| 3.2 Delegation of Use                                                        | 8  |
| 3.3 Public Utility Easements                                                 | 8  |
| 3.4 Easement for Encroachments                                               | 8  |
| 3.5 Easements for Support                                                    | 8  |
| 3.6 Easements for Ingress and Egress                                         | 8  |
| 3.7 Water Easement                                                           | 9  |
| 3.8 Declarant's Rights and Easements                                         | 9  |
| 3.9 Common Elements Easement in Favor of Unit Owners                         | 10 |
| 3.10 Common Elements Easements in Favor of the Association                   | 10 |
| 3.11 Units and Limited Common Elements Easements in Favor of the Association | 10 |
| <b>ARTICLE 4 USE RESTRICTIONS</b>                                            | 11 |
| 4.1 Restricted Use For Residential Units and Limited Common Elements         | 11 |
| 4.2 Restricted Use For Live-Work Units                                       | 12 |
| 4.3 Signs                                                                    | 14 |
| 4.4 Improvements & Alterations                                               | 14 |
| 4.5 Noxious or Offensive Activities                                          | 14 |
| 4.6 Animals                                                                  | 14 |
| 4.7 Trash                                                                    | 15 |
| 4.8 Woodpiles and Storage Areas                                              | 15 |
| 4.9 Antennas                                                                 | 15 |
| 4.10 Windows and Window Covering                                             | 15 |
| 4.11 Ownership and Leasing                                                   | 15 |
| 4.12 Machinery                                                               | 15 |
| 4.13 Increased Risk                                                          | 16 |
| 4.14 Outdoor Burning and Lighting                                            | 16 |
| 4.15 Hazardous Wastes                                                        | 16 |
| 4.16 Commercial and Recreational Vehicles                                    | 16 |
| 4.17 General Restrictions Regarding Parking                                  | 16 |
| 4.18 No Vehicle Repairs                                                      | 17 |
| 4.19 Declarant's Exemption                                                   | 17 |
| 4.20 Access                                                                  | 17 |
| <b>ARTICLE 5 MEMBERSHIP AND VOTING RIGHTS</b>                                | 17 |
| 5.1 Membership                                                               | 17 |
| 5.2 Class                                                                    | 17 |
| 5.3 Transfer of Control                                                      | 18 |
| <b>ARTICLE 6 COVENANT FOR MAINTENANCE ASSESSMENTS</b>                        | 18 |
| 6.1 Lien and Personal Obligation for Assessments                             | 18 |
| 6.2 Purpose of Annual Assessments                                            | 19 |
| 6.3 Annual Assessments; Commencement of Assessments                          | 19 |
| 6.4 Annual Assessment Increases                                              | 19 |
| 6.5 Special Assessments                                                      | 20 |
| 6.6 Notice and Quorum                                                        | 20 |
| 6.7 Allocation of Assessments                                                | 20 |
| 6.8 Transfer                                                                 | 21 |
| 6.9 Effect of Nonpayment of Assessments - Remedies of the Association        | 21 |
| 6.10 Subordination of the Lien to Mortgages                                  | 22 |
| 6.11 Notice of Lien                                                          | 22 |
| 6.12 Initial Working Capital Contribution by Owners                          | 22 |
| <b>ARTICLE 7 COMMON ELEMENTS AND UNIT MAINTENANCE</b>                        | 23 |
| 7.1 Common Elements                                                          | 23 |
| 7.2 Repairs Necessitated by Owner; Walls                                     | 23 |

|                   |                                                                      |           |
|-------------------|----------------------------------------------------------------------|-----------|
| 7.3               | Maintenance of Unit.....                                             | 23        |
| 7.4               | Owner's Failure to Maintain .....                                    | 24        |
| 7.5               | Exterior Repairs .....                                               | 24        |
| 7.6               | General Standards .....                                              | 24        |
| 7.7               | Utilities .....                                                      | 24        |
| 7.8               | Use of Tract.....                                                    | 24        |
| <b>ARTICLE 8</b>  | <b>DUTIES AND POWERS OF THE OWNERS' ASSOCIATION; INSURANCE .....</b> | <b>25</b> |
| 8.1               | Duties and Powers.....                                               | 25        |
| 8.2               | Other Duties and Powers.....                                         | 25        |
| 8.3               | Association Rules.....                                               | 25        |
| 8.4               | Insurance .....                                                      | 26        |
| <b>ARTICLE 9</b>  | <b>CONDEMNATION.....</b>                                             | <b>28</b> |
| 9.1               | Taking .....                                                         | 28        |
| 9.2               | Award.....                                                           | 28        |
| 9.3               | Total.....                                                           | 28        |
| 9.4               | Partial .....                                                        | 28        |
| 9.5               | Effect.....                                                          | 29        |
| 9.6               | Reconstruction .....                                                 | 29        |
| 9.7               | Separate Compensation.....                                           | 29        |
| <b>ARTICLE 10</b> | <b>CASUALTY DAMAGE.....</b>                                          | <b>29</b> |
| 10.1              | Attorney-in-Fact.....                                                | 29        |
| 10.2              | Restoration .....                                                    | 29        |
| 10.3              | Declaration .....                                                    | 29        |
| 10.4              | Costs.....                                                           | 30        |
| 10.5              | Partial Damage .....                                                 | 30        |
| 10.6              | Total Destruction.....                                               | 30        |
| 10.7              | Insurance Trustee; Proceeds.....                                     | 30        |
| 10.8              | Manner of Disbursement.....                                          | 31        |
| 10.9              | Information.....                                                     | 31        |
| 10.10             | Termination .....                                                    | 31        |
| 10.11             | Non-Repair.....                                                      | 31        |
| <b>ARTICLE 11</b> | <b>GENERAL PROVISIONS .....</b>                                      | <b>31</b> |
| 11.1              | Enforcement .....                                                    | 31        |
| 11.2              | Approval of Litigation.....                                          | 32        |
| 11.3              | Severability .....                                                   | 33        |
| 11.4              | Term.....                                                            | 33        |
| 11.5              | Amendment.....                                                       | 33        |
| 11.6              | Government Financing.....                                            | 34        |
| 11.7              | Construction .....                                                   | 34        |
| 11.8              | Notices .....                                                        | 34        |
| 11.9              | Management Agreements.....                                           | 34        |
| 11.10             | No Partition .....                                                   | 34        |
| 11.11             | Declarant's Right to Use Similar Name .....                          | 34        |
| 11.12             | Joint and Several Liability.....                                     | 35        |
| 11.13             | Construction.....                                                    | 35        |
| 11.14             | Survival of Liability .....                                          | 35        |
| 11.15             | Waiver .....                                                         | 35        |
| 11.16             | Attorney Fees .....                                                  | 35        |
| 11.17             | Notice Regarding Ingress and Egress.....                             | 35        |
| <b>ARTICLE 12</b> | <b>CLAIMS AND DISPUTE RESOLUTION/LEGAL ACTIONS .....</b>             | <b>35</b> |
| 12.1              | Dispute Resolution Agreement .....                                   | 35        |
| 12.2              | Exempt Claims .....                                                  | 36        |

|                    |                                                                                                           |           |
|--------------------|-----------------------------------------------------------------------------------------------------------|-----------|
| 12.3               | Mandatory Resolution Procedures .....                                                                     | 37        |
| 12.4               | Allocation of Costs of Resolving Claims .....                                                             | 39        |
| 12.5               | Enforcement of Resolution.....                                                                            | 39        |
| 12.6               | Alleged Defects .....                                                                                     | 39        |
| 12.7               | Annual Inspection .....                                                                                   | 40        |
| 12.8               | Amendments to Article XII.....                                                                            | 40        |
| 12.9               | Conflicts .....                                                                                           | 40        |
| <b>ARTICLE 13</b>  | <b>ARCHITECTURAL CONTROL COMMITTEE.....</b>                                                               | <b>41</b> |
| 13.1               | Prohibition of Alteration and Improvement .....                                                           | 41        |
| 13.2               | Plans and Approval .....                                                                                  | 41        |
| 13.3               | Architectural Control Committee.....                                                                      | 42        |
| <b>ARTICLE 14</b>  | <b>RIGHTS AND DUTIES OF FIRST MORTGAGEE.....</b>                                                          | <b>42</b> |
| 14.1               | First Mortgagee Protections .....                                                                         | 42        |
| 14.2               | Mortgagee and Insurer Notices .....                                                                       | 42        |
| 14.3               | Approval Required to Terminate Condominium.....                                                           | 43        |
| 14.4               | Approval Required for Amendment to Declaration, Articles or Bylaws .....                                  | 43        |
| 14.5               | First Mortgagee's Right of Inspection.....                                                                | 44        |
| 14.6               | Limitation on Partition and Subdivision .....                                                             | 44        |
| 14.7               | Conflicting Provisions.....                                                                               | 44        |
| <b>ARTICLE 15</b>  | <b>TERMINATION .....</b>                                                                                  | <b>44</b> |
| 15.1               | Termination of Condominium.....                                                                           | 44        |
| 15.2               | Sale.....                                                                                                 | 44        |
| 15.3               | Tenancy in Common.....                                                                                    | 44        |
| 15.4               | Sale Proceeds .....                                                                                       | 45        |
| 15.5               | Interests .....                                                                                           | 45        |
| 15.6               | Foreclosure.....                                                                                          | 45        |
| <b>EXHIBIT "A"</b> | <b>TO DECLARATION OF CONDOMINIUM AND COVENANTS, CONDITIONS, AND<br/>RESTRICTIONS FOR ARTISAN PARKVIEW</b> |           |

Unofficial Document

**DECLARATION OF CONDOMINIUM AND  
COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR  
ARTISAN VILLAGE, A CONDOMINIUM**

This Declaration of Condominium and Covenants, Conditions, and Restrictions for Artisan Village, a Condominium is made as of the date set forth at the end of this Declaration by Artisan Village, L.L.C., an Arizona limited liability company (the "Declarant").

**BACKGROUND**

A. Declarant is the owner of certain real property that is depicted on the Plat and that is additionally described as follows:

See Exhibit "A" attached to and incorporated in this Declaration by this reference.

The real property is located in the City of Phoenix, County of Maricopa, State of Arizona.

B. Declarant desires to provide for the construction of a residential and live-work condominium project consisting of condominium units, limited common elements, common elements, and other facilities.

C. Declarant intends that this Declaration <sup>Unofficial Document</sup> and the other Condominium Documents will facilitate a general plan for development for the Condominium.

**DECLARATION AND GRANT**

Accordingly, Declarant declares that the Units, Common Elements, and Limited Common Elements described in this Declaration as the Condominium shall be held, sold, mortgaged, encumbered, leased, rented, used, occupied, improved, and conveyed subject to the following reservations, easements, limitations, restrictions, servitudes, covenants, conditions, charges, and liens (collectively referred to as "covenants and restrictions"). The covenants and restrictions are for the purpose of protecting the value, attractiveness, and desirability of the Condominium, and the covenants and restrictions shall benefit, burden, and run with the title to the Condominium and shall be binding upon all parties having any right, title, or interest in or to any part of the Condominium and their heirs, successors, and assigns. The covenants and restrictions shall inure to the benefit of each Owner. The Declarant further declares as follows:

**ARTICLE 1**

**DEFINITIONS**

1.1 "Act" means the Arizona Condominium Act found at A.R.S. § 33-1201 through § 33-1270, as and if amended from time to time.

1.2 "Adjoining Unit" means a Unit which shares an interior common wall with another Unit.

1.3 "Alleged Defect" means as provided in Article XII.

1.4 "Articles" means the Articles of Incorporation of the Association that have been or will be filed in the office of the Corporation Commission of the State of Arizona, as may be amended from time to time in the manner set forth in the Articles.

1.5 "Assessment," "assessment," "annual assessment," and "special assessment" (and the plural of each) means the assessments authorized in this Declaration, including those authorized in Article 5.

1.6 "Association" means Artisan Village Condominium Association, Inc., that has been or will be incorporated by Declarant as a non-profit Arizona corporation, and shall mean additionally the Association's successors and assigns.

1.7 "Association Rules" means any rules and regulations or design guidelines that may be adopted or amended by the Association from time to time.

1.8 "Board" and "Board of Directors" means the Board of Directors of the Association.

1.9 "Building" means any of the buildings actually constructed from time to time on the Condominium. A Building will contain one or more Units. The horizontal boundaries of a Building shall be the plane of its top elevation, as actually constructed, and the plane of its base elevation, as actually constructed. The vertical boundaries shall be the exterior of the outside perimeter walls of each Building, as actually constructed.

1.10 "Bylaws" means the bylaws of the Association, as may be amended from time to time in the manner set forth in the Bylaws.

1.11 "Claimant" means the Association, the Board, or any Owner.

1.12 "Common Elements" means all those areas of the Condominium that are not included within the description of the Units. Unless otherwise specified in this Declaration, the Limited Common Elements are considered part of the Common Elements. The <sup>Unofficial Document</sup> Common Elements shall include all sprinkler heads, piping and other components of the fire sprinkler system, including all ancillary piping and components located in the Condominium and any Units.

1.13 "Condominium" means the real property described on Exhibit "A," together with all improvements located thereon, including the Units and Common Elements.

1.14 "Condominium Documents" refers to this Declaration, the Articles, the Bylaws, the Association Rules, and the Plat, collectively, as any or all of the foregoing may be amended from time to time.

1.15 "Declarant" means Artisan Village, L.L.C., an Arizona limited liability company. The term "Declarant" will include all successors and assigns of Artisan Village, L.L.C., an Arizona limited liability company, if the successors or assigns: (i) acquire more than one (1) Unit from the Declarant for the purpose of resale or development; and (ii) record a supplemental declaration executed by the then-Declarant declaring the successor or assignee as a succeeding Declarant under this Declaration. "Declarant" does not include any Mortgagee.

1.16 "Declaration" means this Declaration of Condominium and Covenants, Conditions, and Restrictions and the covenants and restrictions set forth in this entire document (in entirety or by reference), as may be amended from time to time in the manner set forth below.

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

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

(b) Subdivide Units, convert Units into Common Elements or convert Common Elements into Units, and/or designate Unit 125 and/or Unit 128 as Live-Work Units;

(c) Amend the Condominium Documents during the period of Declarant Control as provided in Section 11.5(d).

1.18 "Easement Rights" means the beneficial right of the Owners of the Units to use and enjoy the applicable easements created and reserved in this Declaration or the Plat over the Common Elements, whether created or reserved solely for the use and benefit of one (1) Owner or multiple Owners.

1.19 "Fractional Interest" means the appurtenant and undivided percentage interest in the Common Elements allocated to each Unit, as determined pursuant to Section 2.3.

1.20 "Institutional Guarantor" means, if applicable to the Condominium, a governmental insurer, guarantor, or secondary market mortgage purchaser such as the Federal Housing Administration (FHA), the Veterans Administration (VA), the Federal Home Loan Mortgage Corporation (FHLMC), and the Federal National Mortgage Association (FNMA) that insures, guarantees, or purchases any note or similar debt instrument secured by a First Mortgage. An Institutional Guarantor will be entitled to vote on those matters that require the approval or consent of the Institutional Guarantors if the Institutional Guarantor notifies the Association in writing of its desire to vote and its address for delivery of all Association notices.

1.21 "Inventory Unit" means a Unit in any stage of construction owned by the Declarant.

1.22 "Limited Common Elements" means a portion of the Common Elements specifically designated in Section 2.4 as a Limited Common Element and allocated by this Declaration or by operation of the Act for the exclusive use of one or more, but fewer than all of the Units. All Limited Common Elements are reserved for the exclusive use and benefit of the designated Unit Owners, subject to the rights of the Association described in this Declaration or the other Condominium Documents.

1.23 "Live-Work Permittees" shall mean all customers or invitees of the Owner or occupant of the Live-Work Unit transacting or intending to transact commerce therein or with the Owner or occupant thereof.

Unofficial Document

1.24 "Live-Work Unit" means a Unit that is specifically designated as a Live-Work Unit in Section 2.1 of this Declaration, or that may be designated as a Live-Work Unit in accordance with Section 2.1 hereof and that shall be used in accordance with the provisions of the Condominium Documents and this Declaration, including, but not limited to, the provisions of Section 2.1 and Section 4.1 hereof.

1.25 "Member" shall mean each Owner of a Unit that is located within the Condominium.

1.26 "Mortgage" (whether capitalized or not) shall mean the conveyance or assignment of any Unit, or the creation of a lien on any Unit, to secure the performance of an obligation, and shall include the instrument evidencing the obligation, and may include a deed of trust, mortgage, assignment, or any other agreement for the purpose of creating a lien to secure an obligation or duty. "First Mortgage" shall mean a Mortgage that is the first and most senior of all Mortgages on the applicable Unit.

1.27 "Mortgagee" (whether capitalized or not) shall mean a person or entity to whom a Mortgage is made and shall include a holder of a promissory note, a beneficiary under a deed of trust, or a seller under an agreement for sale. "First Mortgagee" shall mean a Mortgagee that is the first and most senior of all Mortgagees upon the applicable Unit. "Eligible Mortgage Holder" shall mean a First Mortgagee that has informed the Association, by separate written notice, of the First Mortgagee's address and that has requested notification from the Association on any proposed action that requires the consent of a specified percentage of Eligible Mortgage Holders.

1.28 "Mortgagor" shall mean a person or entity who is a maker under a promissory note, a mortgagor under a mortgage, a trustor under a deed of trust, or a buyer under an agreement for sale, as applicable.

1.29 "Nonrecurring And Temporary Basis" shall mean that the event or act referred to either: (i) is for the sole purpose of loading and unloading non-commercial items for use in the Unit; or (ii) if not for the sole purpose of loading or unloading, does not last more than twenty-four (24) total hours for any one time and does not occur more than twice (regardless of the length of time of the event or act) in any three (3) month period. A



violation of either of the foregoing standards (i.e., not solely for loading or unloading or more than twenty-four (24) hours or more than twice in a three (3) month period) will mean that the act or event is not on a Nonrecurring And Temporary Basis.

1.30 "Owner" shall mean the record owner, whether one or more persons or entities, of a fee simple legal title to any Unit. An "Owner" shall not include those persons having an interest in a Unit merely as security for the performance of an obligation or duty (i.e., a mortgagee). In the case of Units in which the fee simple title is vested of record in a trustee pursuant to Arizona Revised Statutes, §§ 33-801, et seq., the Owner" of the Unit shall be deemed to be the trustor. In the case of a Unit covered by an Agreement for Sale of Real Property as described in A.R.S., §§ 33-741, et seq., the buyer of the Unit shall be deemed to be the "Owner," and "Owner's Permittees" shall mean family members, guests, tenants, licensees, invitees, and agents that use or occupy the Owner's Unit or other portions of the Condominium (including Common Area), whether implied or by express consent of an Owner; provided, however, the Owner's Permittees shall exclude all Live-Work Permittees.

1.31 "Person" (whether capitalized or not) shall mean a natural person, a corporation, a partnership, a trust, or other legal entity.

1.32 "Plat" will refer to the condominium plat for Artisan Village, a Condominium, recorded in Book 672 of Maps, Page 8, Official Records of Maricopa County, Arizona, as it may be amended from time to time pursuant to this Declaration.

