

When recorded, return to:

Barry L. Olsen  
Law Offices of Larry W. Suci, PLC  
101 E. 2<sup>nd</sup> Street  
Yuma, AZ 85364

CONDOMINIUM DECLARATION FOR  
FORTUNA PALMS PLAZA, A CONDOMINIUM  
AND  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

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This Condominium Declaration for Fortuna Palms Plaza, a Condominium, and Declaration of Covenants, Conditions and Restrictions (the "Declaration"), is made as of \_\_\_\_\_, 2020, by T&W, L.L.C. an Arizona limited liability company (hereinafter referred to as "Declarant").

RECITALS

A. Declarant is the sole owner of certain real property and Improvements thereon situated in Yuma County, State of Arizona, which is more particularly described on Exhibit A attached hereto (herein referred to as the "Condominium," the "Property," the "Plat" or the "Amended Plat");

B. The Declarant is herewith recording a Plat with respect to the Property;

C. Declarant desires to submit the Property to a Condominium plan of description, development and ownership pursuant to the Condominium Act (as defined herein) and to establish for the mutual benefit of all future Unit Owners, Lessees and Occupants (as such terms are hereinafter defined) of the Condominium or any part thereof, certain easements and rights in, over and upon the Condominium and certain mutually beneficial restrictions and obligations with respect to the proper use, conduct and maintenance thereof;

D. Declarant desires and intends that the Unit Owners, mortgagees, beneficiaries and trustees under deeds of trust, Occupants and all other Persons (as such terms are hereinafter defined) hereafter acquiring any interest in the Condominium shall at all times enjoy the benefits of, and shall hold their interests subject to, the rights, easements, privileges and restrictions hereinafter set forth, all of which shall run with the land and be binding upon the Condominium and all Persons having or acquiring any right, title or interest in or to any part of the Condominium, and shall inure to the benefit of and are declared to be in furtherance of a plan to promote and protect the cooperative use, conduct and maintenance of the Condominium and are established for the purpose of enhancing and perfecting the value, desirability and attractiveness thereof.

NOW, THEREFORE, Declarant, for all the purposes set forth herein including the Recitals set forth above, and for such other purposes herein set forth, declares as follows:

## ARTICLE 1

### DEFINITIONS

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

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

**1.2.1 "Alleged Defect"** means any alleged defect or deficiency in the planning, design, engineering, grading, construction or development of the Common Elements or any Unit including, without limitation, any claim or cause of action that the Common Elements or the Units are defective or that the Declarant, its agents, contractors, employees, subcontractors, architects, engineers or consultants were negligent in the planning, design, engineering, grading, construction or development thereof.

**1.2.2 "Articles"** means the Articles of Incorporation of the Association, filed with the Arizona Corporation Commission on April 9, 2019 and as amended from time to time.

**1.2.3 "Assessments"** means the Common Expense Assessments, Special Assessments and Enforcement Assessments levied and assessed against each Unit Owner or other Person pursuant to Article 7 of this Declaration.

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

**1.2.5 "Association"** means Fortuna Palms Plaza Owner's Association, an Arizona nonprofit corporation, and its successors and assigns.

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

**1.2.7 "Building"** means the commercial office building in which the Units are located.

**1.2.8 "Bylaws"** means Association's bylaws, as amended from time to time.

**1.2.9 "Collection Costs"** means all costs, fees, charges and expenditures (including, without limitation, attorneys' fees, court costs, filing fees, expenses and recording fees) incurred by the Association in collecting and/or enforcing payment of

Assessments, monetary penalties, late fees, interest or other amounts payable to the Association pursuant to this Declaration or the Condominium Act.

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

**1.2.11 "Common Expenses"** means the actual or estimated costs or expenses incurred or to be incurred by the Association or financial liabilities of the Association together with any allocations to reserves, including, without limitation, the following:

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

(b) the cost of any utilities, trash pickup and disposal, landscaping and other services which serve the Units and/or the Common Elements and which the Association has assumed liability for such utilities and services except to the extent such utilities and services are separately metered or billed to specific Units;

(c) the cost of insurance premiums for fire, liability, worker's compensation, errors and omissions and directors, officers and agents liability, and any other insurance that may be required for the Association, the Condominium or that the Board of Directors determines advisable to obtain, including the costs of bonding the members of the Board of Directors, officers and employees of the Association, any professional managing agent or any other Person handling the funds of the Association or acting on behalf of the Association;

(d) the cost of compensation, wages, materials, services, supplies and other expenses required for the administration, management, operation, maintenance and repair of the Condominium and the Association; including, but not limited to, compensation paid by the Association to managers, accountants, attorneys, architects, employees and others;

(e) the costs of rendering to the Unit Owners all services required to be rendered by the Association under the Condominium Documents;

(f) such other funds as may be necessary to provide general operating reserves and reserves for contingencies and replacements deemed appropriate by the Board of Directors or otherwise required pursuant to the Condominium Documents;

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

(h) the cost of any other item or items incurred by the Association for any reason whatsoever in furtherance of the purposes or the discharge of the obligations imposed on the Association by the Condominium Documents or the Condominium Act.

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

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

**1.2.14 "Condominium"** means the real property located in Yuma County, Arizona, which is described in Exhibit A attached to this Declaration, together with all Buildings and other Improvements located thereon.