1.33 "Single Family" shall mean a group of one or more persons each related to the other by blood, marriage, or legal adoption, or a group of not more than four (4) adult persons not all so related who maintain a common household in a Residential Unit.

1.34 "Single Family Residential Use" shall mean the occupancy or use of a Residential Unit by a Single Family in conformity with the Condominium Documents and the requirements imposed by applicable zoning laws or other federal, state, county, or municipal rules, ordinances, codes, and regulations.

Unofficial Document

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

- (a) Construct improvements provided for in this Declaration or shown on the Plat;
- (b) Exercise any Development Right;
- (c) Maintain sales offices, management offices, models and signs advertising the Condominium;
- (d) Use easements through the Common Elements for the purpose of making improvements within the Condominium;
- (e) Appoint or remove any officer of the Association or any member of the Board of Directors during the period of Declarant Control.
- (f) Exercise the rights described in Section 3.8.

1.36 "Residential Unit" means a Unit that is designated in Section 2.1 as a "Residential Unit."

1.37 "Tract B" means that portion of the Common Elements depicted on the Plat as "Tract B", and which is intended to serve as a special use area, all in accordance with the provisions of Section 7.8 hereof.

1.38 "Unit" means an individual condominium unit designated for separate ownership.

## ARTICLE 2

**UNIT BOUNDARIES; PROPERTY RIGHTS IN COMMON ELEMENTS**

2.1 Condominium Description. The Condominium will initially consist of one hundred five (105) Units. The identifying numbers of the Units initially submitted to the Condominium are those Units numbered 101 through 184, inclusive, and 201 through 221, inclusive, as shown on the Plat. Initially, Units 137-140 inclusive, Units 149-159 inclusive, Unit 210 and Unit 213 shall each be a Live-Work Unit. Units 101-136 inclusive, Units 141-148 inclusive, Units 160-184 inclusive, Units 201-209 inclusive, Unit 211, Unit 212 and Units 214-221 inclusive shall each be Residential Units. Additionally, so long as the Declarant owns Unit 125 and/or Unit 128, the Declarant reserves the right to designate Units 125 and 128 as Live-Work Units and, as the exercise of a Development Right, to amend the Plat and this Declaration to reflect the same. At such time the Declarant conveys a Live-Work Unit, Declarant shall designate such usage in the deed of conveyance and the Live-Work Unit shall remain a Live-Work Unit unless a change in designation is approved by the Board, as allowed by the applicable zoning, and is reflected in a recorded instrument.

2.2 Unit Boundaries.

(a) The Boundaries of each Unit are as follows:

- (i) The vertical boundaries are the edge of the vertical stud walls of the Unit.
- (ii) The lower horizontal boundary is the upper edge of the subflooring of the Unit.
- (iii) The upper horizontal boundary is the lowest edge of any ceiling joist or rafter.

(iv) Each Unit shall include any door or window within a perimeter wall of the Unit, the openings and outlets of all utility installations in the Unit and the firebox of any fireplace located in the Unit. All lath, <sup>Unofficial Document</sup> ~~furring~~, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, wall coverings, paint, finished flooring and other materials constituting any part of the finished surfaces of the walls or floor or attached to the walls or floor, including, but not limited to, cabinets and wall coverings, are part of the Unit. All spaces, interior partitions and other fixtures and improvements (including, but not limited to, shoots, flues, wires, conduits, heating and air conditioning units, hot water heaters and gas, cable television, cabinets, water and electric pipes, lines or meters) within the boundaries of a Unit 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.

(b) In interpreting the Plat, this Declaration, and the Condominium Documents, the existing physical boundaries of a Unit (or a Unit reconstructed in substantial conformity with its original plans) conclusively shall be presumed to be its actual boundaries regardless of settling, shifting, lateral, or other movement of any of the Buildings, and regardless of minor variances between the actual boundaries of a Unit and those boundaries shown on the Plat, this Declaration, or the other Condominium Documents.

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

(d) Declarant reserves the right to relocate the boundaries between Adjoining Units owned by the Declarant and to reallocate each such Unit's Fractional Interest in the Common Elements, votes in the Association and allocation of assessments subject to and in accordance with A.R.S. § 33-1222.

2.3 Allocation of Fractional Interest in Common Elements An appurtenant and undivided percentage interest in the Common Elements shall be allocated to each Unit as determined by dividing the numerator of one (1) by the denominator equaling the total number of Units irrevocably annexed into the Condominium. The Fractional Interest allocated to each Unit shall be one one-hundred-fifth (1/105th) of a whole.

## 2.4 Allocation of Limited Common Elements.

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

(i) the garage parking space or spaces designated for use solely by an Owner of a Unit or the Owner's Permittees;

(ii) any stairways, entry walks or courtyards designated for use by one or more, but not all, Units and any balconies and patios designed to serve a single Unit (but located outside the physical boundaries of a Unit);

(iii) any shutters, awnings, window boxes, door steps, exterior doors to the Unit, and windows and other similar features designated to serve a single Unit (but located outside the physical boundaries of a Unit);

(iv) the air conditioning unit (including compressors and condensers), heater, and hot water heater servicing a single Unit;

(v) all sewer and drainage pipes, water lines, and other utility lines servicing a single Unit, between the point of entry into the Unit and the point of connection with joint or common utility lines; and

(vi) any chimney, chute, flue, duct, or other similar improvement that lies partially within and partially outside of the physical boundaries of a Unit and that serves only a single Unit (with any item of the type described in subparagraph (vi) that services more than a single Unit being deemed a part of the Common Elements and not a Limited Common Element).

(b) A Limited Common Element <sup>Unofficial Document</sup> may be reallocated by an amendment to this Declaration. The amendment shall be executed by the Unit 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.

(c) The Declarant shall have the right to allocate as a Limited Common Element any part of the Common Elements 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 seventy-five percent (75%) 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 Act.

2.5 Exclusive Use. Subject to the terms of the Condominium Documents, each Owner of a Unit shall have the exclusive right to the use of: (i) the Unit; (ii) the tandem garage parking space(s) assigned to the Unit; (iii) the balcony or patio designed to serve the Unit (if any); and (iv) those Limited Common Elements described in subparagraph (iii), (iv), (v), and (vi) of Section 2.4. The exclusive right to the use and possession of the foregoing shall be appurtenant to and inseparable from the ownership of the Unit. Other Limited Common Elements not reserved for the exclusive use of a single Owner are reserved for the exclusive and joint use of the applicable Owners.

2.6 Reallocation of Boundaries Between Adjoining Units. The boundaries between or among Adjoining Units may be reallocated by an amendment to this Declaration. The Owners of the Units affected by the reallocation of boundaries shall prepare an amendment to this Declaration and the Plat that identifies the Units involved, specifies the outer boundaries of the Units and their dimensions and includes the Units' identifying

numbers. If the Owners of the Adjoining Units have specified a reallocation between their Units of the allocated Fractional Interest in the Common Elements, the amendment shall state the proposed reallocation in a reasonable manner. The amendment shall be executed by the Owners of those Units, shall contain words of conveyance between or among them and, before recording the amendment, shall be submitted to the Board of Directors. Unless the Board of Directors determines within forty five (45) 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.

2.7 Restricted Limited Common Elements and Live-Work Units. A seven (7) foot portion of the Common Elements located immediately adjacent to the Live-Work Units are described on the Plat as "Restricted Limited Common Elements." The use, enjoyment, operation and improvement of the Restricted Limited Common Elements associated with a Live-Work Unit by the Live-Work Unit Owners and the Live-Work Permittees shall at all times (i) be subject to the rules and regulations of the Association, and (ii) be terminated and cease without notice or demand at such time as (A) the business operated within the Live-Work Unit violates the Continuous Operating Covenant, as defined in Section 4.2(b) hereof, or (B) the Live-Work Unit Owner sells or transfers its interest in the Live-Work Unit, or (C) subleases the portion of the Live-Work Unit delineated as "1<sup>st</sup> Floor Retail" on the Plat without the prior written approval of the Board. The Live-Work Unit Owners' use, enjoyment, operation and improvement of the Restricted Limited Common Elements associated with its Unit shall be limited to the construction, erection, or placement of certain temporary improvements such as wrought iron fences, chairs or tables, which improvements shall be compatible with the Condominium design and shall be constructed or erected pursuant to plans approved by the Board.

### ARTICLE 3

#### EASEMENTS AND DEVELOPMENT RIGHTS

3.1 Owners' Easements of Enjoyment/Limitation on Units. Except as provided in this Declaration with respect to Limited Common Elements, every Owner shall have a non-exclusive right and easement of use and enjoyment in and to the Common Elements, in Unofficial Document with all other persons entitled to use the Common Elements. An Owner's right and easement to use and enjoy the Common Elements shall be appurtenant to and pass with the title to every Unit and shall be subject to the following:

(a) The right of the Association to charge reasonable admission and other fees for the use of the Common Elements and to regulate the use of the Common Elements; the right of the Association to limit the number of the Owner's Permittees who use the Common Elements; the right of the Association to limit the number and type of pets that use the Common Elements; the right of the Association to hold the Owners accountable for the conduct of the Owner's Permittees and pets;

(b) The right of the Association to suspend the voting rights of any Owner and to suspend the right to the use of the Common Elements by an Owner or the Owner's Permittees for any period during which any assessment against that Owner or Owner's Unit remains unpaid, or, in the case of any non-monetary infraction of the Condominium Documents, for any period during which the infraction remains uncured;

(c) The right of the Association to dedicate or grant an easement covering all or any part of the Common Elements to any provider utility company or municipality for the purposes, and subject to the conditions, that may be established by the Declarant during the period of Declarant Control (as defined in Section 5.2) and, after the period of Declarant Control, by the Board. Except for those easements reserved or created in this Declaration or by the Plat or by any separately recorded easement or map of dedication affecting all or part of the Condominium, no dedication or grant of easement over all or any part of the Common Elements to any municipality or provider utility company shall be effective unless the dedication or grant is approved at a duly called regular or special meeting by an affirmative vote in person or by proxy of eighty percent (80%) or more of the total number of eligible votes in each class of Members and unless the instrument evidencing the dedication or grant is executed by an authorized officer of the Association and recorded in the proper records in Maricopa County;

(d) 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 seventy-five percent (75%) of the votes entitled to be cast, any such action by the Association shall be done in the manner contemplated and subject to the limitations set forth in the Act;

(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 3.8; and

(f) None of the Live-Work Permittees, as defined in Section 1.23 hereof, may use or enjoy the recreational Common Elements such as the pool or park areas of the Condominium, it being understood that a portion of the Live-Work Units are designated for the transaction of a trade, business or commerce, and such rights are inherently inconsistent with Single Family Use of recreational amenities as part of residential use; provided, however, in order to reflect the residential nature of the Live-Work Units, any Owner Permittee of an Owner of a Live-Work Unit that is not a Live-Work Permittee, as defined in Section 1.23 hereof, may use the recreational Common Elements such as the pool or park areas. Nothing contained in this paragraph, however, shall preclude an Owner or Owner's Permittees of a Residential Unit lawfully conducting a trade or business within the Residential Unit in accordance with the limitations set forth in Section 4.1 from using or enjoying the recreational Common Elements such as the pool or park areas.

3.2 Delegation of Use. Subject to and in accordance with the Condominium Documents, any Owner may delegate its right of enjoyment to the Common Elements to the Owner's Permittees.

3.3 Public Utility Easements. Declarant grants and creates a permanent and non-exclusive easement upon, across, over, and under those portions of the Common Elements depicted and described on the Plat as a public utility easement or p.u.e. for the installation and maintenance of utilities servicing the Condominium, including electricity, telephone, water, gas, cable television, drainage facilities, sanitary sewer, or other utility lines. All public utility easements depicted and described on the Plat may be used by the provider utility company and municipality without the necessity of any additional recorded easement instrument. While it holds a Class B membership, the Declarant may permit, through <sup>Unofficial Document</sup> instrument, any person to use the public utility easement for the installation and maintenance of utilities servicing any neighboring property. The public utility easement described in this Section 3.3 shall not affect the validity of any other recorded easements affecting the Condominium, and the term of this public utility easement shall be perpetual. All utilities and utility lines shall be placed underground, but no provision of this Declaration shall be deemed to forbid the use of temporary power or telephone structures incident to the construction of buildings or structures as needed by the Declarant. Public or private sidewalks may be located in the public utility easements.

3.4 Easement for Encroachments. Each Unit and the Common Elements are subject to a reciprocal and appurtenant easement benefiting and burdening, respectively, the Unit or the Common Elements for minor encroachments created by construction, settling, and overhangs as originally designed or constructed by Declarant. This easement will remain in existence for so long as any encroachment of the type described in the proceeding sentence exists and will survive the termination of the Declaration or other Condominium Documents. This easement is non-exclusive of other validly created easements. This easement for encroachments and maintenance is reserved by Declarant by virtue of the recordation of this Declaration for the benefit of the encroaching Unit and its Owner or the Association, as applicable.

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

3.6 Easements for Ingress and Egress. A perpetual and non-exclusive easement for pedestrian ingress and egress is created and reserved by Declarant for the benefit of the Declarant and all Owners over, through, and across sidewalks, paths, driveways, roadways, walks, and lanes that from time to time may be constructed within the Condominium. The right of access described in this Section 3.6 is and will remain at all times an unrestricted right of ingress and egress.

3.7 Water Easement. Without limiting any other provision of this Declaration or the Plat, there is granted to the City of Phoenix a permanent, non-exclusive, and blanket easement across the Condominium for the purpose of installing, repairing, reading, and replacing water meter boxes.

3.8 Declarant's Rights and Easements.

(a) Declarant shall have the right and an easement to maintain sales or leasing offices, management offices, storage areas, models and related facilities throughout the Condominium and to maintain one or more marketing, directional or advertising signs in the Common Elements so long as the Declarant is marketing Units in the Condominium. Declarant reserves the right to maintain models, management offices, storage areas and sales and leasing offices in any Units owned or leased by Declarant and on any portion of the Common Elements in such number, of such size and in such locations as Declarant deems appropriate. Declarant may from time to time relocate models, storage areas, management offices and sales and leasing offices to different locations within the Condominium. Declarant shall have the right and an easement to post signs, flags and banners in the Common Elements in connection with its marketing of Units.

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

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

(d) Declarant and its employees, <sup>Unofficial Document</sup> 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 the Declarant may deem appropriate and to use the Common Elements and any Units owned by Declarant for construction or renovation related purposes including the storage of tools, machinery, equipment, building materials, appliances, supplies and fixtures, and the performance of work in the Condominium.

(e) The Declarant and its employees, agents, contractors and subcontractors shall have an easement through the Units for the purpose of completing any renovations, warranty work or modifications to be performed by Declarant.

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

(g) 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.

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

(i) The Declarant and its employees, agents, contractors and subcontractors shall have a right and easement on, over and through the Condominium as may be reasonably necessary for the purpose of inspecting, elected maintenance or repair or the other Declarant obligations set forth under Section 12.7

(j) So long as the Declarant or its successors or assigns owns one or more of the Units established and described in this Declaration, the Declarant and its successors or assigns are exempt from complying with the provisions of Article 13 hereof.

In the event of any conflict or inconsistency between this Section 3.8 and any other provision of the Condominium Documents, this Section 3.8 shall control and prevail over such other provisions. The rights of the Declarant set forth in this Section 3.8 shall be enforceable by injunction, by any other remedy available at law or in equity and/or by any means provided in this Declaration.

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

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

(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 adjacent to such Unit; provided that the installation, repair, maintenance, use, removal or replacement of any such item does not unreasonably interfere with the common use of any part of the Common Elements, adversely affect either the thermal or acoustical character of the Building or impair or structurally weaken the Building.

(c) For the performance of ~~Unit~~<sup>Unit Owner</sup> owners' obligation to maintain, repair, replace and restore those portions of the Limited Common Elements that the Unit Owner is obligated to maintain under Section 7.3.

3.10 Common Elements Easement in Favor of the Association. The Common Elements shall be subject to a perpetual, non-exclusive easement in favor of the Association, its Board and the agents, employees and independent contractors of the Association, for the purpose of the inspection, upkeep, maintenance, repair, and replacement of the Common Elements and Limited Common Elements and to exercise the authority and to fulfill the responsibilities that each respective entity is granted or assigned by the Condominium Documents.

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

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

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

(c) For correction of emergency conditions in one or more Units or Limited Common Elements or casualties to the Common Elements, the Limited Common Elements or the Units;

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

## ARTICLE 4

### USE RESTRICTIONS

In addition to all other covenants and restrictions contained in this Declaration and the other Condominium Documents, the use of the Common Elements, Limited Common Elements, and the Units is subject to the following:

#### 4.1 Restricted Use for Residential Units and Limited Common Elements.

(a) All Residential Units and Limited Common Elements allocated thereto shall be used, improved and devoted exclusively to residential use by a Single Family. No gainful occupation, profession, trade or other nonresidential use shall be conducted on or in any Residential Unit or Limited Common Element, but an Owner or Owner's Permittees of a Residential Unit may conduct a business activity within a Unit so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Unit; (ii) the business activity conforms to all applicable zoning ordinances or requirements for the Residential Units contained in the Condominium; provided further the Owners and Owners' Permittees of Residential Units acknowledge that the Residential Units shall not be granted the rights or benefits otherwise available to the Live-Work Units with regard to the operation of a business within such Unit; (iii) the business activity does not involve retail sales, gatherings, or day care; (iv) the business activity does not involve persons coming to the Residential Unit or the door-to-door solicitation of Owners or Owner's Permittees in the Condominium; (v) the trade or business conducted by the Owner or Owner's Permittees does not require more than one (1) employee working in or from such Unit who does not permanently reside in the Residential Unit; (vi) the volume of vehicular or pedestrian traffic or parking generated by such trade or business does not result in congestion or parking violations; (vii) the trade or business does not use flammable liquids or hazardous materials in quantities not customary for residential use; (viii) the business activity is consistent with the overall residential character of the Condominium and does not constitute a nuisance or a hazardous or offensive use or threaten security or safety of Condominium Owners, as may be determined from time to time in the sole discretion of the Board of Directors; and (ix) the trade or business is not a use prohibited under the provisions of Section 4.2(d)(i-xii). No Owner or Owner's Permittees of a Residential Unit may use parking spaces designated for employees, invitees, customers or Live-Work Permittees of a Live-Work Unit regardless of whether the Owner or Owner's Permittees of such Residential Unit operate a business from the Residential Unit in accordance with the express restrictions of this Section 4.1, except during "Non-business Hours." "Non-business hours" are generally determined to be the hours of a day that are not the "Live-Work Business Hours" described in Section 4.2(c) hereof. The Association Rules and Common Element signage may establish further restrictions on parking as may be necessary to protect the parking spaces for employees and invitees of those businesses that operate after hours or on Sundays.

(b) The terms "business" and "trade" as used in this Section 4.1 shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether: (i) such activity is engaged in full or part time; (ii) such activity is intended or does generate a profit; or (iii) a license is required for such activity. The mere leasing of a Unit by the Owner thereof in accordance with the provisions of Section 4.11 below shall not be considered a trade or business within the meaning of this section.