**1.2.15 "Condominium Act"** means the Arizona Condominium Act set forth in A.R.S. § 33-1201, et.seq., as amended from time to time.

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

**1.2.17 "Declarant"** means T&W, L.L.C., an Arizona limited liability company, and its successors and assigns or any Person to whom it may transfer any Special Declarant Rights in accordance with the Condominium Act or this Declaration.

**1.2.18 "Declarant Party" or "Declarant Parties"** means collectively Declarant, Declarant's members, manager's, agents and representatives, Declarant's builders, general contractors or brokers, or their agents or employees.

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

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

(a) Amend this Declaration during the Period of Declarant Control to comply with the Condominium Act or any other applicable law, or to correct any error or inconsistency in this Declaration if the amendment does not have a material adverse effect on the rights or interests of the Unit Owners; and

(b) Amend this Declaration during the Period of Declarant Control to comply with the laws, ordinances, regulations, rules, guidelines, or other requirements in effect from time to time, of any state, federal, county, city or other governmental or quasi-governmental entity including but not limited to any federal corporation guaranteeing or insuring mortgage loans or governing transactions involving mortgage instruments.

**1.2.21 "Enforcement Assessment"** means an assessment levied pursuant to Section 7.4 of this Declaration.

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

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

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

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

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

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

**1.2.28 "Maintenance Standard"** means the standard or quality of maintenance of Improvements from time to time as determined by the Board of Directors.

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

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

**1.2.31 "Parking Space"** means a portion of the Condominium intended for the parking of a single motor vehicle and identified on the Plat as a parking space.

**1.2.32 "Party Wall"** means a demising wall located between two Units. The boundaries of the Party Wall shall be the interior unfinished surfaces of the Party Wall. A Party Wall shall not include any lath, furring, wallboard, plasterboard, plaster, paint, wallpaper, paneling or other material constituting any part of the finished surfaces of the Party Wall. The term "Party Wall" includes a demising wall.

**1.2.33 "Perimeter Building Walls"** means the perimeter walls of the Buildings, including all windows and doors, but excluding (a) any fixtures, lines, pipes,

wires, ducts or conduits within the wall which serve only one Unit and (b) any lath, furring, wallboard, plasterboard, plaster, paint, wallpaper, paneling or other materials constituting any part of the finished surfaces of the interior surface of the perimeter walls.

**1.2.34 "Period of Declarant Control"** means the time period commencing on the date this Declaration is recorded in the Official Records of the County Recorder for Yuma County, Arizona, and ending on the earliest of: (a) ninety (90) days after the conveyance of one hundred percent (100%) of the Units that may be created to Unit Owners other than the Declarant; or (b) such date as Declarant declares to be the termination of the Period of Declarant Control in a document recorded with the County Recorder's Office for Yuma County, Arizona.

**1.2.35 "Person"** means, by way of example, and not by limitation, a natural person, corporation, estate, trust, partnership, limited liability company, association, joint venture, government or quasi government entity, governmental subdivision or agency, and any other legal or commercial entity.

**1.2.36 "Plat"** means the condominium plat for Fortuna Palms Plaza Owner's Association, which is attached hereto as Exhibit A and has been recorded in the official records of the County Recorder of Yuma County, Arizona, and includes any amendments, supplements or corrections recorded subsequent to the date of this Declaration.

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

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

**1.2.39 "Special Declarant Rights"** means any right or combination of rights reserved by or granted to the Declarant in this Declaration or by the Condominium Act including the right 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 and management offices, models, signs and any other actions which Declarant believes to be reasonably necessary or desirable to market and sell the Units;

(d) Use easements through the Common Elements for the purpose of making Improvements within the Condominium or within real estate which may be added to the Condominium; and

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

**1.2.40 "Unit"** means a portion of the Condominium designated for separate ownership or occupancy. The boundaries of each Unit are shown on the Plat and described in Section 2.5.

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

## ARTICLE 2

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

**2.1 Submission of Property.** Declarant is the owner of the real property described on Exhibit A attached hereto, and Declarant hereby submits the Property together with all Buildings and Improvements situated thereon and all easements, rights and appurtenances thereto, to the provisions of the Condominium Act for the purpose of creating a condominium in accordance with the provisions of the Condominium Act and hereby declares that the real property described on Exhibit A attached to this Declaration, together with all Buildings and Improvements situated thereon, and all easements, rights and appurtenances thereto, shall be held and conveyed subject to the terms, covenants, conditions and restrictions set forth in this Declaration.

**2.1.1** Pursuant to the Condominium Act, the Declarant hereby divides the Property into the Units and Common Elements described in Section 2.5 as provided and shown on the Plat.

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

**2.2 Name of Condominium.** The name of the Condominium created by this Declaration is "Fortuna Palms Plaza, a Condominium."

**2.3 Name of Association.** The name of the Association is "Fortuna Palms Plaza Unit Owner's Association."

**2.4 Identifying Number of Units.** The identifying numbers of the Units are set forth on the Plat.

**2.5 Unit Boundaries.**

**2.5.1** The boundaries of each Unit are as follows:

(a) The vertical boundaries are the interior surfaces of the Perimeter Building Walls (and the exterior surface of any windows or doors in the Perimeter Building Walls) of the Building and a vertical plane running through the center of any Party Wall separating the Unit from another Unit and such boundaries as reflected on the Plat attached as Exhibit B;

(b) The upper horizontal boundary is set forth on the Plat; and

(c) The lower horizontal boundary is set forth on the Plat;

**2.5.2** All spaces, interior partitions and other fixtures and improvements (including, but not limited to, chutes, flues, wires, conduits, heating and air conditioning units, hot water heaters and gas, cable television, water and electric pipes, lines or meters) within the boundaries of a Unit and which serve only the Unit are part of the Unit, and any such fixtures or improvements located within the boundaries of a Unit but which serve more than one Unit or which serve any portion of the Common Elements are part of the Common Elements.

**2.5.3** In interpreting deeds, plats, declarations, and plans, the existing physical boundaries of a Unit or a Unit reconstructed in substantial accordance with the

original plans thereof shall be conclusively presumed to be its boundaries rather than the description expressed in the deed, plat, plan, or declaration, regardless of settling or lateral movement of a Building, and regardless of minor variances between the boundaries as shown on the Plat.

**2.5.4** 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.

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

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

**2.6.1** Each Unit is allocated a percentage of undivided interests in the Common Elements and in the Common Expenses calculated by dividing the square footage of each Unit by the square footage of all Units in the Condominium. The square footage of each Unit is shown on the Plat. The square footages of the Units and the percentage of undivided interests in the Common Elements and in the Common Expenses are set forth on Exhibit B attached hereto. The percentage of interest of each Unit in the Common Elements shall be an undivided interest, and the Common Elements shall be owned by the Unit Owners as tenants in common in accordance with their respective percentages of interest. The ownership of each Unit shall not be conveyed separate from the percentage of interest in the Common Elements allocated to the Unit. The undivided percentage of interest in the Common Elements allocated to any Unit shall always be deemed conveyed or encumbered with any conveyance or encumbrance of that Unit, even though the legal description in the instrument conveying or encumbering the Unit may refer only to the fee title to the Unit.

**2.6.2** The percentage of interest of each Unit in the Common Elements and in the Common Expenses allocated to each Unit as set forth on Exhibit B attached hereto shall be deemed accurate and acceptable and shall be binding on each Unit Owner at such time as they become the Owner of a Unit.

**2.6.3** In the event that the Declarant modifies a Building size on a Unit owned by Declarant, Declarant shall amend Exhibit B, without the consent of the Association or any other Unit Owner to reflect the new fractional interest of each Unit. In the event that a Building size is modified by a Unit Owner as approved by the Board of Directors, no adjustment of the fractional interest of the Units shall occur.

**2.7 Allocation of Votes in the Association.** The total votes in the Association shall be 100, which shall be divided among the Unit Owners in accordance with their respective fractional interest in the Common Elements and Common Expense Liabilities (as set forth on Exhibit B attached hereto) multiplied by 100.

## **2.8 Allocation of Limited Common Elements.**

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

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

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

(c) Any Parking Space or Spaces designated by the Declarant to a specific Unit.

**2.8.2** Each Unit Owner shall have the right to the exclusive use and possession of the Limited Common Elements allocated to his Unit, subject to the rights granted to the Declarant or the Association by the Condominium Documents.

**2.8.3** An Owner of a Unit to which a Parking Space has been allocated may reallocate the Parking Space to another Unit Owner by recording an amendment to this Declaration. The amendment shall be executed by the Unit Owners between or among whose Units the reallocation is made and shall state the manner in which the Parking Space is to be reallocated. Before recording the amendment, the amendment shall be submitted to the Board of Directors. Unless the Board of Directors determines within thirty (30) days that the proposed amendment is unreasonable, which determination shall be in writing and specifically state the reasons for disapproval, the Association shall execute its approval and record the amendment.

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

**2.9 Relocation of Boundaries Between Adjoining Units.** The boundaries between or among adjoining Units may be relocated by an amendment to this Declaration. The Owners of the Units affected by the relocation 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 interests in the Common Elements, in the Common Expenses and in the votes in the Association, 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 with thirty (30) days that the proposed amendment is unreasonable, which determination shall be in writing and specifically state the reasons for disapproval, the Association shall execute its approval and record the amendment.

**2.10 Subdivision of Units.** A Unit may be subdivided into two (2) or more Units. A Unit Owner desiring to subdivide his Unit shall prepare an amendment to this Declaration and the Plat which identifies the Unit involved, specifies the boundaries of each Unit created and the dimensions, assigns an Identifying Number to each Unit created and allocates the allocated interest in the Common Elements, in the Common Expenses and in the votes in the Association formerly allocated to the subdivided Unit to the new Units in a reasonable manner. The amendment shall be executed by the Owner of the Unit to be subdivided and, before recording, 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 shall specifically state the reasons for disapproval, the Association shall execute its approval and record the amendment.