(c) Notwithstanding the foregoing, Declarant and its agents, successors, or assigns may use the Condominium or Units for any of the uses as may be required, convenient, or incidental to the construction and sale of Units, including, without limitation, a business office, management office, storage area, construction yard, signage, model sites, and display and sales office during the construction and sales period.



#### 4.2 Restricted Use For Live-Work Units.

(a) Live-Work Designation. The Live-Work Units shall be those Units identified as such in Section 2.1 hereof and shall be concurrently used for residential purposes and those commercial purposes expressly authorized by this Section 4.2 and for no other purpose. Notwithstanding the foregoing, only the ground floor level of the Live-Work Unit may be utilized for commercial purposes; provided, however, that the ground floor level of the Live-Work Unit may be used concurrently for residential purposes and commercial purposes, so long as the Continuous Operating Covenant, as described in Section 4.2(b), is not violated. The use of any portion of the Live-Work Unit for the commercial purposes authorized under this Section 4.2(b), other than the ground floor level shall be a violation of this Declaration.

(b) Continuous Operation of Business in Live-Work Unit, Violation Hearing and Imposition of Fines. The concurrent commercial purpose located in the Live-Work Unit shall be open for business and operated a minimum of seven (7) months out of a rolling twelve (12) month period (the "Continuous Operating Covenant"). To the extent the Board determines that a Live-Work Unit Owner has violated the Continuous Operating Covenant, the Board shall provide the owner of the Live-Work Unit with written notice of (i) the violation of the Continuous Operating Covenant, and (ii) the time and date of a hearing for the Live-Work Unit Owner to appear before the Board with regard to the violation of the Continuous Operating Covenant. To the extent the Board determines the business operated in the Live-Work Unit has violated the Continuous Operating Covenant, the Board shall impose and levy against the applicable Live-Work Unit a daily monetary fine, as determined in the Association Rules that the business operated in the Live-Work Unit is in violation of the Continuous Operating Covenant. The Live-Work Unit Owner acknowledges that any and all monetary fines imposed and levied against the Live-Work Unit prior to the recommencement of the operation of business within the Live-Work Unit shall constitute a lien against the Live-Work Unit and shall be enforced in accordance with the provisions of Section 6.9 hereof.

(c) Hours of Business of Concurrent Commercial Use in Live-Work Units. The permitted concurrent commercial use in a Live-Work Unit shall be open for business to the public during the hours of 8:00 a.m. to 8:00 p.m., Phoenix time, on ~~M~~<sup>U</sup>~~on~~<sup>n</sup>~~official~~<sup>o</sup>~~document~~<sup>o</sup> ~~ugh~~<sup>h</sup> Thursday; 8:00 a.m. to 10:00 p.m., Phoenix time, on Friday and Saturday; and 10:00 a.m. to 6:00 p.m., Phoenix time, on Sunday (collectively, the "Live-Work Business Hours").

(d) Permitted Concurrent Commercial Uses. Any permitted concurrent commercial use of a Live-Work Unit shall comply with the provisions of this Declaration and the City of Phoenix's C-2 District zoning classification as the same may be in effect from time to time. Without limitation, but subject to compliance with zoning and other requirements, permitted concurrent commercial uses shall include home occupations as permitted in the residential section of the City of Phoenix Zoning Ordinance, offices wherein medical, dental, professional, clerical, administrative or sales services are rendered, fine arts class instruction studios and photography studios and other similar uses not more detrimental than those listed above. Use and other permits or licenses, if any and when required by the City of Phoenix, shall be obtained and maintained and shall be the sole obligation and responsibility of the Unit Owner(s). Notwithstanding the above, the following uses are expressly not allowed in any Residential Units or Live-Work Units:

- (i) Pet stores or pet grooming establishments;
- (ii) Banks or similar businesses providing retail banking services;
- (iii) Automatic teller or similar machines however denominated;
- (iv) Video or game arcades or businesses;
- (v) Vending machines, bars, restaurants or any business serving food or drink – provided, however, that notwithstanding the foregoing, businesses may serve food for take-out;
- (vi) Vehicle or vehicle equipment sales, maintenance or repair;

- (vii) Hotel, motel, apartment rental or any other temporary occupancy business;
- (viii) Retail discount, or thrift shops;

(ix) Tanning parlors, massage parlors and any establishment which offers entertainment or service by nude or partially dressed male or female persons, except that this provision shall not preclude tanning and massage services offered by fully clothed, trained and licensed personnel as part of a legitimate day spa operation which also offers beauty, body care, skin care, nail care and similar services;

(x) "Adult entertainment uses," which term shall mean, for the purposes of this Declaration, any establishment which shows, previews, prominently displays, advertises or conspicuously promotes for sale or rental: (i) movies, films, videos, magazines, books or other media (whether now or hereafter developed) which is rated "X" by the movie production industry (or any successor rating established by the movie production industry) or as otherwise of a pornographic or obscene nature; or (ii) sexually explicit games, toys, devices or similar merchandise.

(xi) The Board reserves the right from time to time, to designate other activities which shall not be permitted. In such event, such activities shall be prohibited if approved by a vote of 80% of the Owners; or

(xii) Any business which would violate the additional restrictions set forth in Section 4.2(e) below.

(e) Additional Restrictions on Live-Work Unit.

(i) No Interference with Others Quiet Enjoyment. In addition to all other restrictions set forth herein or under <sup>Unofficial Document</sup> applicable law, no concurrent commercial use of a Live-Work Unit shall be conducted that causes or can reasonably be expected to cause interference with the reasonable and quiet enjoyment of other Owners and occupants of the Condominium, including unreasonable hours of operation; noise; odors; traffic; or hours; location and means of deliveries; and amounts of trash deposited in common facilities. The Board shall have the right to adopt and enforce reasonable rules and regulations to implement the preceding sentence.

(ii) Insurance/Indemnity. All uses shall conform to the Uniform Fire Code, as amended and adopted by the City of Phoenix from time to time, and shall not increase the liability or casualty insurance obligation or premium of the Association. The Owner shall provide Commercial General Liability Insurance, naming the Association and all other Owners as a class as additional insureds, in an amount not less than \$1,000,000 from a carrier and with terms and conditions approved by the Association and shall provide and continually maintain in effect a Certificate of Insurance naming the Association and requiring at least thirty (30) days notice to the Association of nonrenewal, cancellation or material modification. If any such notice is issued, replacement coverage and a replacement certificate shall be provided within fifteen (15) days or the Association may require the Owner to cease commercial activity until this requirement is satisfied.

(iii) To the extent not fully covered by insurance, the Owner shall indemnify and hold harmless the Association, the Board and its officers and representatives, Declarant, the Owners, their Mortgagees and tenants, from and against any and all liability, obligations, claims, losses, damages, expenses or attorneys' fees incurred or sustained by any of such parties as a result of the commercial use or activity.

(iv) Lighting. There will be no special exterior, Common Element or Limited Common Element lighting for any concurrent commercial use.

(v) Americans with Disabilities Act and Related Laws. An Owner who uses a Live-Work Unit for a permitted concurrent commercial use shall be solely responsible for the cost of any changes to the Live-Work Unit or adjoining space or any other part of the Condominium that may be required by the Americans with Disabilities Act, any similar state law, state or federal OSHA requirements, or any other state or federal law, regulation, code or requirement relating to work places or places of business, and neither the Declarant nor the Association shall have any responsibility therefor. Under no circumstances will the Association or the other Owners, be responsible for any costs of any such required work or the consequences thereof.

4.3 Signs. No emblem, logo, sign, or billboard of any kind shall be displayed on any of the Units or the Common Elements so as to be visible from neighboring property, except for: (i) signs used by Declarant to advertise the Units for sale or lease; (ii) signs on the Common Elements as may be placed and approved by the Declarant, during the period of Declarant Control, or by the Board, after the period of Declarant Control and (iii) (iv) any signs as may be required by legal proceedings. The foregoing will not be deemed to prevent the right of an Owner to display religious and holiday signs, symbols, and decorations of the type customarily and typically displayed inside or outside Condominium Units, subject to the authority of the Board to adopt reasonable time, place, and manner restrictions for the purpose of minimizing damage and disturbance to other Owners (including disturbance from pedestrian and vehicle traffic coming on the Condominium to view the signs, symbols, and decorations). Notwithstanding the foregoing, and subject to the approval of the Board, the Owner of a Live-Work Unit shall at all times be permitted to display signs on the exterior Common Elements or the ground floor level of the Live-Work Unit and immediately adjacent to such Live-Work Unit that conform to all applicable zoning and signage ordinances and all requirements of all Condominium Documents.

4.4 Improvements & Alterations. No Person shall make any "Modifications," as defined in Section 13.1 hereof, to a Unit, unless prior to the commencement of each Modification, the Owner has complied with the provisions of Article 13 hereof and obtained the approval of the Architectural Committee. The Owner shall, to the extent permitted by Arizona law, be responsible for any damage to other Units and to the Common Elements which results from any such Modification.

Unofficial Document

4.5 Noxious or Offensive Activities. No noxious or offensive activity shall be engaged in (or permitted to be engaged in) on any Unit. No act or use may be performed on any Unit that is or may become an annoyance or nuisance to the neighborhood generally or other Owners specifically, or that interferes with the use and quiet enjoyment of any of the Owners and of the Owner's Unit. No Owner shall permit any thing or condition to exist upon any property that induces, breeds, or harbors infectious plant diseases or infectious or noxious insects.

ARTISAN VILLAGE IS A LIVE-WORK CONDOMINIUM CONTAINING USES OTHER THAN RESIDENTIAL CONDOMINIUM UNITS. LAWFUL OPERATION OF SUCH USES MAY PRODUCE NOISE, TRAFFIC, ODORS AND OTHER DISTURBANCES CUSTOMARILY NOT FOUND IN SUCH PROJECTS. NEITHER DECLARANT, NOR THE ASSOCIATION SHALL HAVE ANY LIABILITY TO ANY OWNER, OWNER PERMITTEE OR LIVE-WORK PERMITTEE FOR SUCH MATTERS, NOR SHALL ANY SUCH PERSONS HAVE ANY CLAIMS OR CAUSES OF ACTION THEREFOR, AND THE SAME ARE EXPRESSLY RELEASED AND WAIVED.

4.6 Animals. No animals, livestock, horses, birds, or poultry of any kind shall be raised, bred, or kept on or within any Unit or structure on a Unit; however, an Owner may keep up to two (2) dogs or two (2) cats or two (2) other common household pets or three (3) of any combination of dogs, cats, or other common household pets in the Unit if permitted under local zoning ordinances. Additional pets are prohibited unless approved in writing in advance by the Board. The foregoing restriction will not apply to fish contained in indoor aquariums. These permitted types and numbers of pets shall be permitted for only so long as they are not kept, bred, or maintained for any commercial purpose and for only so long as they do not result in an annoyance or nuisance to other Owners. No permitted pets shall be permitted to move about unrestrained in the Condominium, Common Elements, or any public or private street within the Condominium. Each Owner shall be responsible for the immediate removal and disposal of the waste or excrement of all the Owner's pets from the Condominium, Common Elements, Limited Common Elements or public or private streets. Owners shall be liable for all damage caused by their pets. The Board may establish a system of fines or charges for any infraction of the foregoing, and the Board will be the sole judge for determining whether a pet is a common household pet or whether any pet is an annoyance or nuisance.

4.7 Trash. All rubbish, trash, and garbage shall be regularly removed from the Units and Limited Common Elements and shall not be allowed to accumulate on any Unit or the Limited Common Elements. In the case of an Owner who allows trash to accumulate on the Owner's Unit or on any Limited Common Elements, the Board, on behalf of the Association, may arrange and contract for the removal and cleanup of the trash, and the costs shall become a special assessment to that Owner. No incinerators shall be kept or maintained on any Unit.

4.8 Woodpiles and Storage Areas. Woodpiles and storage areas of any type or nature or of any materials or objects may not be maintained upon or adjacent to any Unit, Common Elements, or Limited Common Elements. At no time shall an Owner maintain any storage on the Condominium of Commercial or Recreational Vehicles or Family Vehicles (as described in Sections 4.16 and 4.18) of the type described in this Declaration in any stage of construction, reconstruction, modification, or rebuilding. No vehicle frames, bodies, engines, or other parts or accessories shall be stored on the Condominium.

4.9 Antennas. Except as originally installed by the Declarant, no external radio, direct television, television antenna, or satellite dish shall be installed or constructed on any Unit, Common Elements, Limited Common Elements or roof of any Unit, except as permitted in writing by the Association.

4.10 Windows and Window Covering. Sheets, newspapers, and similar items may not be used as temporary window coverings. No aluminum foil, reflective screens, awnings, reflective glass, mirrors, or similar reflective materials of any type shall be placed or installed inside or outside of any windows of a Unit without the prior written approval of the Board. Window drapes must be lined in a neutral, non-patterned material. No air conditioners, swamp coolers, or similar units may be placed in any window of a Unit.

4.11 Ownership and Leasing. Nothing in the Declaration shall be deemed to prevent the leasing of a Unit to a Single Family from time to time by the Owner of a Residential Unit, the leasing of a Live-Work Unit, or the subleasing of that portion of the Live-Work Unit utilized for commercial purposes from time to time by the Owner of a Live-Work Unit, subject to all of the provisions of the Condominium Documents, except that the original Owner of either a Residential Unit or Live-Work Unit (the Owner who took title by conveyance from the Declarant or Declarant's successor) shall not, for <sup>Unofficial Document</sup> twelve (12) months after becoming the Owner, (i) lease the Residential Unit or Live-Work Unit; or (ii) transfer or sell the Owner's interest in the Residential Unit or Live-Work Unit to a person that will not occupy the Live-Work Unit or the Residential Unit for the remaining term of the twelve (12) month period described in this Section 4.11(a); provided, however, the owner of a Live-Work Unit may sublease the portion of the Live-Work Unit that is utilized for commercial purposes at any time after the Owner of the Live-Work Unit has received written notice from the Association of the Owner's violation of the Continuous Operation Covenant contained in Section 4.2(b) hereof. All subleases of the commercial use portion of a Live-Work Unit shall be approved by the Board. Any Owner who leases all of the Live-Work Unit or subleases the portion of the Owner's Live-Work Unit utilized for commercial purposes shall promptly notify the Association in writing of the lease period and the name of each lessee and/or Sublessee and the address and telephone number at which the Unit Owner can be contacted by the Association during the lease term. Other than leases entered into by the Declarant where the Declarant is the Owner of the Unit, any lease shall be approved by the Association and shall be for a term of no less than six (6) consecutive months. No Owner shall be permitted to lease the Owner's Unit for transient or hotel purposes. The provisions of this Section 4.11 shall not apply to any Unit(s) owned by Declarant or Declarant's successor. Notwithstanding the foregoing, no more than an aggregate twenty-nine (29) Residential Units may be leased at any one time. No Residential Unit Owner shall be permitted to lease the Owner's Residential Unit, and the Association shall not approve any new lease, if an aggregate of twenty-nine (29) Residential Units are then currently leased. Each owner who leases its Unit or subleases the portion of the Owner's Live-Work Unit utilized for commercial purposes shall, on or before December 31<sup>st</sup> of each year, submit a written report to the Association advising the Association of the Lease Period, the name of each lessee or sublessee, and the address and telephone number at which the Unit Owner may be contacted by the Association during the Lease Term.

4.12 Machinery. No machinery of any kind shall be placed, operated, or maintained upon or adjacent to any Unit or Limited Common Elements other than machinery that is usual and customary in connection with the use, maintenance, or construction of a Unit, and other than machinery that Declarant or the Association may require for the operation and maintenance of the Condominium.

4.13 Increased Risk. Nothing shall be done or kept in or on any Unit or the Common Elements that will increase the rate of insurance on the Common Elements without the prior written consent of the Board. No Owner shall permit anything to be done or kept on or in the Owner's Unit or the Common Elements that will result in the cancellation of insurance on any Unit or any part of the Common Elements or that would be in violation of any law.

4.14 Outdoor Burning and Lighting. There shall be no outdoor burning of trash, debris, wood, or other materials. The foregoing, however, shall not be deemed to prohibit the use of barbecues owned and maintained by the Association within the Limited Common Elements or Common Elements, subject to the Association Rules. Without limiting the provisions of Section 4.5 above and except as originally installed by the Declarant or as otherwise approved by the Board, no spotlights, flood lights, or other high intensity lighting shall be placed or utilized upon any Unit so that the light is directed or reflected on any Common Element or any other Unit.

4.15 Hazardous Wastes. Except as may be necessary for normal household, landscaping, or automotive uses, no Owner shall permit any hazardous wastes (as defined under all applicable federal and state laws), asbestos, asbestos containing material, or any petroleum products or by-products to be kept, dumped, maintained, stored, or used in, on, under, or over any Unit or the Common Elements. No gasoline, kerosene, similar cleaning solvents, or other flammable liquids may be stored in the Units or the Common Elements.

4.16 Commercial and Recreational Vehicles. No commercial truck, recreational vehicle, pick-up trucks with campers or camper shells, semitrailer, wagon, freight trailer, boat trailer, automobile trailer, camper, camper shell, mobile home, motor home, boat, dune buggy, all-terrain vehicle, bus, or similar commercial or recreational equipment or vehicle (whether or not equipped with any sleeping quarters) (collectively referred to in this Declaration as "Commercial or Recreational Vehicles") shall be stored or parked within the Condominium unless such Commercial or Recreational Vehicles are in good working condition and repair and stored or parked completely within the garage space(s) of the respective Owner and are covered from view. The provisions of this Section 4.16 are subject to the rules and regulations of the Association, as may be amended

4.17 General Restrictions Regarding Parking Unofficial Document

(a) Each Residential Unit shall be assigned at least two (2) tandem garage parking spaces that will be used by the Owner of the Unit for parking of Family Vehicles. Additional Family Vehicles that cannot be parked in the garage assigned to the Residential Unit may be parked in any undesignated parking areas on the Condominium so long as the Family Vehicles are in good working condition, operable and are, in fact, operated from time to time. Except as may be otherwise expressly approved in advance by the Board, no Owner may use his assigned parking space for storage of anything other than parking of a Family Vehicle, permitted under this Declaration. In addition, parking spaces may be allocated in the future as a Limited Common Element of the Unit, as further provided in Section 2.4.

(b) A "Family Vehicle" means any domestic or foreign cars, station wagons, sport wagons, pick-up trucks, vans, mini-vans, jeeps, sport utility vehicles, motorcycles, and similar non-commercial and non-recreational vehicles that are used by the Owner of the applicable Unit or the Owner's Permittees for family and domestic purposes only. A "Family Vehicle" also includes: (i) pick-up trucks with no more than three-quarter (3/4) ton capacity with attached camper shells that are no more than eight (8) feet in height, measured from ground level; (ii) small motor homes of not more than eight (8) feet in height or more than eighteen (18) feet in length; and (iii) non-commercial pick-up trucks of greater than one (1) ton capacity that the Board determines, in advance of use, to be similar in size and appearance to smaller vehicles. A "Family Vehicle" does not include any of the commercial or recreational vehicles described in Section 4.16. The provisions of this Section 4.16 are subject to the rules and regulations of the Association, as may be amended.

(c) No Owner may park a Family Vehicle in any parking that is designated as guest parking.