**2.11 Combination of Units.** If adjoining Units are owned by the same Person, the Owner of the adjoining Units may remove all or a portion of the demising wall between the adjoining Units provided the removal of a portion or all of the demising wall is approved by the Board of Directors prior to removal. The provisions of Section 4.3 shall apply to any request by an Owner of adjoining Units to remove all or a portion of the demising wall between the Units and to the removal of any demising wall approved by the Board of Directors. The Board of Directors shall not approve the request unless the Board of Directors is satisfied that the removal of the demising wall will not impair the structural integrity or mechanical systems of the Building or lessen the support of any portion of the Condominium. The fact that a demising wall between adjoining Units is removed with approval of the Board of Directors shall not affect the Units' percentage undivided interest in the Common Elements or the Units' Common Expense Liability. A demising wall between adjoining Units which is removed with approval of the Board of Directors may be constructed or reconstructed with the prior written approval of the Board of Directors. The Board of Directors shall not approve the request unless the Board of Directors is satisfied that the construction or reconstruction of the demising wall will not impair the structural integrity or mechanical systems of the Building or lessen the support of any part of the Condominium. The provisions of Section 4.3 shall apply to any request by an Owner of

adjoining Units to construct or reconstruct a demising wall between the Units owned by such Owner and to any construction or reconstruction of a demising wall approved by the Board of Directors.

### ARTICLE 3

#### EASEMENTS AND DEVELOPMENT RIGHTS

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

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

#### **3.3 Unit Owners' Easements of Enjoyment.**

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

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

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

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

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

(e) The right of the Association to suspend the right of a Unit Owner, Lessee or Occupant and the Invitees of a Unit Owner, Lessee or Occupant to use the Common Elements (other than the right of a Unit Owner, Lessee or Occupant to use the streets which are part of the Common Elements for ingress and egress to the Unit Owner's Unit) for any period during which the Unit Owner, Lessee or Occupant is in violation of any provision of the Condominium Documents.

**3.3.2** Notwithstanding the provisions of Subsection 3.3.1 to the contrary, if a Unit is leased or rented, the Lessee and the Lessee's Invitees shall have the right to use the Common Elements during the term of the lease, and the Unit Owner shall have no right to use the Common Elements (other than the right of a Unit Owner to use the streets which are part of the Common Elements for ingress and egress to the Unit Owner's Unit) until the termination or expiration of the lease.

**3.3.3** The Invitees of any Unit Owner or other Person entitled to use the Common Elements pursuant to Subsection 3.3.1 or of any Lessee who is entitled to use the Common Elements pursuant to Subsection 3.3.2 may use the Common Elements provided they are accompanied by a Unit Owner, Lessee or other Person entitled to use the Common Elements pursuant to Subsection 3.3.1 or Subsection 3.3.2. The Board of Directors shall have the right to limit the number of Invitees who may use the Common Elements at any one time and may restrict the use of the Common Elements by Invitees to certain specified times.

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

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

#### **3.4 Declarant's Rights and Easements.**

**3.4.1** Declarant shall have the right and an easement to maintain sales or leasing offices, management offices, storage areas, models and related facilities throughout the Condominium and to maintain one or more marketing, directional or advertising signs, banners, flags or similar items on the Common Elements, or elsewhere within the Condominium while the Declarant is marketing Units in the Condominium. Declarant reserves the right to place models, management offices, storage areas and sales and leasing offices on any Units or on any Buildings owned by Declarant and on any portion of the Common Elements in such number, of such size and in such locations as Declarant deems appropriate.

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

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

**3.4.4** 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.

**3.4.5** In the event of any conflict or inconsistency between Section 3.4 and any other provision of the Condominium Documents, Section 3.4 shall control and prevail over such other provisions.

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

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

**3.5.2** The Declarant and its employees, agents, contractors and subcontractors shall have an easement through the Units, including the Building, for any access necessary to complete any construction, renovations, warranty work or modifications to be performed by Declarant.

**3.5.3** 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 any of the Declarant's obligations and for the purpose of exercising Special Declarant Rights, whether arising under the Condominium Act or reserved in this Declaration.

**3.5.4** Declarant shall have the right and an easement on, over and under those portions of the Common Elements and Units for the purpose of maintaining and correcting drainage of surface, roof or storm water; however, nothing herein shall obligate Declarant to maintain or correct any such drainage conditions. The easement created by this subsection expressly includes the right to cut any trees, bushes, or shrubbery, to grade the soil or to take any other action reasonably necessary.

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

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

**3.6** **Easement for Support.** There is hereby granted and reserved to each Unit a non-exclusive easement for structural support over every other Unit, 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, the Common Elements and the Limited Common Elements.

**3.7** **Easements and Rights of the Association.**

**3.7.1** The Common Elements and the Units shall be subject to an easement in favor of the Association and its agents, employees and contractors for the purpose of: (a) making emergency repairs to the Common Elements and those components of the Unit the Association is obligated to maintain pursuant to this Declaration; (b) inspection, upkeep, maintenance, repair and replacement of the Common Elements and those components of the Unit which the Association is obligated to maintain pursuant to this Declaration; (c) exercising all rights and powers of the Association and discharging all duties and obligations of the Association; (d) inspection of the Units and Limited Common Elements in order to verify the performance by Unit Owners of all items of maintenance and repair for which they are responsible; (e) correction of conditions (including, without limitation, broken or leaking water pipes, broken hot water heaters or obstructed sewer lines) in one or more Units or Limited Common Elements which have damaged or if left uncorrected could damage, the Common Elements, the Limited

Common Elements or other Units; and (f) inspection of the Units and the Limited Common Elements in order to verify that the provisions of the Condominium Documents are being complied with by the Unit Owners, Lessees and Occupants of the Unit. Except in case of emergency, the Association shall only enter a Unit at reasonable times and upon reasonable notice to the Unit Owner or, if the Unit is leased, to the Lessee. In the event of any emergency, the Association may enter a Unit without prior notice to the Unit Owner or the Lessee, but promptly following the Association's entry into the Unit, the Association shall notify the Unit Owner or the Lessee of the nature of the emergency condition which require entry without notice.