(d) Each Owner acknowledges that the surface parking areas of the Condominium that are located on or adjacent to Roosevelt Street, Portland Street or Fifth Street may be subject to (i) city parking meters, or (ii) restrictions based on hours or duration of continuous parking.

(e) The Declarant, during the period of Declarant Control, and, after the period of Declarant Control, the Board, shall have the right to designate through signage, or otherwise, certain unassigned and unallocated surface parking in the Common Elements for the sole use of the Live-Work Owner's Permittees during the hours of operation for Live-Work Units described in Section 4.2(b) hereof.

(f) Nothing contained in this Section 4.17, however, shall be construed as prohibiting the Declarant and the Board from reserving, assigning and/or allocating certain surface parking spaces for the use and benefit of the Live-Work Unit and their Owners as a whole.

4.18 No Vehicle Repairs. Routine maintenance and repairs of Commercial and Recreational Vehicle Family Vehicles shall not be performed in the Unit or anywhere else on the Condominium; provided, however, that Unit Owners may wash their Family Vehicles within the Condominium. No vehicles of any type shall be constructed, reconstructed, or assembled anywhere within the Condominium.

4.19 Declarant's Exemption. Nothing contained in this Declaration shall be construed to prevent the erection or maintenance by Declarant, or its duly authorized agents, of model homes, structures, improvements, construction trailers, or signs necessary or convenient to the construction, development, identification, sale, or lease of Units or other property within the Condominium.

4.20 Access. Each Owner understands and agrees that neither the Association (nor its officers, directors, employees, and agents) nor the Declarant (nor its officers, directors, employees, and agents) is responsible for the acts or omissions of any third parties or of any other Owner or the Owner's Permittees resulting in damages or injury to person or property. Any entry gate features, common security or access measures that may be used at the Condominium will commence and be maintained by the Association solely through a majority vote of the Board, and each Owner understands that any entry gate features or access measures that are in effect at the time he or she accepts a deed for a Unit (or otherwise becomes an "Owner") may be abandoned, terminated, or modified by a majority vote of the Board. The commencement of access devices or controls shall not be deemed to be an assumption of any duty on the part of the Association or the Declarant with respect to the Condominium and its Owners.

Unofficial Document

## ARTICLE 5

### MEMBERSHIP AND VOTING RIGHTS

5.1 Membership. Every Owner of a Unit, by accepting a deed for that Unit (whether or not expressed in the deed or conveying instrument) or otherwise becoming an "Owner", shall be a Member of the Association and shall be bound by the provisions of the Condominium Documents, shall be deemed to have personally covenanted and agreed to be bound by all covenants and restrictions contained in the Condominium Documents, and shall be deemed to have entered into a contract with the Association and each other Owner for the performance of the respective covenants and restrictions. The personal covenant of each Owner described in the preceding sentence shall be deemed to be in addition to the real covenants and equitable servitudes created by the Declaration, and this personal covenant of each Owner shall not limit or restrict the intent that this Declaration benefit and burden, as the case may be, and run with title to all Units and Common Elements covered by this Declaration. Membership in the Association shall be appurtenant to and may not be separated from ownership of any Unit that is subject to assessment. Upon the permitted transfer of an ownership interest in a Unit, the new Owner shall automatically become a Member of the Association. With the exception of Declarant, membership in the Association shall be restricted solely to Owners of Units.

5.2 Class. The Association shall have two (2) classes of voting membership:

(a) Class A. Class A members shall be all Owners, with the exception of the Declarant. Class A members shall be entitled to one (1) vote for each Unit owned. When more than one person holds an interest in any Unit, all joint owners shall be Members; however, for all voting purposes and quorum purposes, they shall together be considered to be one (1) Member. The vote for any jointly-owned Unit shall be exercised as the joint owners determine, but in no event shall more than one (1) vote be cast with respect to any Unit. Any attempt to cast multiple votes for a given Unit shall result in the invalidity of all votes cast for that Unit.

(b) Class B. The Class B member shall be the Declarant and shall be entitled to three (3) votes for each Unit owned. The Class B membership shall cease and be converted to Class A membership upon the happening of any of the following events, whichever occurs earlier:

- (i) Four (4) months after the date when the total votes outstanding in the Class A membership equals or exceeds the total votes outstanding in the Class B membership;
- (ii) The date that is six (6) years after the date of the close of escrow on the first Unit sold by Declarant; or
- (iii) When the Declarant notifies the Association in writing that it relinquishes its Class B membership.

Upon the conversion of Declarant's Class B membership to Class A membership, the Declarant will be entitled to only one (1) vote for each Unit owned by the Declarant. The period of time during which Class B membership is in existence shall be referred to in this Declaration as the period of "Declarant Control." For the purposes of determining when the total votes outstanding in the Class A membership first equals or exceeds the total votes outstanding in the Class B membership under Section 5.2(b)(i), the number of votes in the Association shall be based upon the total number of Units.

5.3 Transfer of Control. When the period of Declarant Control ends, the Class A Members shall accept control of the Association from the Declarant and full responsibility for the operation of the Association and administration of the Condominium as provided in the Condominium Documents, and Declarant shall have no further responsibility for any future acts or omissions with respect to the operation of the Association and administration of the Condominium (other than the payment of assessments on Units that the Declarant still owns). Any claims of the Association or any Owners against the Declarant for present or past acts or omissions of the Declarant or its members with respect to the operation of the Association or the administration of the Condominium (including the availability or sufficiency or any reserves) shall be waived, unenforceable, and released if not commenced within one (1) year from <sup>Unofficial Document</sup> ~~the~~ end of Declarant Control.

## ARTICLE 6

### COVENANT FOR MAINTENANCE ASSESSMENTS

6.1 Lien and Personal Obligation for Assessments. Each Owner of any Unit, by accepting a deed for that Unit (whether or not expressed in the deed or conveying instrument) or otherwise becoming an "Owner", is deemed personally to covenant and agree to be bound by all covenants and restrictions and all duties, obligations, and provisions of the Condominium Documents and to pay to the Association:

- (a) Annual assessments or charges;
- (b) Special assessments for capital improvements under Section 6.5 unexpected or extraordinary expenses for repairs of the Common Elements, or other Association matters;
- (c) An amount sufficient to, on demand, indemnify and hold the Association harmless for, from, and against all obligations undertaken or incurred by the Association at or on account of that individual Owner's special request and to repay the Association for all expenditures on account of the special request;
- (d) An amount sufficient to reimburse the Association for the cost of performing any obligation of an Owner under the Condominium Documents that the Owner has failed to timely pay or perform; and
- (e) All other assessments as may be fixed, established, and collected from time to time as provided in this Declaration or the other Condominium Documents, including, without limitation, any accrued interest, taxable court costs, late fees, attorney fees, fines, penalties, or other charges.

The assessments and amounts described above, together with all accrued interest, court costs, attorney fees, late fees, lien fees, and all other expenses incurred in connection with the assessments and amounts described above, whether a lawsuit or other legal action is initiated, shall be referred to in the Condominium Documents as an "assessment" or the "assessments". The assessments shall be a charge and a consensual and continuing lien upon the Unit against which the assessment is made or with reference to which each assessment is incurred. Each assessment also shall be the personal obligation of the person who was the Owner of the Unit at the time when the assessment became due or charge was incurred, or, in the case of more than one Owner, the personal obligation of each person, jointly and severally. The personal obligation for delinquent assessments shall not pass to the particular Owner's successors in title unless expressly assumed by them; however, the personal obligation of the prior Owner for the delinquent assessments or charges shall not be deemed released or discharged by reason of any assignment, conveyance, or transfer of title of a Unit. Notwithstanding the previous sentence, in the event of an assignment, conveyance, or transfer of title to any Unit, the assessment additionally shall continue as a charge against the Unit in the hands of the subsequent Owner, except in those circumstances described in Section 6.10. The recordation of this Declaration shall constitute record notice and perfection of any assessment or assessment lien, and, notwithstanding Section 6.11, further recordation of any claim of lien (or Notice and Claim of Lien) for assessment shall not be required for perfection, priority, or enforcement.

6.2 Purpose of Annual Assessments. The annual assessments levied by the Association shall be used for the purpose of:

- (a) promoting the recreation, health, safety, welfare, and desirability of the Condominium for its Owners;
- (b) operating of the Common Elements (including payment of all taxes, utilities, maintenance, and rubbish collection fees, if any, and if not individually billed to the Owners);
- (c) insuring (including a reserve fund for insurance deductibles), maintaining, repairing, painting, and replacing improvements in the Common Elements (including any reserve fund for the foregoing); and
- (d) enhancing and protecting the value, desirability, and attractiveness of the Units and Common Elements generally.

Unofficial Document

The annual assessment may include a reserve fund for taxes, insurance, insurance deductibles, maintenance, repairs, and replacements of the Common Elements and other improvements that the Association is responsible for maintaining.

6.3 Annual Assessments; Commencement of Assessments. The Board shall annually determine and fix the amount of the annual assessment against each Unit, effective as of January 1 of each year, and shall notify the Unit Owner in writing as to the amount of such annual assessment at least thirty (30) days in advance of each annual assessment period; however, the annual assessment shall be binding notwithstanding any delay. Written notice of the annual assessment and of any special assessments shall be sent to every Owner subject to the assessment. The Board is expressly authorized to adopt and amend budgets from time to time without the approval of the Members and shall provide a summary of such budget or amended budget to the Members not later than thirty (30) days after adoption of the same by Board. The due dates of the annual assessments shall be established by the Board of Directors. The annual assessments established in this Declaration regarding the Units subject to this Declaration shall commence on the first day of the month following the conveyance of the first Unit to an Owner other than the Declarant. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year

6.4 Annual Assessment Increases.

- (a) The annual assessment in any given year over the annual assessment in the previous year may not be increased by more than the Permitted Percentage Increase (as defined below), unless any further additional increase is approved at a duly called regular or special meeting by an affirmative vote (in person or by proxy) of two-thirds (2/3) or more of the total number of eligible votes cast at that meeting in each class of Members. From and after January 1 of the year immediately following the conveyance of the first



Unit to an Owner other than the Declarant ("base year"), the Board, without a vote of the Members, may increase the maximum annual assessments during each fiscal year of the Association by an amount ("Permitted Percentage Increase") equal to the greater of: (i) twenty percent (20%); or (ii) a percentage calculated by dividing the Consumer Price Index in the most recent October (identified by an "A" in the formula below) by the Consumer Price Index for the October one (1) year prior (identified by a "B" in the formula below), minus one (1) (i.e.,  $CPI\ percentage = (A/B) - 1$ ). By way of example only, the percentage increase in the assessment for 2004 cannot be increased by more than the greater of: (I) twenty percent (20%); or (II) the increase in the Consumer Price Index for October, 2003, divided by the Consumer Price Index in October, 2002), minus one (1). The term "Consumer Price Index" shall refer to the "United States Bureau of Labor Statistics, Consumer Price Index, United States and selected areas, all items" issued by the U.S. Bureau of Labor Statistics, or its equivalent or revised or successor index.

(b) Notwithstanding the foregoing, the annual assessment per unit shall increase by five percent (5%) per year over the base year without any action by the Board of Directors. The Board of Directors may defer the automatic five percent (5%) annual increase for one or more years, from time to time, and then may take action to increase the annual assessment by the aggregate of the five percent (5%) increases so deferred. For example, the annual assessment may not increase for five (5) years because the Board has taken action to defer the five percent (5%) automatic increase. At the end of the fifth (5<sup>th</sup>) year, the Board may take action to then increase the annual assessment by twenty-five percent (25%) as a result of five (5) years of five percent (5%) increases that have been deferred.

6.5 Special Assessments. The Association, at any time and from time to time in any assessment year, in addition to the annual assessments authorized above or any other assessments authorized elsewhere in this Declaration, may levy a special assessment against all of the Members for the purpose of defraying, in whole or in part: (i) the cost of any construction, reconstruction, repair, or replacement (whether or not due to destruction, governmental taking, or otherwise) of a capital improvement upon or under the Common Elements (including fixtures and personal property related to the Common Elements); or (ii) the cost of any other unexpected or extraordinary expenses for repairs of the Common Elements or other association matters; however, any special assessment must be approved at a duly called regular meeting by an affirmative vote (in person or by proxy) of two thirds (2/3) or more of the total number of eligible votes cast at that meeting in each class of Members. Notwithstanding the foregoing, no approval of the Members shall be needed to levy assessments on an Owner that arise out of the Owner's failure to comply with the Condominium Documents including, without limitation, any assessment levied pursuant to Sections 6.1(c), 6.1(d), 6.7, 7.2 or 7.4 of the Declaration.

6.6 Notice and Quorum. Written notice of any meeting called for the purpose of taking any action authorized under Section 6.4 or 6.5 shall be sent to all Members not less than ten (10) days nor more than fifty (50) days in advance of the meeting. At the first meeting called regarding any given proposal, the presence (at the beginning of the meeting) of Members or proxies entitled to cast at least sixty percent (60%) of the total number of eligible votes of the Association, regardless of class of membership, shall constitute a quorum. If the required quorum is not present, one other meeting for the same purpose may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be at least thirty percent (30%) of the total number of eligible votes of the Association, regardless of class of membership. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

#### 6.7 Allocation of Assessments.

(a) Both the annual assessments outlined in Section 6.3 and the special assessments outlined in Section 6.5 shall be allocated among Units based upon the number of square footage of finished area contained within a Unit as follows: (i) the sixty-three (63) Units containing 1,500 or less square feet of finished area will be allocated fifty-six percent (56%) of both the annual assessments and special assessments, (ii) the twenty six (26) Units containing between 1,500 and 1,900 square feet of finished area will be allocated twenty-six percent (26%) of both the annual assessments and special assessments, and (iii) the sixteen (16) Units containing more than 1,901 square feet of finished area will be allocated eighteen percent (18%) of both the annual assessments and special assessments. The assessments within a group shall be equal. If Declarant creates a new Unit type on any Plat, the square footage of such Unit shall determine the assessment group of that Unit for purposes of this Section 6.

(b) The rate of assessment for Inventory Units owned by Declarant shall be twenty-five percent (25%) of the rate for completed and occupied Units owned by an Owner other than the Declarant. Declarant shall commence payment of the reduced assessment for the Inventory Units upon first day of the month following the conveyance of the first Unit to Owner other than Declarant. Notwithstanding the reduced assessment on Inventory Units, Declarant shall be obligated to pay to the Association for any shortages or deficiencies in the Association's operating budget caused by reason of Declarant's reduced assessments; however, Declarant's maximum obligation for these shortages or deficiencies shall be not more than the uniform rate of assessment on all Units multiplied by the number of Inventory Units upon which Declarant paid a reduced assessment, less all amounts previously paid by Declarant as reduced assessments on the Inventory Units.

(c) The provisions of this Section 6.7 shall not preclude the Association from making a separate or additional charge to, or special assessment on, an Owner for or on account of special services or benefits rendered to, conferred upon, or obtained by or for that Owner or the Owner's Unit. If any expense incurred by the Association is caused by the misconduct of any Owner or the Owner's Permittees, the Association may specially assess the expense exclusively against the offending Owner and/or Unit.

6.8 Transfer. The Association, acting through the Board of Directors and property management company, upon written demand and for a reasonable charge (currently \$150.00 per request, subject to change by the Board), shall furnish to any Owner or the Owner's authorized representative a certificate signed by a representative of the property management company or an officer of the Association setting forth whether the assessments and charges on a specified Unit have been paid and setting forth any other matters as may be required from time to time by Arizona law. A properly executed certificate of the Association as to the status of assessments on a Unit and any other required matters shall be binding on the Association as of the date of issuance of the certificate and for the time period specified in the certificate. Assessments shall be payable in the full amount specified by the assessment notice, and no offsets against such amount shall be permitted for any reason whatsoever including, without limitation, abandonment of the Owner's Unit, a claim that the Association is not properly exercising its duties in maintenance or enforcement, a claim against the Declarant or its affiliates, or the non-use or claim of non-use by Owner of all or Unofficial Document of the Common Elements. Assessments may be collected in advance or in arrears as the Board of Directors shall determine in their sole discretion. Upon any transfer of a Unit, the Owner acquiring the Unit shall pay to the Association as a working capital contribution an amount equal to one sixth (1/6) of the annual assessment then in effect.

6.9 Effect of Nonpayment of Assessments - Remedies of the Association. Any assessment not paid within fifteen (15) days after the due date shall be subject to a one-time late charge of Twenty-Five and No/100 Dollars (\$25.00) and additionally shall bear interest from the due date at the minimum rate of ten percent (10%) per annum or any other legal interest rate approved by the Board of Directors and permitted under the requirements of any applicable Institutional Guarantor. Notwithstanding the foregoing, the Board of Directors may approve changes to the assessment collection procedure. Each Owner of a Unit, by accepting a deed for that Unit (whether or not expressed in the deed or conveying instrument), or otherwise becoming an "Owner", vests in the Association and its agents the right and power to bring all actions against the Owner personally for the collection of all assessments due under the Condominium Documents as a debt and to enforce the lien securing the assessment by all methods available for the enforcement of liens, including foreclosure by an action brought in the name of the Association in the same manner as a mortgage of real property, a deed of trust, and/or a mechanic's lien. If an Owner fails to make payments on any prior liens (including any Mortgage) or fails to pay taxes on the Owner's Unit, the Association may make payments on any prior liens (including any Mortgage) or taxes on the Unit, and all payments shall be due and payable immediately as a special assessment and shall be added to the lien in favor of the Association. The lien shall be in favor of and shall benefit the Association. The Association shall have the power to bid in any foreclosure, sheriff's sale, or similar sale (whether or not the foreclosure was initiated by the Association or some other person) and to acquire, hold, lease, mortgage, and convey the Unit purchased. The Association may institute suit to recover a money judgment for unpaid assessments of the Owner without being required to foreclose its lien on the Unit involved and without waiving the lien that secures the unpaid assessments. Any foreclosure may be instituted without regard to the value of the Unit, the solvency of the Owner, or the relative size of the Owner's default. The assessment lien and the rights of enforcement under this Declaration shall be in addition to and not in substitution of all other rights and remedies that the Association may have under the Condominium Documents or under Arizona law.

6.10 Subordination of the Lien to Mortgages. Regardless of whether or not a Notice and Claim of Lien has been recorded, the lien for the assessments established in this Declaration shall be superior to all liens, charges, homestead exemptions, and encumbrances that are imposed on any Unit after the date of recordation of this Declaration. The lien for the assessments established in this Declaration, however, shall be automatically subordinate to: (i) the lien of any First Mortgagee, except for the amount of assessments that accrues from and after the date upon which the First Mortgagee acquires title to or comes in possession of any Unit and except for amounts due to the Association as a result of the exercise of its self-help and lien rights described in Section 7.4 ; and (ii) any taxes, bonds, or assessments that by law are prior and superior to the assessment lien. The sale or transfer of any Unit shall not affect the lien for assessments or the personal obligation of the Owner to pay all assessments arising during the Owner's ownership of the Unit; however, the sale or transfer of any Unit pursuant to a judicial foreclosure or trustee's sale by a First Mortgagee shall extinguish that portion of the lien on the Unit (but not the personal obligation) that became due prior to the transfer or sale. In the case of a sale or transfer by judicial foreclosure or trustee's sale by a First Mortgagee, the First Mortgagee or other successor Owner shall not be liable for any assessments that become due prior to the sale or transfer by the First Mortgagee. No sale or transfer pursuant to a judicial foreclosure or trustee's sale of any First Mortgagee shall relieve any Unit from the liability or the lien for any assessments that may become due or arise after the judicial foreclosure or trustee's sale. A sale or transfer pursuant to a judicial foreclosure or trustee's sale, however, shall not be construed to release any Owner or previous Owner from the Owner's personal obligation to pay any assessment arising during the Owner's or previous Owner's ownership of the Unit, and the Association may enforce the personal obligation to pay the assessments arising during the Owner's ownership of the Unit in any manner permitted under Arizona law or the Condominium Documents.

6.11 Notice of Lien. Without affecting the priority and perfection of any assessment that has been perfected as of the date of recordation of this Declaration, the Association may give (but is not obligated to give) notice to any Owner whose assessment is due and unpaid by mailing to the Owner a copy of a "Notice and Claim of Lien" which may state, among other things, the following:

- (a) The last known name of the delinquent Owner;
  - (b) The legal description or street address of the Unit against which the claim of lien is made;
  - (c) The amount claimed to be due and owing from the Owner and assessed against the Unit;
- and
- (d) A statement that the claim is made by the Association pursuant to the terms of the Declaration and the other Condominium Documents.

Each default in the payment of any assessment shall constitute a separate basis for a claim of lien, but any number of defaults may be included within a single Notice and Claim of Lien. The Association may record a Notice and Claim of Lien against the delinquent Owner's Unit. The Notice and Claim of Lien may be executed by any officer of the Association, the managing agent for the Association, or legal counsel for the Association, but in all events the lien will remain that of the Association.

6.12 Initial Working Capital Contribution by Owners. Upon acceptance of a deed for a Unit from the Declarant or from an Owner of a Unit other than the Declarant in the event of any "re-sales" of the Units (whether or not expressed in the deed or conveying instrument) or otherwise becoming an "Owner," each Owner (except for Declarant) shall contribute to the working capital of the Association an amount equal to one-sixth (1/6) of the annual assessment then in effect as determined in accordance with this Article 6. This amount shall be deposited by the buyer into the purchase and sale escrow and disbursed from the purchase and sale escrow directly to the Association. Declarant, in its sole discretion, may advance certain amounts to the Association as working capital; however, Declarant shall not be obligated to advance any amounts for working capital. If Declarant elects to advance any amounts for working capital, Declarant shall be entitled to a reimbursement from the Association, upon Declarant's demand, for all working capital funds previously advanced by Declarant. Except for those amounts paid by Declarant, all amounts paid as working capital shall be non-refundable and shall not act as a credit against any assessment payable by an Owner pursuant to this Declaration.

## ARTICLE 7

**COMMON ELEMENTS AND UNIT MAINTENANCE**

7.1 Common Elements. Except as provided in Sections 7.2 or 7.3 below, the Association shall be responsible for the maintenance, repair, and replacement of the Common Elements (including the exterior and the structural elements of all garages, all structural elements of the Building such as walls, patios, and balconies, shutters, awnings, window boxes and the roof of the Building). Without any approval of the Owners, the Association may: (i) reconstruct, repair, replace, and refinish any Common Elements; (ii) maintain, repair, and landscape any shared entry area for the Condominium (whether established through easement, license, or otherwise); (iii) cause the annual inspection and preparation of the inspection report as required by Section 12.7 and (iv) do any other acts deemed necessary to preserve, beautify, and protect the Common Elements in accordance with the general purposes specified in the Condominium Documents. The Board of Directors of the Association shall be the sole and absolute judge as to the appropriate maintenance of the Common Elements. Notwithstanding anything contained in this Section 7.1, the Association will have no obligation to perform any maintenance or repair work that is performed by any municipality or provider utility company responsible for the maintenance of any utilities or improvements located within any Common Elements. No Owner may alter, remove, injure, damage, or interfere in any way with any landscaping, lawns, plants, irrigation systems, sprinklers, shrubs, trees, and the like, if any, placed on the Common Elements.

7.2 Repairs Necessitated by Owner: Walls. In the event that the need for maintenance or repair to the Common Elements is caused through the acts or omissions (including negligent acts or omissions) of an Owner, the Owner's Permittees, or any pet of the Owner, the cost of the maintenance or repairs, including the deductible portion of any applicable insurance policy, shall be added to and become a part of the assessment against the Unit owned by that Owner, without regard to the availability of any insurance proceeds payable to the Association for the cost of the maintenance or repairs. In addition to the foregoing, if the Owner of a given Unit is held liable to the Association by a court of competent jurisdiction for maintenance or repair work performed by the Association to any other Unit (i.e., a Unit not owned by that Owner), the amount of that judgment shall be added to and become a part of the assessment against the Unit owned by <sup>Unofficial Document</sup>. To protect the integrity of soundproofing material contained inside the walls of the Condominium, Building or Unit, no Owner may puncture or damage any wall in the Condominium, Building or any Unit.

7.3 Maintenance of Unit. Each Owner shall clean, maintain, repair, and replace, at the Owners' expense and without disturbance to the rights of other Owners:

- (a) All portions of the Owner's Unit;
- (b) The interior portions of the Unit, including, without limitation: (i) service equipment such as a dishwasher, laundry, refrigerator, microwave, oven, and stove, whether or not these items are built-in fixtures; (ii) interior fixtures such as electrical and plumbing fixtures, tubs, toilets, sinks, floor coverings, and surfaces except the floor slab and subfloor; and (iii) all interior surfaces including but not limited to windows, doors, inside paint, and other inside wall finishes;
- (c) All windows, doors and garage doors (including the cleaning of the interior and exterior of any windows and doors and repair of any blemishes to the doors or garage doors);
- (d) The air conditioning unit (including compressors and condensers), heater, and hot water heater servicing the Unit;
- (e) Any chimneys, chute, flue or duct that solely serves the Owner's Unit.
- (f) The decorating within the Unit including, without limitation, painting, wallpapering, paneling, floor covering, draperies, window shades, curtains, lamps, and other furniture and interior decorating. Subject to the provisions of this Declaration, each Owner shall be entitled to the exclusive use of the interior surfaces of the perimeter and interior walls, floors, and ceilings within the Owner's Unit, and each Owner shall maintain these surfaces in good condition at the Owner's sole expense. Maintenance by

the Owners may be subject to the rules and regulations of the Association as may be necessary for the common good of the Condominium;

- (g) The interior space of the garage designated for parking by a single Owner;
- (h) To the extent not included within the categories identified above in this Section 7.3, the Limited Common Elements of the type described in subparagraphs (iii), (iv), and (vi) of Section 2.4 of this Declaration;
- (i) To the extent not included within the categories identified above in this Section 7.3, the Restricted Limited Common Elements described in Section 2.7 hereof;
- (j) All cosmetic defects or blemishes within the Unit including, without limitation, damage or defect caused by settlement, expansion and/or cracking;
- (k) It is the responsibility of all Owners to maintain, repair, replace and provide insurance for personal property; and
- (l) Each Owner of a Live-Work Unit shall maintain, in accordance with the Condominium Documents, at its sole cost and expense, any commercial sign on the Common Elements advertising the commercial business conducted within the Live-Work Unit.

7.4 Owner's Failure to Maintain. If an Owner fails to perform any items of maintenance and repair required under the terms of this Article 7, then, the Board or its agents may enter the Unit and any limited common elements allocated thereto, when necessary, upon reasonable notice, unless it would be impractical to give notice in an emergency, and with as little inconvenience to the Owner shall have the right (but not the obligation) to enter upon or into that Unit and to provide the required maintenance or make the required repairs or replacements. Any entry by the Association or its agents shall not be considered a trespass. The cost of these maintenance items and repairs shall be added to the assessments charged to the Owner, shall be paid immediately to the Association by that Owner as a special assessment or otherwise, and shall constitute a lien upon that Owner's Unit. The rights of the Association described above are in addition to any other remedies available to the Association under the Condominium Documents or Arizona law. No Owner shall do any act or create any obstruction which would unreasonably interfere with the right or ability of the Association to perform any of its obligations or exercise any of its rights under this Declaration. Without limiting the foregoing, the Association or its designated manager shall have the right and authority to require that copies of all keys, entry cards and/or codes be left with such parties to assure access for the foregoing purposes, pursuant to procedures specified by the Board from time to time in the Rules and Regulations.

7.5 Exterior Repairs. Notwithstanding the fact that the Owner may be required to maintain certain of the Limited Common Elements that are outside of the physical boundaries of the Unit, the Owner will not be permitted to change any exterior color, style, or condition of the Limited Common Elements without the prior approval of the Board.

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

7.7 Utilities. Except for those utility costs that are metered collectively for the Common Elements and paid by the Association as a common expense, all utilities for individual Units will be metered separately to each Unit and will be the responsibility of the respective Owners for payment.

7.8 Use of Tract "B" – Special Use Area. The Condominium is a Live-Work condominium project containing uses other than residential condominium units. In order to promote the concurrent commercial uses of the Condominium and the unique nature of the Condominium, the Declarant, through the period of Declarant Control; and the Association, through its Board of Directors, following the expiration of the Declarant Control,

shall have the power and authority, and in accordance with the rules and regulations of the Association, to (a) authorize persons, other than Unit Owners, to use or occupy that portion of the Condominium delineated on the Plat as "Tract B" and described as a Special Use Area from time to time; (b) to place reasonable restrictions upon the use and enjoyment of Tract "B" by the Unit Owners; or (c) to permit the Owners of Live-Work Units to utilize Tract "B" for the commercial display or exhibition of goods, services or other items sold in the Live-Work Units.

## ARTICLE 8

### DUTIES AND POWERS OF THE OWNERS' ASSOCIATION; INSURANCE

8.1 Duties and Powers. In addition to the duties and powers enumerated in the other Condominium Documents or elsewhere in the Declaration, the Association, through its Board of Directors, shall have the power and authority to:

(a) Common Elements. Maintain and otherwise manage the Common Elements and all other real and personal property that may be acquired by the Association, including, but not limited to, the authority to manage Tract T, as more fully described in Section 7.8 hereof;

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

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

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

Unofficial Document

(e) Purchase Insurance. Purchase insurance for the Common Elements for risks, with companies, and in amounts as the Board determines to be necessary, desirable, or beneficial, subject to the provisions of Section 8.2 below;

(f) Other. Perform other acts authorized expressly or by implication under this Declaration and the other Condominium Documents including, without limitation, the right to construct improvements on the Units and Common Elements and grant irrevocable licenses to use certain portions of the Common Elements necessary or beneficial for the Live-Work Units as more fully described in Section 2.7 hereof; and

(g) Enforcement. Enforce the provisions of this Declaration and the other Condominium Documents by all legal means, including, without limitation, the expenditure of funds of the Association, the employment of legal counsel, the commencement of actions, and the establishment of a system of fines or penalties for the enforcement of this Declaration and the other Condominium Documents and a notice and hearing process in those instances in which fines or penalties are to be imposed.

8.2 Other Duties and Powers. The Association, acting through the Board and if required by this Declaration or by law or if deemed necessary or beneficial by the Board for the operation of the Association or enforcement of this Declaration, shall obtain, provide, and pay for any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, or insurance, or pay any taxes or assessments. If, however, any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, insurance, taxes, or assessments are specifically provided or apply to particular Units, the cost shall be specially assessed to the Owners of these Units.

8.3 Association Rules. By a majority vote of the Board, the Association, from time to time and subject to the provisions of this Declaration, may adopt, amend, and repeal rules and regulations for the Condominium. The Association Rules may restrict and govern the use of any area by any Owner or the Owner's

Permittees or the Owner's pets. The Association Rules may establish a system of fines and charges for violations of the Condominium Documents, which fines and charges shall be collected as assessments and become a lien on the Unit of the violating Unit Owner; however, the Association Rules may not discriminate among Owners. A copy of the Association Rules shall be available for inspection by the Members at reasonable times. The Association Rules shall not be interpreted in a manner inconsistent with this Declaration or the Articles or Bylaws, and, upon adoption, the Association Rules shall have the same force and effect as if they were set forth in full and were a part of this Declaration.

#### 8.4 Insurance.

(a) Liability Insurance. Prior to the first conveyance of a Unit to an Owner other than Declarant, comprehensive general liability insurance covering the Common Elements shall be purchased and obtained by the Board, or acquired by assignment from Declarant, promptly following the Board's election, and shall be maintained in force at all times. The premiums shall be paid out of the Association's funds. The insurance shall be carried with reputable companies authorized and qualified to do business in Arizona. The minimum amounts of coverage shall be \$2,000,000 for bodily injury and property damage on a combined single limit basis. The policy shall name as insureds the Owners, the Association (its directors, officers, employees, and agents acting in the scope of their employment), and the Declarant (its directors, officers, partners, employees, and agents acting in the scope of their employment) for so long as Declarant owns any Unit. This policy shall include, but need not be limited to, insurance against injury or damage occurring in or on the Common Elements.

(b) Hazard and Multi-Peril Insurance - Master Policy for Common Elements. A master or blanket hazard and multi-peril insurance policy shall be purchased or obtained by the Board or acquired by assignment from Declarant promptly following the construction of any Building or any permanent structure on the Common Elements. Once purchased, obtained, or acquired, this hazard insurance policy shall be maintained in force at all times by the Association and such policy will provide coverage only to the edge of the vertical stud wall to the lowest edge of any ceiling joist or rafter and the upper edge of the sub-flooring. Everything within the bounds of the Unofficial Document described above is the responsibility of the Owner of the Unit, including, but not limited to, drywall or plaster surfaces and anything attached therefore and all floor coverings. The hazard insurance policy will cover all exterior windows. The hazard insurance policy contemplated by this section 8.2(b) will not insure any personal property in a Unit. Personal property within a Unit must be insured by the Unit Owner, which insurance shall be the responsibility and risk of the Unit Owner. The premiums shall be paid out of the Association's funds at the common expense of the Owners. The hazard insurance policy shall be carried with reputable companies authorized and qualified to do business in the State of Arizona and shall insure against loss from fire and other hazards covered by the standard extended coverage endorsement and "all risk" endorsement to the hazard insurance policy for the full replacement cost of all of the Common Elements (excluding land, foundations, excavations, and other items that are usually excluded from insurance coverage), Limited Common Elements, and, if required by any Institutional Guarantor, the fixtures, equipment, and other personal property inside a Unit (whether or not part of the Common Elements). The hazard insurance policy shall be in an amount determined from time to time by the Board in its sole discretion. The hazard insurance policy shall name the Declarant (for so long as Declarant owns a Unit), Association, and any First Mortgagee of the insured permanent improvements on the Common Elements as insureds, as their respective interests may appear.

(c) Other Insurance. The Board may purchase (but is not obligated to purchase) additional insurance as the Board may determine to be advisable or necessary including, but not limited to, workmen's compensation insurance, boiler explosion insurance, demolition insurance to remove improvements that are not rebuilt, flood insurance, fidelity bonds, director and officer liability insurance, and insurance on personal property owned by the Association. All premiums for these types of insurance and bonds shall be paid out of the Association's funds. The Association may assess the Owners in advance for the estimated cost of these types of insurance. By virtue of owning a Unit subject to this Declaration, each Owner covenants and agrees with all other Owners and the Association that each Owner shall carry "all-risk" casualty insurance on the Units. Without limiting any other provision of the Declaration, it shall be each Owner's sole responsibility to secure comprehensive personal liability insurance, theft, fire, multi-peril, and other hazard insurance covering loss or damage to the Owner's personal property, furniture, fixtures, and any other insurance not carried by the Association that the Owner desires.

(d) General Provisions on Insurance. The Board of Directors of the Association is granted the authority to negotiate loss settlements with the appropriate insurance carriers covering insurance purchased and obtained by the Association pursuant to Section 8.2. Any two (2) Directors of the Association may sign a loss claim form and release form in connection with the settlement of a loss claim, and their signatures shall be binding on the Association and the Members. Any policy of insurance obtained by the Association may contain a deductible no higher than that permitted by an Institutional Guarantor. The deductible shall be paid by the party who would be responsible for the repair in the absence of insurance and, in the event multiple parties are responsible but without waiving any right to enforce joint and several liability, the deductible shall be allocated in relation to the amount each party's responsibility bears to the total loss, as determined by the Board. Where possible, each insurance policy maintained by the Association must require the insurer to notify the Association in writing at least ten (10) days before the cancellation or any substantial change to the Association's insurance.

(e) Nonliability of Declarant and Association. Notwithstanding the requirement of the Association to obtain insurance coverage as stated in this Declaration, neither the Declarant, nor its officers, directors, partners, or employees nor the Association, nor any director, officer, or agent of the Association shall be liable to any Owner or any other party if any risks or hazards are not covered by the insurance to be maintained by the Association or if the amount of insurance is not adequate, and it shall be the responsibility of each Owner to ascertain the coverage and protection afforded by the Association's insurance and to procure and pay for any additional insurance coverage and protection that the Owner may desire.

(f) Provisions Required. The comprehensive general liability insurance referred to in Section 8.2(a) and, if applicable, the hazard insurance policy referred to in Section 8.2(b) shall contain the following provisions (to the extent available at a reasonable cost):

(i) Any "other insurance" clause shall exclude insurance purchased by any Owners or First Mortgagees;

Unofficial Document

(ii) The coverage afforded by the policies shall be primary and shall not be brought into contribution or proration with any insurance that may be purchased by any Owners or First Mortgagees;

(iii) The act or omission of any one or more of the Owners or the Owner's Permittees shall not constitute grounds for avoiding liability on the policies and shall not be a condition to recovery under the policies;

(iv) A "severability of interest" endorsement shall be obtained that shall preclude the insurer from denying the claim based upon negligent acts or omissions of the Association or Owners;

(v) Any policy of property insurance that gives the carrier the right to elect to restore damage in lieu of a cash settlement must provide that this election is not exercisable without the prior written consent of the Association;

(vi) Each insurer shall waive its rights to subrogate under each policy against the Association (and its directors, officers, agents, and employees) and the Owner (and the Owner's Permittees);

(vii) A standard mortgagee clause shall be included and endorsed to provide that any proceeds shall be paid to the Association, for the use and benefit of First Mortgagees as their interest may appear, or endorsed to fully protect the interest of First Mortgagees and their successors and assigns;

(viii) Any insurance trust agreement shall be recognized; and



(ix) "Agreed Amount," "Construction Code," "Steam Boiler and Machinery," "Special Condominium," and "Inflation Guard" endorsements shall be obtained, when available.

(g) Other Governmental Requirements. Notwithstanding anything to the contrary contained in this Section 8.2, the Association shall maintain any other forms or types of insurance as may be required from time to time by any applicable guidelines issued by any Institutional Guarantor. Additionally, all insurance maintained by the Association must meet the rating requirements of any Institutional Guarantor.

## ARTICLE 9

### CONDEMNATION

9.1 Taking. If, at any time during the term of this Declaration, all or any part of the Condominium is taken or condemned by any public authority or sold or otherwise disposed of in lieu of or in advance of any taking (collectively referred to as "taking", "taken", or "condemned"), the provisions of this Article 9 shall apply.