**3.7.2** Each Unit shall be subject to an easement in favor of the Association and the agents, employees and contractors of the Association for the purpose of performing such pest control activities as the Association may deem necessary to control or prevent the infestation of the Condominium by insects, rodents or other pests or to eradicate insects, rodents or other pests from the Condominium.

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

**3.8.1** For the installation, repair, maintenance, use, removal or replacement of pipes, ducts, heating and air conditioning systems, electrical, telephone and other communication equipment, receptacles, panels, wiring and cables and all other utility lines and conduits which are a part of or serve any Unit and which pass across, under, over or through a portion of the Common Elements or any other Unit if the installation was originally designed or constructed by or on behalf of Declarant or is subsequently approved by the Board of Directors and 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.

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

**3.8.3** For the ingress or egress by a Unit Owner over any driveway or entryway serving such Unit which may encroach upon any adjacent Common Elements or other Unit.

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

## ARTICLE 4

### USE AND OCCUPANCY RESTRICTIONS

**4.1 Use of Units.** The Units shall be used, improved and occupied, with the liabilities set forth herein and used by the Owners exclusively for commercial purposes conforming to all applicable zoning ordinances and requirements, and shall not be used for any other purpose. However no Unit shall be used for an adult orientated business, tattoo parlor/studio, vape or smoke shop/lounge or for the sale or dispensing of marijuana or related products. Declarant shall have the right to maintain sales and any other offices and signs on the Condominium, together with rights of ingress and egress therefrom, and to do such other acts and maintain such other facilities as are incidental to the development and sale of the Units now or hereafter existing. Declarant shall have the right in its discretion to restrict, limit or provide exclusivity for certain uses to a particular Unit/s and to prohibit the same or similar uses within other Units.

#### **4.2 Utility Service and Antennas.**

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

**4.2.2** No antenna, satellite television dish or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation shall be erected, used or maintained outdoors on any portion of the Condominium whether attached to the Building or otherwise, unless approved in writing by the Board of Directors, unless applicable law prohibits the Board of Directors from requiring such prior approval. Even if applicable law prohibits the Board of Directors from requiring prior approval of certain types of antennas, satellite dishes or other devices, any such antennas, satellite dishes or other devices must be installed or constructed in accordance with such rules and regulations as the Board of Directors may adopt.

#### **4.3 Improvements and Alterations.**

**4.3.1** Any Unit Owner, Lessee or Occupant may make nonstructural additions, alterations and improvements within such Unit without the prior written approval of the Board of Directors, but such Unit Owner shall be responsible for any damage to other Units, the Limited Common Elements, the Buildings, and to the Common Elements which results from any such alterations, additions or improvements. No owner shall make any additions, alterations or improvements to the Perimeter Building Walls or any Party

Wall without the prior written consent of the Board of Directors. No Unit Owner, Lessee or Occupant shall make any structural additions, alterations or improvements within a Unit, unless prior to the commencement of each addition, alteration or improvement, the Unit Owner, Lessee or Occupant receives the prior written approval of the Board of Directors and an architect or engineer, licensed in Arizona, certifies that such addition, alteration or improvement will not impair the structural integrity or the mechanical systems of a Building or lessen the support of any portion of the Condominium.

**4.3.2** Notwithstanding Subsection 4.3.1, no addition, alteration or improvement within a Unit, whether structural or not, or within any Limited Common Element allocated to the exclusive use of a Unit, which would be visible from the exterior of a Unit, including but not limited to a change to the exterior color scheme, shall be made without the prior written approval of the Board of Directors, which approval shall only be granted if the Board of Directors affirmatively finds that the proposed addition, alteration or improvement is aesthetically pleasing and in harmony with the surrounding Improvements. No Unit Owner shall make any addition, alteration or improvement to the Common Elements without the prior written approval of the Board of Directors.

**4.3.3** No Unit Owner, Lessee or Occupant shall overload the electric wiring in a Building or Unit, or operate machines, appliances, accessories or equipment in such manner as to cause, in the judgment of the Board of Directors, an unreasonable disturbance to others.

**4.3.4** The Board of Directors may condition the approval of any proposed additions, alterations or improvements to a Unit or the Common Elements in any manner, including, without limitation: (a) retaining approval rights of the contractor to perform the work; (b) restricting the time during which such work may be performed; (c) requiring the placement of a security deposit in an amount determined by the Board of Directors in an account controlled by the Board of Directors; (d) requiring the provision to the Board of Directors of plans and specifications prepared and sealed by a professional architect or engineer duly licensed by the State of Arizona; and (e) requiring that the Unit Owner requesting the change obtain, prior to commencing any work, and maintain until completion of such work, comprehensive general liability insurance with Builders Risk coverage in such amounts as may be required by the Board of Directors. The Unit Owner shall be obligated to designate Declarant, the Association, the Board of Directors and any other Person designated by the Board of Directors as additional insureds under the policies. The Unit Owner shall be responsible for all costs incurred by the Board of Directors in connection with the Board of Director's review of the Unit Owner's proposed changes to such Unit Owner's Unit, including, without limitation, all costs of architects, engineers and other professionals which may be retained by the Board of Directors to assist in their review. Any such costs not timely paid by the Unit Owner shall be deemed an Enforcement Assessment which may be collected in the manner provided in Section 7.4 herein.