9.2 Award. All compensation, damages, or other proceeds from the taking shall be payable to the Association. The compensation, damages, and other proceeds, less the amount of reasonable and necessary costs and expenses including, without limitation, attorney fees, appraisal fees, and court costs incurred by the Association in connection with the taking, are referred to as the "Award."

9.3 Total. In the event that the entire Condominium is taken or condemned, the Condominium shall terminate. The Award shall be apportioned among the Owners ratably according to their Fractional Interests; however, if a different standard is employed in the valuation used to measure the Award in the negotiation, judicial decree, or otherwise, the same standard shall be employed to determine the apportionment among the Owners to the extent it is relevant and applicable. On this basis, the Association, as soon as practical, shall determine the share of the Award to which each Owner is entitled. All shares shall be paid into a separate account and be disbursed as soon as practicable by check payable jointly to the Owners and their respective First Mortgagees.

Unofficial Document

#### 9.4 Partial.

(a) In the event that less than the entire Condominium is taken or condemned, the Condominium shall not terminate. Each Owner shall be entitled to a share of the Award to be determined in the following manner: (i) the Board shall allocate that portion of the Award attributable to the taking of or injury to a particular Unit and/or improvements an Owner made within his own Unit to the particular Unit involved; (ii) as soon as practical, the Board shall reasonably and in good faith allocate that portion of the Award attributable to taking of or injury to the Common Elements and apportion that amount among the Owners in accordance with their Fractional Interests in the Condominium; (iii) the Board shall allocate that portion of the Award attributable to severance damages among those Units that were not taken or condemned; and (iv) the remainder of the Award shall be apportioned as the Association determines to be equitable under the circumstances. If an allocation of the Award is already established by negotiation, judicial decree, or otherwise, the Association shall employ the same allocation to determine the apportionment among the Owners to the extent it is relevant and applicable. Distribution of apportioned proceeds shall be made by check payable jointly to the respective Owners and their respective First Mortgagees.

(b) Notwithstanding anything to the contrary, if any Unit is acquired by condemnation or a taking, or if part of a Unit is acquired by condemnation or a taking that leaves the Owner with a remnant that may not practically or lawfully be used for any purpose permitted by the Declaration, the Award must compensate the Owner for the Owner's Unit and its Fractional Interest in the Common Elements, regardless of whether any Common Elements are taken or condemned. Unless the judicial decree or negotiation provide otherwise, upon acquisition of the Unit (or a portion of a Unit that leaves a remnant that may not be practically or lawfully used for any purpose permitted by the Declaration), the Unit's Fractional Interest is automatically reallocated to the remaining Units in accordance with the formula set forth in Section 2.3. Any remnant of a Unit remaining after part of a Unit is taken becomes a Common Element.

(c) If part of the Common Elements is acquired by condemnation or a taking, the portion of the Award attributable to the Common Elements taken shall be paid to the Association for the benefit of the Unit Owners.

9.5 Effect. Without limiting Section 9.4, in the event a partial taking results in the taking of all of a Building or a part of a Building with the result that the remainder of the Building cannot reasonably be restored to an architectural whole, the Owners of the Units located in each applicable Building (regardless of whether all or any portion of the Owner's undivided Unit was taken) automatically shall cease to be members of the Association as of the time of the taking, which, for the purposes of this Article 9, shall be the date upon which possession is acquired by the condemnor or the date upon which title is conveyed to the condemnor, whichever occurs first. Thereafter, the Board shall reallocate the Fractional Interests of the remaining Owners in the Condominium pursuant to the formula described in Section 2.3 so that the total percentage of all remaining Units shall be one hundred percent (100%).

9.6 Reconstruction. Any reconstruction and repair necessitated by a partial taking shall be governed by the procedures specified in Article 10.

9.7 Separate Compensation. Nothing contained in this Article 9 shall restrict the rights of lessees, mortgagees, the Declarant, or any other person holding an interest in a Unit or its Common Elements from receiving separate compensation or a portion of the compensation payable, or both, pursuant to this Article 9 and A.R.S. § 33-1206 (as and if amended).

## ARTICLE 10

### CASUALTY DAMAGE

10.1 Attorney-in-Fact. The Owners irrevocably appoint the Board as their true and lawful agent and attorney-in-fact (in their name, place, and stead) for the purpose of dealing with the Condominium in the event of its damage or destruction including, but not limited to, the right to negotiate with any insurer and adjust any loss covered by the insurance required by this Declaration. Each Owner by becoming an Owner of a Unit shall automatically constitute appointment of the Board as its agent and attorney-in-fact for the purposes outlined in this Declaration.

10.2 Restoration. The Board shall have full and complete authorization, right, and power to make, execute, and deliver any contract, deed, or other instrument with respect to the interest of an Owner that may be necessary or appropriate to exercise the power granted to the Board in this Declaration. Repair and reconstruction of the improvements as used in this Article 10 means restoring the Condominium to substantially the same condition that existed prior to the damage and with each Unit and the Common Elements having substantially the same vertical and horizontal boundaries as before. The proceeds of any insurance collected shall be used by the Board for the purpose of repair and reconstruction unless: (i) the Condominium is terminated; (ii) repair or replacement would be illegal under any state or local health or safety statute or ordinance; or (iii) eighty percent (80%) of the Owners (without regard to any weighted voting of the Declarant), including every Owner of a Unit that will not be rebuilt, vote not to rebuild (the foregoing are collectively called "Events of Non-Repair"). If the damaged property is to be repaired and restored, no Unit Owner or lienholder is entitled to receive payment of any portion of the proceeds of any insurance unless there is a surplus of proceeds after the damaged property has been completely repaired or restored.

10.3 Declaration. For the purposes of this Article 10, the following terms shall have the following meanings:

(a) "Casualty Event" means any event causing damage or destruction of all or part of the Condominium.

(b) "Total Destruction" means damage or destruction to the Condominium that renders eighty percent (80%) or more of the Units uninhabitable in the judgment of the Board.

(c) "Partial Damage" means any damage or destruction that is less than Total Destruction.

10.4 Costs. As soon as practicable after a Casualty Event, the Board shall obtain estimates that it deems reliable and complete of the costs of repair or reconstruction of the Condominium or that portion of the Condominium that was damaged or destroyed.

10.5 Partial Damage. Unless there occurs an Event of Non-Repair, any Partial Damage to the Condominium shall be repaired as promptly as possible by the Board as attorney-in-fact for the Owner or Owners, whether insurance proceeds are sufficient to cover the partial damage or not, and any cost of the repair or reconstruction in excess of insurance proceeds available and reserves, if any, shall be assessed as a Common Expense. If the Unit Owners vote not to rebuild any Unit pursuant to Section 10.2(iii), the unrepaired Unit's Fractional Interest shall be automatically reallocated to the remaining Units.

10.6 Total Destruction. In the event of Total Destruction, the following provisions shall govern:

(a) Unless an Event of Non-Repair occurs, the repair and reconstruction promptly shall be performed by the Board as attorney-in-fact for the Owners.

(b) In the event that insurance proceeds (as estimated by the Board) are insufficient to cover the cost of repair and reconstruction in the judgment of the Board and there has not previously occurred an Event of Non-Repair, the Board shall advise all Owners of this estimate and shall give notice of a special meeting of Owners to be held as soon as reasonably possible after the date of the Casualty Event for the purpose of determining whether or not the repair or reconstruction should be performed. The Condominium shall be reconstructed unless at least eighty percent (80%) of the Owners (without regard to any weighted voting of the Declarant) agree in writing to sell the entire remaining Condominium as provided below. Any necessary assessment made in connection with the repair and reconstruction shall be charged as an assessment to each Owner during the course of reconstruction at the times deemed necessary or desirable by the Board.

(c) If at least eighty percent (80%) of the Owners (without regard to any weighted voting of the Declarant) agree in writing, the Condominium <sup>Unofficial Document</sup> be sold by the Board, as attorney-in-fact for each of the Owners, free and clear of the provisions contained in this Declaration and the other Condominium Documents. In this case, the insurance proceeds payable as a result of the Casualty Event and the sale proceeds shall be apportioned among the Owners ratably according to their Fractional Interests, and all proceeds shall be paid into separate accounts, each account representing one Unit. Each account shall be in the name of the Association and shall be further identified by the Unit designation and the name of the Owner or Owners. As attorney-in-fact, the Board shall use and disburse the total amount of each separate account without contribution from one account to another as follows: (i) for payment of taxes and special assessment liens in favor of any assessing entity and customary expenses of sale; (ii) for payment of the entire balance of the lien of any First Mortgage encumbering the Unit; (iii) for payment of unpaid assessments and all costs, expenses and fees incurred by the Association and owed by the Owner; (iv) for payment of valid junior liens and encumbrances in the order and to the extent of their priority; and (v) the balance remaining, if any, shall be paid to the Owner.

10.7 Insurance Trustee; Proceeds.

(a) Except for loss or damage representing less than one percent (1%) of the value of the Condominium, as estimated by the Board, all insurance proceeds payable on account of damage or loss to the Condominium shall be adjusted with the Association and shall be paid to any bank in Arizona that is selected as a trustee by the Board as the "Insurance Trustee". The Insurance Trustee shall not be liable for payment of premiums, for the renewal or the sufficiency of policies, or for the failure to collect any insurance proceeds. Insurance proceeds payable on account of loss or damage that equals or is less than one percent (1%) of the value of the Condominium shall be payable to and used by the Association to repair the loss or damage in accordance with the provisions of this Article 10.

(b) The duty of the Insurance Trustee shall be to receive the insurance proceeds that are paid, and to hold them in trust for the benefit of the Owners and the First Mortgagees as their interests may appear as follows: (i) unless there occurs an Event of Non-Repair, an undivided share of the proceeds on account of damage to the Common Elements shall be allocated to the Owners according to their Fractional

Interests; (ii) proceeds, if any, on account of damage to Units shall be held for the Owner of damaged Units in proportion to the cost of repairing the damage suffered by each Owner, as determined by the Board. In the event a mortgagee endorsement has been issued as to a Unit, the share of the Owner shall be held in trust for the First Mortgagee and the Owner as their interests may appear.

10.8 Manner of Disbursement. The proceeds from assessments and insurance received by the Insurance Trustee shall be disbursed in the following manner.

(a) The portion of the insurance proceeds, if any, representing damage, the reconstruction and repair of which is the responsibility of the Owner, shall be paid by the Insurance Trustee to the Owner or, if there is a mortgagee endorsement, then to the Owner and the First Mortgagee jointly, who may use such proceeds as they may determine; provided, however, to the extent that any damage to a Unit affects in any way the Common Elements or any other Owner's Unit, the proceeds must be used for reconstruction and repair of such damage.

(b) The portion of insurance proceeds representing damage, the reconstruction and repair of which is the responsibility of Owner, shall be disbursed in payment of the costs of the repair and reconstruction in the manner required by the Board and upon approval of an architect qualified to practice in Arizona and employed by the Board to supervise the work.

(c) The Insurance Trustee shall not be required to determine whether a disbursement is to be made, the identity of the payee, or the amount to be paid, but may rely upon a certificate of the Board or of such architect acting for and on behalf of the Association stating all information.

10.9 Information. All repair and reconstruction work shall be done by licensed contractors of good reputation. Payment bonds, performance bonds, and statutory lien bonds may be required in the discretion of the Board, but all work shall be done under written contracts.

10.10 Termination. If it is determined <sup>Unofficial Document</sup> of the Buildings shall be repaired or reconstructed because of damage or destruction, this Condominium shall be terminated, and all of the Owners and all of the mortgagees and lienholders of record of all of the Units appoint the Board, and each of the members of the Board, as their attorney-in-fact for the purpose of executing, acknowledging, and recording a declaration withdrawing the Condominium from the Condominium.

10.11 Non-Repair. If portions of the Condominium are not repaired or replaced, the following shall apply:

(a) The insurance proceeds attributable to the damaged Common Elements in proportion to their undivided percentage interests shall be used to restore the damaged area to a condition compatible with the remainder of the Condominium;

(b) The insurance proceeds attributable to Units and undivided percentage interests that are not rebuilt shall be distributed in proration to their undivided percentage interests to the Owners of those Units or to lienholders, as their respective interests may appear; and

(c) The remainder of the insurance proceeds shall be distributed to all of the Owners or lienholders as their interests may appear in proration to the Common Elements interest of all the Units.

## ARTICLE 11

### GENERAL PROVISIONS

11.1 Enforcement. The Association, in the first instance, or any Owner, should the Association fail to act within a reasonable time, shall have the right to enforce by any proceeding at law or in equity all covenants and restrictions now or hereafter imposed by the provisions of this Declaration, or the other Condominium Documents. Subject to the limitations established in Article XII below with respect to the negotiation, mediation, or arbitration of any disputes, the right to enforce all covenants and restrictions includes the right to bring an action at law, in

equity, or both. Failure of the Association or any Owner to enforce any covenant and reservation in this Declaration or in the other Condominium Documents shall not be deemed a waiver of the right to do so thereafter. No act or omission by Declarant shall act as a waiver or defense to the enforcement of this Declaration by the Association or any Owner. Deeds of conveyance of the Condominium, or any part of the Condominium, may incorporate the covenants and restrictions by reference to this Declaration; however, each and every covenant and restriction shall be valid and binding upon the respective grantees whether or not any specific or general reference is made in the deed or conveying instrument. Violators of any one or more of the covenants and restrictions may be restrained by any court of competent jurisdiction and damages awarded against the violators. The remedies established in this Declaration may be exercised jointly, severally, cumulatively, successively, and in any order. A suit to recover a money judgment for unpaid Assessments, interest, rent, fines, penalties, costs, attorney fees, or an other amount due, to obtain specific performance, or to obtain injunctive relief may be maintained without the foreclosing, waiving, releasing, or satisfying the liens created under this Declaration. Each Owner of a Unit, by accepting a deed for that Unit (whether or not expressed in the deed or conveying instrument) or otherwise becoming an "Owner," specifically acknowledges that any award of monetary damages made in favor of the Owner against the Association for the Association's failure to comply with, or accurately comply with, the provisions of A.R.S. § 33-1806 will be satisfied from and limited solely to: (i) the proceeds available under any policy of insurance maintained by the Association for errors or omissions of this type; or (ii) the amount available in any liability reserve account that may be established by the Association and funded through specific liability reserves collected as part of the annual assessments.

#### 11.2 Approval of Litigation.

(a) Limits on Initiation of Litigation. Except for any legal proceedings initiated or joined by the Association either to: (i) enforce the use restrictions contained in this Declaration through injunctive relief or otherwise; (ii) enforce the Association Rules or the Architectural Committee Rules through injunctive relief or otherwise; (iii) collect any unpaid Assessments, enforce or foreclose any lien in favor of the Association, or determine the priority of any lien for Assessments; (iv) make a claim against a vendor of the Association or supplier of goods and services to the Association; (v) defend claims filed against the Association (and to assert counterclaims or <sup>Unofficial Document</sup> is in connection with a defense); or (vi) make a claim for a breach of fiduciary duty by any one or more of the Board of Directors or officers of the Association, the Association will not incur any expenses (including, without limitation, attorney fees and costs) to initiate legal proceedings or to join as a plaintiff in legal proceedings without the prior approval of the Members.

(b) Member Approval of Association Litigation. The Members' approval to initiate legal proceedings or join as a plaintiff in legal proceedings must be given at any duly called regular or special meeting of the Members by an affirmative vote (in person or by proxy) of more than 50% of the total number of eligible votes of the Members, excluding the vote of any Owner who would be a defendant in the proceedings.

(c) Prior Approval Disclosures. Prior to any vote of the Members, the Association will provide full disclosure of the nature of the claim, the name and professional background of the attorney proposed to be retained by the Association to pursue the matter, a description of the relationship (if any) between the attorney and the Board of Directors (or any member of the Board of Directors) or the property management company, a description of the fee arrangement with the attorney, an estimate of the fees and costs necessary to pursue the claim, and the estimated time necessary to complete the proceedings.

(d) Litigation Fund. The costs of any legal proceedings initiated or joined by the Association that are not included in the above exceptions (i.e., Section 11.2(a)(i) through (vi) above) must be financed by the Association with monies that are specifically collected for that purpose, and the Association will not borrow money, use reserve funds, use general funds, or use monies collected for other Association obligations (such as working capital requirements) to initiate or join any legal proceeding.

(e) Notification to Prospective Purchasers. Each Owner must notify all prospective purchasers of the Owner's Unit of all legal proceedings initiated or joined by the Association for which a special litigation fund has been established and must provide all prospective purchasers with a copy of any written notice received by the Owner from the Association regarding the litigation.

(f) Exceptions for Certain Board Actions. These limitations on the commencement of litigation do not preclude the Board from incurring expenses for legal advice in the normal course of operating the Association to, among other things: (i) enforce the Condominium Documents including the imposition of fines; (ii) comply with the Condominium Documents or any statutes or regulations related to the operation of the Association, Common Area, or the Areas of Association Responsibility; (iii) amend the Condominium Documents in a manner and for the purposes described in this Declaration; (iv) grant easements or convey Common Area in a manner and for purposes described in this Declaration; or (v) perform the obligations of the Association as provided in this Declaration, including, but not limited to, the collection of assessments, fines, penalties, or other amounts due under the Condominium Documents.

(g) Legal Proceedings. As used in this Section 11.2, the term "legal proceedings" includes administration, arbitration, and judicial actions including any matters covered by the alternative dispute resolution procedures described in Article XII below.

11.3 Severability. Invalidation of any one or any portion of these covenants and restrictions by judgment or court order shall not affect the validity of any other provisions of the Condominium Documents, which shall remain in full force and effect.

11.4 Term. The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years for so long as the Units continue to be used for Single Family Residential Uses or unless terminated under Article 14.

11.5 Amendment.

(a) Except in cases of amendments that may be executed by a Declarant in the exercise of its Development Rights or under § 33-1220 of the Act, by the Association under § 33-1206 or § 33-1216(D) of the Act, or by certain Unit Owners under § 33-1218(B), § 33-1222, § 33-1223, or § 33-1228(B) of the Condominium during the first twenty (20) <sup>Unofficial Document</sup> years, this Declaration amendments shall be made only by a recorded instrument executed on behalf of the Association by an officer of the Association designated for that purpose or, in the absence of designation, by the President of the Association, and any amendment shall be deemed adopted if approved at a duly called regular or special meeting by the affirmative vote (in person or by proxy) of seventy-five (75%) or more of the total number of eligible votes in the Association. After the initial twenty (20) year period, amendments shall be made by a recorded instrument approved at a duly called regular or special meeting by the affirmative vote (in person or by proxy) of sixty-seven percent (67%) or more of the total number of eligible votes in the Association, and the amendment shall be executed on behalf of the Association by an officer of the Association designated for the purpose or, in the absence of designation, by the President of the Association. In addition to and notwithstanding the foregoing, any amendment to the uniform rate of assessments established under Section 6.3 above shall require the prior written approval of sixty-seven percent (67%) or more of the holders of First Mortgages on the Units.

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

(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.

(d) During the period of Declarant Control, the Declarant shall have the right to amend the Declaration, including the Plat, to: (i) to exercise any Development Right or Special Declarant Right; or (ii) comply with the Act or any other applicable law if the amendment does not adversely affect the rights of any Unit Owner; or (iii) correct any error or inconsistency in the Declaration if the amendment does not adversely affect the rights of any Unit Owner; or (iv) comply with the rules or guidelines in effect from time to time of any governmental or quasi-governmental entity or federal corporation guaranteeing or

insuring mortgage loans or governing transactions involving mortgage instruments, including, without limitation, the Veterans Administration, the Federal Housing Administration, the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation.

(e) Notwithstanding anything contained herein to the contrary, following the expiration of the period of Declarant Control, none of the provisions of Article 4 that govern the use or operation of the Live-Work Units may be amended or altered without the unanimous consent of the Owners of the Live-Work Units.

11.6 Government Financing. If the financing of any Institutional Guarantor is applicable to the Condominium, any amendment to the Declaration made by the Declarant pursuant to Section 11.5 shall contain either: (i) the approval of the Institutional Guarantor; or (ii) an affidavit that the Institutional Guarantor's approval has been requested in writing and that it has not either approved or disapproved the amendment or annexation within thirty (30) days of Declarant's request.

11.7 Construction. This Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan and scheme for the development of a residential and commercial condominium project consisting of Condominium Units and Common Elements with maintenance as provided in this Declaration and the other Condominium Documents. Section and Article headings have been inserted for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction. All terms and words used in this Declaration (including any defined terms), regardless of the number and gender in which they are used, shall be deemed and construed to include any other number and any other gender as the context or sense of this Declaration may require, with the same effect as if such number and words had been fully and properly written in the required number and gender. Whenever the words and symbol "and/or" are used in this Declaration, it is intended, if consistent with the context, that this Declaration be interpreted and the sentence, phrase, or other part be construed in both its conjunctive and disjunctive sense, and as having been written twice, once with the word "and" inserted, and once with the word "or" inserted, in the place of words and symbol "and/or". Any reference to this Declaration shall automatically be deemed to include all amendments to this Declaration.

Unofficial Document

11.8 Notices. Except as may be required under the rules applicable to any Institutional Guarantors, any notice permitted or required to be delivered may be delivered either personally, by mail, or by express delivery service. If delivery is made by mail, it shall be deemed to have been delivered and received two (2) business days after a copy of the notice has been deposited in the United States mail, postage prepaid, addressed to each person at the address given by such person to the Association for the purpose of service of such notice. If delivery is made by express delivery service, it shall be deemed to have been delivered and received on the next business day after a copy of the notice has been deposited with an "overnight" or "same-day" delivery service, properly addressed. This address may be changed from time to time by notice in writing received by the Association. If an Owner fails to provide the Association with an address for purposes of receiving notices, the address of any Unit owned by the Owner may be used in giving the notice.

11.9 Management Agreements. Any management agreement entered into by the Association or Declarant may be made with an affiliate of Declarant or a third-party manager and, in any event, shall be terminable by the Association with or without cause and without penalty upon thirty (30) days written notice. The term of any management agreement entered into by the Association or Declarant may not exceed one year and may be renewable only by affirmative agreement of the parties for successive periods of one year or less. Any property manager for the Condominium or the Association will be deemed to have accepted these limitations, and no contrary provision of any management agreement will be enforceable.

11.10 No Partition. There shall be no partition of any Unit, nor shall Declarant or any Owner or other person acquiring any interest in any Unit, or any part of the Unit, seek any partition.

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

governmental entity) in order for any other corporation formed or incorporated by the Declarant to use a corporate name that is the same or deceptively similar to the name of the Association.

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

11.13 Construction. In the event of any discrepancies, inconsistencies, or conflicts between the provisions of this Declaration and the Articles, Bylaws, Plat, or Association Rules, the provisions of this Declaration shall prevail in all instances.

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

11.15 Waiver. The waiver of or failure to enforce any breach or violation of the Condominium Documents shall not be deemed a waiver or abandonment of any provision of the Condominium Documents or a waiver of the right to enforce any subsequent breach or violation of the Condominium Documents. The foregoing shall apply regardless of whether any person affected by the Condominium Documents (or having the right to enforce the Condominium Documents) has or had knowledge of the breach or violation.

11.16 Attorney Fees. Without limiting the power and authority of the Association to incur and assess attorney fees as part of the creation or enforcement of any assessment, in the event an action is instituted to enforce any of the provisions contained in the Condominium Documents, the party prevailing in any action shall be entitled to recover from the other party all reasonable attorneys' fees and court costs. In the event the Association is the prevailing party in the action, the amount of attorney fees and court costs may be deemed all or part of a special assessment against the Unit and Owner involved in Unofficial Document

11.17 Notice Regarding Ingress and Egress. The Condominium shall have access to Roosevelt Street, Portland Street and 7<sup>th</sup> Street, which streets abut the Condominium..

## ARTICLE 12

### CLAIMS AND DISPUTE RESOLUTION/LEGAL ACTIONS

12.1 Dispute Resolution Agreement. All Bound ADR Parties, as identified and defined below, agree to encourage the amicable resolution of claims, grievances, controversies, disagreements, or disputes involving the Condominium or the Condominium Documents in order to avoid or limit wherever possible the emotional and financial costs of litigation. Accordingly, each Bound ADR Party covenants and agrees that all Covered Claims, as defined below, between one or more Bound ADR Party must be resolved using the alternative dispute resolution procedures set forth below in this Declaration and the Bylaws in lieu of filing a lawsuit or initiating administrative proceedings. As used in the Condominium Documents, the term "Bound ADR Parties" means the Association, Board, Declarant, any affiliate of Declarant, any property manager or association manager for the Condominium, all Owners, any tenant of an Owner, any family member residing in the Owner's Unit, and any person not subject to this Declaration who voluntarily agrees to be subject to the dispute resolution procedures described below. Unless they otherwise agree, Mortgagees and Institutional Guarantors are not Bound ADR Parties. As used in the Condominium Documents, the term "Covered Claims" means all claims, grievances, controversies, disagreements, or disputes that arise in whole or part out of: (i) the interpretation, application, or enforcement of the Declaration or the other Condominium Documents; (ii) any alleged violation of the Condominium Documents by any of the Bound ADR Parties; (iii) the authority of the Association or the Board to take or not take any action under the Condominium Documents; (iv) the failure of the Declarant or the Association or the Board to properly conduct elections, give adequate notice of meetings, properly conduct meetings, allow inspection of books and records, or establish adequate warranty and reserve funds; (v) the performance or non-performance by any of the Bound ADR Parties of any of their respective obligations or responsibilities under the Condominium Documents to or on behalf of any other Bound ADR Party; (vi) the design or construction of any of the Units within the Condominium (other



than matters of aesthetic judgment by the Architectural Committee or the Board, all of which are not subject to further review under the alternative dispute resolution procedures or legal action); or (vii) any alleged violation or defect with respect to the maintenance or construction of the Common Area or any improvements or landscaping on the Common Area. The term "Covered Claims", however, specifically does not include any Exempt Claims of the type described below. The term "Alleged Defects" means only those Covered Claims described in subsections (vi) and (vii) above.

12.2 Exempt Claims. The following claims, grievances, controversies, disagreements, and disputes (each an "Exempt Claim" and, collectively, the "Exempt Claims") are exempt from the alternative dispute resolution provisions described in this Declaration:

(a) Collection of Assessments. Any action taken by the Association against any Bound ADR Party to enforce the collection of any Assessments, to enforce or foreclose any lien in favor of the Association, or to determine the priority of any lien for Assessments;

(b) Specific Actions. Any claim, grievance, controversy, disagreement, or dispute that primarily involves:

- (i) Title to any Unit or Common Area;
- (ii) A challenge to a property taxation or condemnation proceeding;
- (iii) The eviction of a tenant from a Unit;
- (iv) The breach of fiduciary duty by any one or more of the Board of Directors or officers of the Association;
- (v) The rights of any Mortgagee or Institutional Guarantor;
- (vi) An employment matter between the Association and any employee of the Association; or
- (vii) The invalidation of any provision of the Declaration or any of the covenants and restrictions contained in the Condominium Documents.

Unofficial Document

(c) Injunctive Relief. Any suit by the Association to obtain a temporary or permanent restraining order or equivalent emergency equitable relief (together with any other ancillary relief as the court may deem necessary) in order to maintain the then-current status of the Condominium and preserve the Association's ability to enforce the architectural control provisions of the Condominium Documents and the use restrictions contained in this Declaration;

(d) Owner Actions. Any suit solely between Owners (that does not include as a party the Association, Declarant) seeking redress on any Covered Claim that would constitute a cause of action under federal law or the laws of the State of Arizona regardless of the existence of the Condominium Documents;

(e) Separate Written Contracts. Any action arising out of any separate written contract between Owners, between the Declarant and any Owner, or between Declarant and that would constitute a cause of action under the laws of the State of Arizona regardless of the existence of the Condominium Documents; and

(f) Not Bound Parties. Any suit in which less than all parties are Bound ADR Parties (unless the parties that are not Bound ADR Parties voluntarily agree to be subject to the alternative dispute resolution procedures established in this Declaration and the Bylaws).

Any Bound ADR Party having an Exempt Claim may submit it to the alternative dispute resolution procedures established in this Declaration and the Bylaws, but there is no obligation to do so and no obligation of any other Bound ADR Party to agree to have the Exempt Claim submitted to the alternative dispute resolution

procedures. The submission of an Exempt Claim involving the Association or Declarant to the alternative dispute resolution procedures below requires the approval of the Association or Declarant, as applicable.

12.3 Mandatory Resolution Procedures. All Covered Claims must be resolved using the following procedures:

(a) Notice. Any Bound ADR Party having a Covered Claim (each a "Claimant") against any one or more Bound ADR Party (each a "Respondent") must notify each Respondent in writing of the Covered Claim (the "Covered Claim Notice"), stating plainly and concisely:

(i) The nature of the claim, including date, time, location, persons involved, and Respondent's role in the Covered Claim;

(ii) The basis of the Covered Claim (i.e., the provisions of the Condominium Documents or other authority out of which the Covered Claim arises);

(iii) The resolution or relief sought by Claimant against Respondent; and

(iv) The agreement of Claimant to meet personally with Respondent at a mutually agreeable time and place to discuss ways to resolve the Covered Claim.

If the Respondent to the Covered Claim includes the Declarant or its officers, directors, incorporators, members, contractors, subcontractors, or employees, Declarant will be given a period of fifteen (15) days after receipt of the Covered Claim Notice to enter the Condominium and inspect, test, and, perhaps, repair the alleged violation or defect in the sole discretion of Declarant. This right to inspect and test is irrevocable and may not be waived or otherwise terminated except by a written instrument signed by Declarant.

(b) Conciliation and Negotiation.

(i) Each Claimant and Respondent (collectively, the "Claim Parties" and, singularly, a "Claim Party") must make reasonable efforts to meet personally and agree to confer for the purpose of resolving the Covered Claim by good faith and confidential negotiations.

(ii) Upon receipt of a written request from any of the Claim Parties, accompanied by a copy of the Covered Claim Notice, the Board may appoint a representative to assist the Claim Parties in resolving the dispute by negotiation if, in its discretion, the Board believes its efforts will be beneficial to the Claim Parties or to the welfare of the Condominium.

(c) Mediation.

(i) If the Claim Parties do not resolve the Covered Claim through negotiation within ten (10) days of the date of the Covered Claim Notice (or within any other period as may be agreed upon by the Claim Parties) ("Termination of Negotiations"), Claimant will have thirty (30) additional days within which to submit the Covered Claim to mediation by an independent mediation service designated by the Association or, in absence of a mediation service designated by the Association or in the case of a reasonable objection by Claimant, any dispute resolution center or other independent agency providing similar services in the Maricopa County, Arizona area upon which the Claim Parties may mutually agree.

(ii) If Claimant does not submit on a timely basis the Covered Claim to mediation within thirty (30) days after Termination of Negotiations, Claimant will be deemed to have waived the Covered Claim, and Respondent will be released and discharged from any and all liability to Claimant arising out of the Covered Claim; however, Claimant's failure to submit the Covered Claim for mediation will not release or discharge Respondent from any liability to any person that is not a Claim Party to the foregoing proceedings.

(iii) Within ten (10) days of the selection of the mediator, each of the Claim Parties will submit to the mediator and each other a brief memorandum setting forth its position with

regard to the issues to be resolved. The mediator will have the right to schedule a pre-mediation conference, and all Claim Parties must attend unless otherwise agreed. The mediation will commence within ten (10) days following submittal of the memoranda to the mediator and will conclude within fifteen (15) days from the commencement of the mediation unless the Claim Parties mutually agree to extend the mediation period. The mediation will be held in Maricopa County or any other place that is mutually acceptable to the Claim Parties.

(iv) The mediator has discretion to conduct the mediation in the manner in which the mediator believes is most appropriate for reaching a settlement of the Covered Claim. The mediator is authorized to conduct joint and separate meetings with the Claim Parties and to make oral and written recommendations for settlement. Whenever necessary, the mediator also may obtain expert advice concerning technical aspects of the dispute, so long as the Claim Parties agree to obtain and assume the expenses of obtaining the expert advice. The mediator does not have the authority to impose a settlement.

(v) The expenses of witnesses will be paid by the Claim Party producing the witnesses. All other expenses of the mediation, including, but not limited to, the fees and costs charged by the mediator and the expenses of any witnesses or the cost of any proof or expert advice produced at the direct request of the mediator, will be borne equally by the Claim Parties unless agreed to otherwise. Each Claim Party will bear their own attorney fees and costs in connection with the mediation.

(vi) If the Claim Parties do not settle the Covered Claim within thirty (30) days after submission of the matter to the mediation process, or within any period of time as determined reasonable or appropriate by the mediator and the Claim Parties, the mediator will issue a notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation notice must set forth when and where the Claim Parties met, the nature of the Claim Parties' impasse, and the date that the mediation was terminated. At the option of the Claim Parties, the Termination of Media<sup>Unofficial Document</sup> may establish, as to matters or items that have been agreed to by the Claim Parties, any undisputed factual findings or agreed resolutions.

(vii) Within five (5) days of the mediator's issuance of the Termination of Mediation, each of the Claim Parties must make a written offer of settlement in an effort to resolve the Covered Claim, the Claimant will make a final written settlement demand ("Settlement Demand") to the Respondent, and the Respondent will make a final written settlement offer ("Settlement Offer") to the Claimant. If the Claimant fails to make a Settlement Demand, Claimant's original Covered Claim Notice will constitute the Settlement Demand. If the Respondent fails to make a Settlement Offer, Respondent will be deemed to have made a "zero", "take nothing", or "do nothing" Settlement Offer.

(viii) All mediation discussions are privileged and confidential in the same manner as described in A.R.S. § 12-2238. Other than witnesses, persons who are not Claim Parties are not allowed to attend the mediation conference without the consent of all Claim Parties.

(d) Final and Binding Arbitration. If the Claim Parties do not agree in writing to accept either the Settlement Demand or the Settlement Offer or otherwise fail to resolve the Covered Claim within fifteen (15) days of the Termination of Mediation, the Claimant will have thirty (30) additional days to submit the Covered Claim to arbitration in accordance with the Arbitration Rules described in the Bylaws. If the Claimant fails to submit on a timely basis the Covered Claim to arbitration, the Covered Claim will be deemed waived, and Respondent will be released and discharged from any and all liability to Claimant arising out of the Covered Claim; however, Claimant's failure to submit the Covered Claim for arbitration will not release or discharge Respondent from any liability to any person that is not a Claim Party to the foregoing proceedings. Except as provided below, an arbitration award issued by the arbitrator (the "Arbitration Award") will be final, binding, and unappealable, and a judgment may be entered upon the Arbitration Award in any court of competent jurisdiction to the fullest extent permitted under the laws of the State of Arizona.

(e) Limited Right of Appeal. An Arbitration Award may be: (i) vacated by a court (or a court may decline to confirm an award and enter judgment on the award) only in those cases described in A.R.S. § 12-1512.A.1 through A.4; or (ii) modified or corrected by a court only in those cases described in A.R.S. § 12-1513.A.

(f) Limitation on Arbitration Award. An arbitrator of a Covered Claim will have no power to grant any relief that cannot be granted by a court, and any monetary award made by the arbitrator will be for actual and compensatory damages only and not exemplary, punitive, or consequential damages.

#### 12.4 Allocation of Costs of Resolving Claims.

(a) Costs for Negotiation and Mediation. Each Claim Party will bear its own costs incurred prior to and during the negotiation and mediation proceedings described in subsections 7.11(a), (b), and (c) above, including the fees of its attorney or other representative. Each Claim Party will share equally all costs of the mediator and, if and to the extent required, will pay this respective share of the costs in advance of the mediation as a condition to their continuation of the prosecution or defense of the Covered Claim.

(b) Costs for Arbitration. Each Claim Party will bear its own costs (including the fees of its attorney or other representative) incurred after the Termination of Mediation and will share equally in the costs of conducting the arbitration proceeding (collectively, "Post Mediation Costs"), except as otherwise provided below. If, and to the extent required, each Claim Party will pay their respective share of the costs in advance of the arbitration as a condition to their continuation of the prosecution or defense of the Covered Claim.

(c) Association Advance. If any Owner that is a Claim Party refuses to pay in advance the cost of mediation or arbitration in any Covered Claim involving the Association, the Association may advance the cost and the amount so advanced will be deemed to be an assessment against the applicable Owner and the Owner's Unit.

Unofficial Document

(d) Award of Costs. If the arbitration panel enters any Arbitration Award that is equal to or more favorable to Claimant than Claimant's Settlement Demand, Claimant's Post Mediation Costs will be added to the Arbitration Award, and all Post Mediation Costs will be borne equally by all Respondents. If the arbitration panel enters any Arbitration Award that is equal to or less favorable to Claimant than Respondent's Settlement Offer to that Claimant, Respondent's Post Mediation Costs will be subtracted from the Arbitration Award, and all Post Mediation Costs will be borne by all the Claimants. The arbitration panel will be the sole judge as to whether or not the Arbitration Award is more or less favorable than the Settlement Demand or Settlement Offer, as applicable.

12.5 Enforcement of Resolution. This agreement of the Bound ADR Parties to negotiate, mediate, and arbitrate all Covered Claims is specifically enforceable under the applicable arbitration laws of the State of Arizona. After resolution of any Covered Claim through negotiation, mediation, or arbitration in accordance with the provisions outlined above, if any Bound ADR Party fails to abide by the terms of any agreement or Arbitration Award, any other Bound ADR Party may file suit or initiate administrative proceedings to enforce the agreement or arbitration award without the need to again comply with the procedures set forth above. In this case, the Bound ADR Party taking action to enforce the agreement or Arbitration Award is entitled to recover from the non-complying Bound ADR Party (or if more than one non-complying Bound ADR Party, from all non-complying Bound ADR Parties pro rata) all costs incurred in enforcing the agreement or Arbitration Award, including, with limitation, attorney fees, and court costs.

12.6 Alleged Defects. If any Owner or the Association desires or intends to bring a claim of any sort against the Declarant or its affiliates or contractors for an Alleged Defect, the following provisions will apply to provide full and fair notice of the existence of the Alleged Defect and an opportunity to repair or correct the Alleged Defect without costly and time-consuming litigation.