**4.3.5** The proposed additions, alterations and improvements by any Unit Owner shall be made in compliance with all laws, rules, ordinances and regulations of all governmental authorities having jurisdiction, may only be made once all required permits

have been obtained and must be in compliance with any conditions imposed by the Association with respect to design, structural integrity, sound attenuation, water-proofing, construction details, lien protection or otherwise. A Unit Owner making or causing to be made such additions, alterations or improvements agrees, and shall be deemed to have agreed, for such Unit Owner, and such Unit Owner's heirs, personal representatives, successors and assigns, as appropriate, to defend, indemnify & hold harmless the Association, Declarant and all other Unit Owners, Lessees, or Occupants for, from and against any and all liability, loss or damage resulting from such additions, alterations or improvements, and shall be solely responsible for the maintenance, repair and insurance of such additions, alterations and improvements from and after their date of installation or construction as may be required by the Association.

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

**4.3.7** No excavation or grading work shall be performed on any Unit without the prior written approval of the Board of Directors.

**4.3.8** The approval by the Board of Directors of any construction, installation, addition, alteration, repair, change or other work pursuant to this Section shall not be deemed a waiver of the Board of Director's right to withhold approval of any similar construction, installation, addition, alteration, repair, change or other work subsequently submitted for approval.

**4.3.9** Upon receipt of approval from the Board of Directors for any construction, installation, addition, alteration, repair, change or other work, the Unit Owner who had requested such approval shall proceed to perform, construct or make the addition, alteration, repair, change or other work approved by the Board of Directors as

soon as practicable and shall diligently pursue such work so that it is completed as soon as reasonably practicable and within such time as may be prescribed by the Board of Directors.

**4.3.10** Any change, deletion or addition to the plans and specifications approved by the Board of Directors must be approved in writing by the Board of Directors.

**4.3.11** The Board of Directors shall have the right to charge a fee for reviewing requests for approval of any construction, installation, alteration, addition, repair, change or other work pursuant to this Section 4.3, which fee shall be payable at the time the application for approval is submitted to the Board of Directors.

**4.3.12** All Improvements constructed on Units shall be of new construction, and no portions of the Building or other structures shall be removed from other locations on to any Unit.

**4.3.13** The approval by the Board of Directors of any construction, installation, addition, alteration, repair, change or other work pursuant to this Section 4.3 shall not be deemed a warranty or representation by the Board of Directors as to the quality of such construction, installation, addition, alteration, repair, change or other work or that such construction, installation, addition, alteration, repair, change or other work conforms to any applicable building codes or other federal, state or local law, statute, ordinance, rule or regulation.

**4.3.14** The provisions of this section do not apply to, and approval of the Board of Directors shall not be required for, the construction, erection, installation, addition, alteration, repair, change or replacement of any Improvements made by, or on behalf of, the Declarant.

**4.3.15** The approval required of the Board of Directors pursuant to this Section 4.3 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.

**4.4 Trash Containers and Collection.** No garbage or trash shall be placed or kept on the Condominium except in covered containers of a type, size and style, which are approved by the Board of Directors. The Board of Directors shall have the right to subscribe to a trash service for the use and benefit of the Association and all Unit Owners, and to adopt and promulgate rules and regulations regarding garbage, trash, trash containers and collection. The Board of Directors shall have the right to require all Unit Owners to place trash and garbage in containers located in areas designated by the Board of Directors. No incinerators shall be kept or maintained on or in any Unit or elsewhere in the Condominium.

**4.5 Machinery and Equipment.** No machinery or equipment of any kind shall be placed, operated or maintained upon the Condominium except such machinery or equipment as is usual and customary in connection with the use, maintenance or construction of buildings, improvements or structures which are within the uses permitted

by this Declaration, and except that which Declarant or the Association may require for the construction, operation and maintenance of the Units, the Common Elements or the Limited Common Elements. All machinery and equipment shall be regularly maintained and kept in good condition and repair.

**4.6 Diseases and Insects.** No Unit Owner shall permit any condition to exist upon the Condominium which could induce, breed or harbor infectious diseases, fungal or microbial growth, or noxious insects. Each Unit Owner shall timely repair any water leakage within a Unit and remediate any water intrusion or damage to such Unit, or any adjoining Unit/s. Each Unit Owner shall perform such pest control activities as may be necessary to prevent insects, rodents and other pests from being present in or upon the Owner's Unit.

**4.7 Motor Vehicles.** Except for emergency repairs, no automobile, van, truck, motorcycle, motorbike or other motor vehicle of any kind (herein collectively referred to as a "motor vehicle") nor any other item shall be constructed, reconstructed, serviced or repaired on any portion of the Condominium, and no inoperable vehicle may be stored or parked on any portion of the Condominium. No Unit Owner, Lessee or Occupant of a Unit may park any automobile, motorcycle, motorbike or other motor vehicle upon any part of the Condominium except in the designated Parking Spaces. If a Parking Space is assigned to a Unit as a Limited Common Element, then no other Unit Owner, Lessee or Occupant may park any automobile, motorcycle, motorbike or any other motor vehicle in that Parking Space. Occupants not assigned reserved spaces and invitees of a Unit Owner or other occupant may park an automobile, motorcycle, motor bike or other motor vehicle owned or leased by such invitee in Parking Spaces not reserved or in guest Parking Spaces that may exist from time to time on the Common Elements. In addition to the provisions set forth in this Declaration, the Board of Directors may establish such other reasonable rules and regulations regarding these matters as deemed appropriate by the Board.

**4.8 Trucks, Trailers, Campers and Boats.** No mobile home, travel trailer, tent trailer, trailer of any other kind, camper shell, detached camper, recreational vehicle, boat, boat trailer, or any other similar equipment or vehicle may be parked overnight, kept, maintained, constructed, reconstructed or repaired on any part of the Condominium.

**4.9 Towing of Vehicles.** The Board of Directors shall have the right to have any motor vehicle parked, kept, maintained, constructed, reconstructed or repaired in violation of the Condominium Documents towed away at the sole cost and expense of the owner of the vehicle or equipment. Any expense incurred by the Association in connection with the towing of any vehicle or equipment shall be paid to the Association upon demand by the owner of the vehicle or equipment.

**4.10 Animals.** Other than trained service animals, no animals, birds, reptiles, fowl, poultry or livestock shall be maintained or kept in any Unit or on any other portion of the Condominium.

**4.11 Signs.** No signs (including, but not limited to, "For Sale" or "For Rent" signs) shall be permitted on the exterior of any Building or in the interior of a Unit if the signs would be visible from the exterior of the Building in which the Unit is located, or on any other portion of the Condominium without the prior written approval of the Board of Directors. The Board of Directors shall permit signs identifying the Unit Owner, Lessee or Occupant of a Unit to be installed on the outside of the Building in which a Unit is located provided that the location, size, color, style and appearance of the sign is acceptable to the Board of Directors, and the Board of Directors may permit such sign to be placed at any location on the outside of the Building that is acceptable to the Board of Directors. The design criteria for all signs shall be established by the Board of Directors as appropriate from time to time, however the Declarant shall determine such sign criteria so long as the Declarant is the owner of any Unit which is for sale to the public. In addition to the approval of the Board of Directors required by this Section, any sign must also comply with the ordinances of the Yuma County.

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

**4.13 Nuisances and Offensive Activity.** No nuisance shall be permitted to exist or operate upon the Condominium, and no activity shall be conducted upon the Condominium which is offensive or detrimental to any portion of the Condominium or any Unit Owner, Lessee or Occupant or is an unreasonable annoyance to any Unit Owner, Lessee or Occupant or which unreasonably interferes with the quiet enjoyment of a Unit by a Unit Owner, Lessee or Occupant. No loud music or other loud noises originating from inside or outside of a Unit shall be allowed if such music or noise disturbs neighboring Unit Owners, and no exterior speakers, horns, whistles, bells or other sound devices, except security or other emergency devices used exclusively for security or emergency purposes, shall be located, used or placed on or in any Unit or on the Condominium without the prior written approval of the Board of Directors.

**4.14 Window Coverings.** Each Unit Owner shall install interior window coverings on each window of a Building within sixty days after a certificate of occupancy has been issued for the Building or as otherwise approved by the Board of Directors. No reflective materials, including, but without limitation, aluminum foil, reflective screens or glass, mirrors or similar items, shall be installed or placed upon the outside or inside of any windows of a Unit. No enclosures, drapes, blinds, shades, screens or other items affecting the exterior appearance of a Unit, whether installed on the interior or exterior of the Building, shall be constructed or installed without the prior written consent of the Board of Directors.

**4.15 Leases.**

**4.15.1** Any agreement for the leasing or rental of a Unit executed on or after the date this Declaration is recorded (hereinafter in this Section referred to as a "Lease")

shall provide that the terms of such Lease shall be subject in all respects to the provisions of the Condominium Documents. Said Lease shall further provide that any failure by the Lessee thereunder to comply with the terms of the Condominium Documents shall be a default under the Lease and shall be deemed a violation of the terms of the Condominium Documents by the Owner. All Leases shall be in writing. The Unit Owner of said leased Unit has the duty and obligation to furnish the Board of Directors with the name or names of the Person currently leasing said Unit and to maintain with the Association a record of the current mailing address of said Unit Owner. Any Unit Owner who shall lease his Unit shall be responsible for assuring compliance by such Unit Owner's Lessee, or other Persons who occupy the Unit and their Invitees with the Condominium Documents and any noncompliance by the Lessee, or other Persons who occupy the Unit and their Invitees of the Condominium Documents shall be deemed noncompliance by the Owner and the Unit Owner, upon demand of the Association, shall immediately take all necessary actions to correct any such violations and any deemed noncompliance by the Owner shall be enforceable as any violation of the Condominium Documents as provided in this Declaration or otherwise permitted by law.