(a) Notice of Alleged Defect. If any Owner or the Association discovers an Alleged Defect, the discovering party (referred to as a "Defect Claimant") will give written notice to the Declarant of the Alleged Defect and, if known, the repair or remedy sought by the Defect Claimant.

(b) Right to Enter. Within a reasonable time after the receipt by Declarant of written notice of the Alleged Defect (or Declarant's independent discovery of a possible Alleged Defect), Declarant will have the right to enter the Condominium and any affected Units or Common Area to inspect, test, and, if deemed necessary or advisable by the Declarant in its sole discretion, cause the repair or correction of the Alleged Defect. All tests, inspections, and applicable repairs may be made by Declarant or its agents or independent contractors (including contractors and subcontractors) but can be commenced only after reasonable written notice by the Declarant to the Defect Claimant and must be made only during normal business hours.

(c) Declarant Discretion. In performing the tests, inspections, or repairs, as applicable, Declarant will be entitled to utilize methods or take actions that it deems appropriate or necessary, and Declarant's sole obligation with respect to the Defect Claimant will be to restore the affected area as close as reasonably possible to its condition prior to the testings, investigations, or repairs.

(d) No Extension of Warranties. The existence of this right to notice and an opportunity to inspect and/or cure will not be deemed to impose any obligation on the Declarant to test, inspect, or repair any Alleged Defect or to establish or extend any applicable warranty of any builder, developer, or seller (including Declarant) that may be applicable to the Unit or Common Area. Notwithstanding Section 12.5 below, the provisions of this Section 12.6 may not be modified, amended, waived, or terminated in any manner during any period of time that Declarant or its affiliates or contractors may remain liable or responsible for the Alleged Defect or any resulting injury or damage from the Alleged Defect, without the prior and express written consent of Declarant given in a recorded instrument.

12.7 Annual Inspection. Declarant shall retain West Coast Properties, LLC, or such other independent third-party inspection company acceptable to Declarant ("Inspector") to perform an annual inspection of each Building of the Condominium on an annual basis during the first two (2) years after the City of Phoenix has issued a certificate of occupancy with respect to each Building. After Declarant, at Declarant's sole cost and expense, obtains the first two (2) annual reports, the Association shall retain the Inspector to prepare an annual report for each Building for no less than the next eight (8) years. <sup>Unofficial Document</sup> annual inspection of each Building will result in the annual report containing a written summary specifying the condition of each Building and any defects or deficiencies discovered in any Building. Declarant shall provide a written copy of the first two (2) annual reports to the Association. Thereafter, the Association shall provide written copies of each annual report to the Declarant for a period no less than eight (8) additional years. If any annual report shows a defect or deficiency in a Building, Declarant, at Declarant's sole option, may enter that Building to cause the repair or correction of the defect or deficiency.

12.8 Amendments to Article XII. The alternative dispute resolution procedures established in Article XII of this Declaration may not be modified, amended, terminated, or waived in any manner without Declarant's prior and express written consent, as evidenced by a recorded instrument, for so long as Declarant owns at least one Unit within the Condominium. After Declarant ceases to own at least one Unit within the Condominium, the alternative dispute resolution procedures of Article XII may be modified, amended, or terminated in accordance with the procedures established in the Condominium Documents; however, to the extent any Covered Claim still involves the Declarant, the Declarant can elect for the Covered Claim to be governed by the alternative dispute resolution procedures previously contained in the Condominium Documents (as though not modified, amended, or terminated). Nothing contained in this Section 12.8 is intended to shorten, modify, or amend the provisions of Section 12.6 with respect to the notice and opportunity to inspect and/or cure an Alleged Defect.

12.9 Conflicts. Notwithstanding anything to the contrary in this Declaration, if there is a conflict between this Article and any other provisions of the Condominium Documents, this Article shall control.

## ARTICLE 13

### *ARCHITECTURAL CONTROL COMMITTEE*

13.1 Prohibition of Alteration and Improvement. Subject to the exemption of Declarant under Section 3.8 hereof, no building, fence, wall, obstruction, balcony, screen, patio, patio cover, tent, awning, carport, carport cover, solar collector, air conditioning or evaporative cooling system, antenna, satellite dish, improvement or structure of any kind shall be commenced, erected, painted or maintained upon the Condominium, nor shall any structural addition, alteration or improvement of any kind be made (collectively, "Modifications") thereto until the same has been approved in writing by an Architectural Control Committee (the "Architectural Committee") appointed by Declarant or elected by the Board as provided in this article. There shall be no construction, alteration or removal of any structure or improvement in the Condominium which would impair or affect the integrity or stability of any existing structure the Unit(s) without the prior written approval of the Architectural Committee which shall have the right to approve or disapprove the nature, size, shape, noise level and proposed location thereof. Interior redecoration that does not affect in any manner any structural elements, Building or utility systems, or the Common Elements, or the Limited Common Elements, shall not require Committee approval; provided, however, that any Modifications within a Unit which would be visible from the exterior of the Building shall not be made without the approval of the Architectural Committee.

#### 13.2 Plans and Approval.

(a) No person shall make any Modifications of any type or nature, unless prior to the commencement of each Modification (i) to the extent such Modification is determined by the Board to be structural in nature or impact the mechanical systems of the Building, the Owner retains an architect or engineer licensed in Arizona who certifies to the Architectural Committee that such Modification will not impair the structural integrity of the Building or the mechanical systems serving the same within which such Modification is to be made; (ii) the Owner provides the Association with a written indemnity against liability in accordance with Article 8 below in form provided by the Board; the Owner executes a written acknowledgment that any such Modification <sup>Unofficial Document</sup> may negate or amend any contractual, statutory or common law warranty expressly or implicitly provided by Declarant; (iv) the Owner submits plans and specifications to the Architectural Committee in accordance with the provisions of Section 13.2(b) hereof; and (v) the Owner receives a formal written approval of the modification from the Architectural Committee.

(b) Plans and specifications showing the nature, kind, shape, color, size, materials and location of any Modifications subject to Section 13.1 shall be submitted to the Architectural Committee for approval as to quality of workmanship, design and harmony of design with existing structures and as to location in relation to surrounding structures, together with any other materials reasonably requested by the Architectural Committee for purposes of evaluating the requested improvement or alteration. The Architectural Committee shall have the right to employ professional consultants, including, but not limited to, an architect or engineer to review plans and specifications submitted by an Owner to assist it in discharging its duties. In the event the Architectural Committee elects to employ such consultant, the Architectural Committee shall first give notice to the Owner of the fee required for purposes of hiring any such consultant and the Owner shall promptly pay said consultant's fee to the Architectural Committee prior to the Architectural Committee being obligated to proceed further with its review of said Owner's submission. With prior Board approval of a fee schedule, the Architectural Committee may also establish filing/review fees to be charged whether or not professional consultants are also utilized. No permission or approval shall be required to rebuild in accordance with plans and specifications previously approved by the Architectural Committee. In the event the Committee fails to approve or disapprove such plans, specifications and proposed improvement or alteration within forty-five (45) days after said plans and specifications have been submitted to it, written approval by the Architectural Committee will not be required and this article will be deemed to have been fully complied with. The restrictions contained in this paragraph shall not apply to the Declarant in any manner. Approval by the Architectural Committee shall not be deemed or interpreted to be a warranty or confirmation of any kind concerning the engineering or structural integrity, quality or safety of construction of the proposed improvements or modifications and the Person proposing the same and his agents and contractors shall be solely responsible therefore.

(c) The approvals required of the Board and/or Declarant pursuant to this Article 13 shall be in addition to, and not in lieu of, any approvals or permits which may be required under any federal, state or local law, statute, ordinance, rule or regulation.

### 13.3 Architectural Control Committee.

The number, appointment and term of members of the Architectural Committee shall be as follows:

(a) There shall be three (3) members on the Architectural Committee. Plans submitted to the Architectural Committee may be approved with the consent of at least two (2) Architectural Committee members.

(b) Declarant may appoint all of the original and replacement members of the Architectural Committee and, at any time, may remove and replace any of the members of the Architectural Committee so long as the Declarant owns any Units. The Board shall thereafter have the power to appoint replacements for or remove and replace any or all of the members of the Architectural Committee. Subject to the right and power of the Board to remove and replace at any time any member of the Architectural Committee and such members or replacements appointed by the Board shall serve one (1) year terms.

(c) Committee members appointed by Declarant need not be Members of the Association. Architectural Committee members appointed by the Board shall be Members of the Association. Any Officer or Director of the Association or any person qualified under the Bylaws to serve as an Officer or Director of the Association can be members of the Architectural Committee.

## ARTICLE 14

### RIGHTS AND DUTIES OF FIRST MORTGAGEE

Unofficial Document

14.1 First Mortgagee Protections. Notwithstanding any other provisions of this Declaration or any other Condominium Documents, the following provisions shall apply to and benefit each holder of a First Mortgage upon a Unit:

(a) The First Mortgagee shall not be personally liable for the payment of any assessment or charge or for the observance or performance of any covenants and restrictions, except as provided in this Declaration; and

(b) At the time any First Mortgagee becomes the record Owner of a Unit, the First Mortgagee shall be subject to all of the terms and conditions of this Declaration and the Condominium Documents, including, but not limited to, the obligation to pay for all assessments and charges accruing after the First Mortgagee becomes an Owner, in the same manner as any Owner.

14.2 Mortgagee and Insurer Notices. Upon furnishing the Association with a written request stating the name and address of the Eligible Mortgage Holder or Institutional Guarantor and stating the address of the Unit upon which the First Mortgage is held, Institutional Guarantors and Eligible Mortgage Holder, as applicable, shall be entitled to the following notices:

(a) Written notification from the Association of any default in the performance by the individual Owner (and borrower on the applicable First Mortgage) of any obligation under the Condominium Documents which has remained uncured for a period of sixty (60) days;

(b) Written notification from the Association of any casualty loss or condemnation loss which affects a material portion of the Condominium or any Unit upon which there is a First Mortgage held by an Eligible Mortgage Holder or upon which there is a First Mortgage of an Institutional Guarantor;

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

(d) Written notification from the Association of any proposed action which will require the consent of a specified number of Eligible Mortgage Holders or Institutional Guarantors, as set forth in this Declaration.

14.3 Approval Required to Terminate Condominium. Notwithstanding any other provisions of this Declaration, any termination of the legal status of the Condominium for reasons other than the substantial destruction or condemnation of the Condominium shall not be effective unless approved by two-thirds (2/3) or more of the Eligible Mortgage Holders.

14.4 Approval Required for Amendment to Declaration, Articles or Bylaws. The approval of at least fifty-one percent (51%) of the Eligible Mortgage Holders shall be required to add to or amend any material provisions of the Declaration, Articles, or Bylaws that establish, provide for, govern, or regulate any of the following:

- (a) Voting rights;
- (b) Assessments, assessment liens, or subordination of assessment liens;
- (c) Reserves for maintenance, repair, and replacement of Common Elements;
- (d) Insurance of the Association or fidelity bonds;
- (e) Responsibility for the maintenance and repairs of the Common Elements;
- (f) Expansion or contraction of the Condominium, or the addition, annexation, or withdrawal of real property to or from the Condominium ;
- (g) Boundaries of any Unit sold to an Owner (other than those Units owned by Declarant);
- (h) Reallocation of interests in the Common Elements or the rights to the use of the Common Elements;
- (i) Convertibility of Units into Common Elements or Common Elements into Units;
- (j) Leasing of Units;
- (k) Imposition of any restrictions on an Owner's right to sell or transfer the Owner's Unit;
- (l) A decision by the Association to establish self management when professional management had been required previously by the Eligible Mortgage Holders;
- (m) Restoration or repair of the Condominium (after a hazard damage or partial condemnation) in a manner other than that specified in the Condominium Documents;
- (n) Any action to terminate the legal status of the Condominium after substantial destruction or condemnation occurs; and
- (o) Any provisions that expressly benefit First Mortgagees, Eligible Mortgage Holders, or Institutional Guarantors.

Any addition or amendment to the Declaration, Articles, or Bylaws shall not be considered material if it is for the purpose of correcting technical errors or for clarification only. Any First Mortgagee who has been delivered a written request to approve additions or amendments to any material provisions of the Declaration, Articles, or Bylaws and who does not deliver or mail to the requesting party a negative response within thirty (30) days from the date the notice is deemed received shall be deemed to have approved the request and consented to the action. A non-response by any First Mortgagee to a written request of the Association shall be deemed an approval only when the notice to the First Mortgagee was delivered by certified or regular mail, return receipt requested.



14.5 First Mortgagee's Right of Inspection. Any First Mortgagee will, upon written request to the Association, be entitled to: (i) inspect the books and records of the Association during normal business hours; (ii) receive, within ninety (90) days following the end of any fiscal year of the Association, an unaudited financial statement of the Association for the immediately preceding fiscal year of the Association, free of charge to the First Mortgagee; and (iii) receive written notice of all meetings of the Members of the Association and be permitted to designate a representative to attend all such meetings. If and when the Condominium consists of fifty (50) or more Units, any Institutional Guarantor may make a request in writing to the Association that the financial statements for the preceding fiscal year be audited at no cost to the requesting Institutional Guarantor. If the Condominium consists of less than fifty (50) Units, the Institutional Guarantor may request in writing to the Association that the financial statements for the preceding fiscal year be audited at the cost of the requesting Institutional Guarantor.

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

14.7 Conflicting Provisions. Except as set forth in the following sentence, in the event of any conflict or inconsistency between the provisions of this Article 14 and any other provision of the Condominium Documents, the provisions of this Article 14 shall prevail. In the event of any conflict or inconsistency between the different sub-sections of this Article 14 or between the provisions of this Article 14 and any other provision of the Condominium Documents with respect to the number or percentage of Owners, First Mortgagees, Eligible Mortgage Holders, or Institutional Guarantors that must consent to an amendment of the Declaration, Articles, or Bylaws, or a termination of the Condominium, or certain actions of the Association as specified in this Declaration, the provision requiring the consent of the greatest number or percentage of Owners, First Mortgagees, Eligible Mortgage Holders, or Institutional Guarantors shall prevail.

## ARTICLE 15

### TERMINATION

15.1 Termination of Condominium. ~~E. Unofficial Document.~~ In the case of taking of all the Units by eminent domain, this Condominium may be terminated only by the adoption of a termination agreement approved at a duly called regular or special meeting by the affirmative vote (in person or by proxy) of eighty percent (80%) or more of the total number of eligible votes in the Association. An agreement to terminate shall be evidenced by the execution or ratifications of a termination agreement, in the same manner as a deed, by the requisite number of Unit Owners. The termination agreement shall specify a date after which the agreement will be void unless it is recorded before that date. The termination agreement and all ratifications shall be recorded in the official records of the County Recorder in Maricopa County, Arizona and shall be effective only upon recordation.

15.2 Sale. A termination agreement may provide that all the Common Elements and Condominium Units shall be sold following termination. If provision is made for sale of any real estate in the Condominium, the termination agreement shall set forth the minimum terms and conditions of the sale. The Association, on behalf of the Unit Owners, may contract for the sale of any real estate in the Condominium, but the contract shall not be binding until approved in the same manner as the termination agreement. If any real estate in the Condominium is to be sold following termination, title to the real estate to be sold shall vest, at termination of the Condominium, in the Association as trustee for the holders of all interest in the Units. Thereafter, the Association shall have all powers necessary and appropriate to effect the sale. Until the sale has been concluded and the sale proceeds distributed, the Association shall continue in existence with all powers it had before termination. Sale proceeds shall be distributed to Unit Owners and lienholders as their interests may appear, in proportion to the respective interests of Unit Owners as specified in this Article 15. Unless otherwise specified in the termination agreement, each Unit Owner and his successors in interest shall have an exclusive right to occupancy of the portion of the real estate that formerly constituted his Unit. During the period of that occupancy, each Unit Owner and his successors in interest remain liable for all assessments and other obligations imposed on Unit Owners by the Act or the Declaration.

15.3 Tenancy in Common. If the real estate constituting the Condominium is not to be sold following termination, title to all the real estate in the Condominium vests in the Unit Owners at termination as tenants in common in proration to their respective interests as provided in this Article 15, with any liens on the Units to shift

accordingly. While the tenancy in common exists, each Unit Owner and his successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted his Unit.

15.4 Sale Proceeds. Following termination of the Condominium, the proceeds of any sale of real estate, together with all assets of the Association, shall be held by the Association as trustee for Unit Owners and lienholders on the Units, as their respective interests may appear. Following termination, creditors of the Association holding liens on the Units that were recorded before termination may enforce those liens in the same manner as any lienholder.

15.5 Interests. Except as provided in this Section 15.5, the respective interests of Unit Owners are the fair market values of their Units and Fractional Interests in the Common Elements immediately before the termination, as determined by an independent appraiser selected by the Association (the "Appraiser"). The determination of the Appraiser shall be distributed to the Unit Owners and shall become final unless disapproved within thirty (30) days after distribution by Owners of Units holding greater than fifty percent (50%) of the total number of eligible votes in the Association. The proportion of any Unit Owner's interest to that of all Unit Owners shall be determined by dividing the fair market value of that Owner's Unit and Fractional Interest in the Common Elements by the total market value of all the Units and Common Elements. If any Unit or any Limited Common Elements is destroyed to the extent that an appraisal of the fair market value of the Unit or Limited Common Elements cannot be made, the interests of all Unit Owners shall be their respective Common Elements interest immediately before the termination.

15.6 Foreclosure. Except as provided in this subparagraph, foreclosure or enforcement of a lien or encumbrance against the entire Condominium does not of itself terminate the Condominium, and foreclosure or enforcement of a lien or encumbrance against a portion of the Condominium does not withdraw that portion from the Condominium.

Dated as of February 17, 2004.

Unofficial Document

"Declarant"

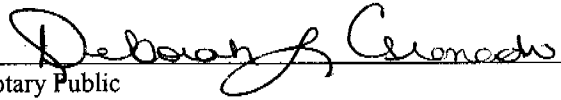
Artisan Village, L.L.C., an Arizona limited liability company

By: Artisan Homes Incorporated, an Arizona corporation  
Its: Managing Member

By:   
Eric C. Brown, President

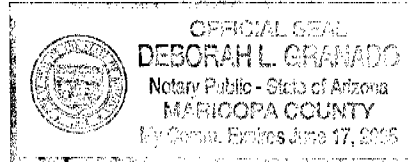
STATE OF ARIZONA                    )  
                                               ) ss.  
 County of Maricopa                 )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of February, 2004, by Eric C. Brown, the President of Artisan Homes, Incorporated, an Arizona corporation, the Managing Member of Artisan Village, L.L.C., an Arizona limited liability company, who executed the foregoing on behalf of the limited liability company, being authorized so to do for the purposes therein contained.

  
 Notary Public

My Commission Expires:

June 17, 2005



Unofficial Document

**EXHIBIT "A"**

**TO**

**DECLARATION OF CONDOMINIUM AND  
COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR  
ARTISAN VILLAGE**

(Legal Description of Entire Property)

LOT ONE (1), ARTISAN VILLAGE, A CONDOMINIUM, A PLAT AS  
RECORDED IN BOOK 663 OF MAPS, PAGE 44, RECORDS OF MARICOPA  
COUNTY, ARIZONA

Unofficial Document

Exhibit "A"