**4.15.2** At least ten (10) days before commencement of the lease term, the Unit Owner shall provide the Association with the following information: (1) the commencement date and expiration date of the Lease term; (2) the names of each of the Lessees and each other Person who will occupy the Unit during the Lease term; (3) the address and telephone number at which the Unit Owner can be contacted by the Association during the lease term; (4) the name, address and telephone number of a Person whom the Association can contact during the Lease term in the event of an emergency involving the Unit; and (5) the proposed use of the Unit.

**4.16 Variances.** The Board of Directors may, at its option and in extenuating circumstances, grant variances from the restrictions set forth in this Article 4 if the Board of Directors determines in its discretion that: (a) a restriction would create an unreasonable hardship or burden on a Unit Owner or Occupant or a change of circumstances since the recordation of this Declaration had rendered such restriction obsolete; and (b) the activity permitted under the variance will not have any substantial adverse effect on Unit Owners and Occupants and is consistent with the high standards intended for Occupants and Owners of the Condominium. No variances shall be granted pursuant to this Section unless also approved in advance by the Declarant so long as the Declarant owns any Unit which is for sale to the public.

## ARTICLE 5

### MAINTENANCE AND REPAIR OF COMMON ELEMENTS AND UNITS

#### 5.1 Duties of the Association.

**5.1.1** The Association shall inspect, maintain, repair and replace all Common Elements. In addition, the Association shall maintain, repair and replace the Perimeter Building Walls and roof. The cost of all such inspection, maintenance, repairs and replacements shall be a Common Expense assessed to the Units as provided in

Section 7.2 and shall be paid for by the Association. The Board of Directors shall be the sole judge as to the appropriate maintenance, repair and replacement of all Common Elements, but all Common Elements shall be maintained in good condition and repair at all times. No Unit Owner, Lessee, Occupant or other Person shall construct or install any Improvements on the Common Elements or alter, modify or remove any Common Elements without the prior written approval of the Board of Directors. No Unit Owner, Lessee, Occupant or other Person shall obstruct or interfere with the Association in the performance of the Association's maintenance, repair and replacement of the Common Elements.

**5.1.2** The Association shall inspect, maintain, repair and replace that portion of the Condominium designated as parking including all of the Parking Spaces which includes those Parking Spaces which have been designated as Limited Common Elements and the Association shall inspect, maintain, repair and replace any other portions of the Units and Limited Common Elements which the Board of Directors approves, and the cost of such inspection, maintenance, repair and replacement of the Parking Area of the Condominium, including all of the Parking Spaces, and any other portions of the Units and the Limited Common Elements which the Board of Directors deems appropriate for the Association to inspect, maintain, repair and replace shall be a Common Expense assessed to the Units as provided in Section 7.2 and shall be paid for by the Association.

**5.2 Duties of Unit Owners.** Each Unit Owner shall maintain, repair and replace, at such Unit Owner's own expense, all portions inside of such Unit Owner's Unit and all Improvements thereon in a good, clean and sanitary condition except any portion of a Unit which the Board of Directors may have determined appropriate for the Association to inspect, maintain, repair and replace in which case such portion of a Unit, if any, shall be inspected, maintained, repaired and replaced by the Association and the cost of such inspection, maintenance, repair and replacement shall be a Common Expense assessed to the Units as provided in Section 7.2 of this Declaration and shall be paid for by the Association. Notwithstanding the foregoing, unless and until such time as the Board of Directors notifies any Unit Owner that any portion of such Unit Owner's Unit which is not currently maintained by the Association but which the Board has repaired will be inspected, maintained, repaired and replaced by the Association, each Unit Owner shall inspect, maintain, repair and replace, at such Unit Owner's own expense, such Unit Owner's Unit as required herein. In addition, each Unit Owner shall be responsible for the maintenance and repair of any of the Limited Common Elements allocated to his Unit which the Board of Directors determines appropriate for the Owners to maintain rather than the Association.

**5.3 Combined Duties of Association and Unit Owners.**

**5.3.1** The Association shall maintain, repair and replace as needed, all waste disposal facilities and waste collection fees at the Condominium, except those facilities located within the Units and further except for waste that may require special handling and disposal (including, without limitation, waste from a medical, dental or other office that is required to be disposed of in a manner other than placement in governmental

landfills that are not intended to receive hazardous waste, substances or materials), which waste shall be disposed of at the sole expense of the respective Owner and shall not be placed in the waste facilities maintained at the Condominium by the Association.

**5.3.2** The Association and the Owners shall perform such confined duties as may be otherwise provided for in this Section 5 and as may be otherwise determined by the Board of Directors as provided herein or as may be otherwise agreed upon between the Association and the Unit Owners.

**5.4 Repair or Restoration Necessitated by Unit Owner.** Each Unit Owner shall be liable to the Association, to the extent permitted by Arizona law, for any damage to the Common Elements or the Improvements thereon, landscaping or equipment thereon or to any portion of the Units for which the Association has the responsibility to maintain, which results from the negligence or willful misconduct of the Unit Owner or the Unit Owner's Invitees. The cost to the Association of any such repair, maintenance or replacements required by such act of a Unit Owner or the Unit Owner's Invitees shall be paid by the Unit Owner, upon demand, to the Association. The Association may enforce collection of any such amounts in the same manner and to the same extent as provided for in this Declaration for the collection of Assessments in Article 7.

**5.5 Unit Owner's Failure to Maintain.** If a Unit Owner fails to maintain in accordance with the Maintenance Standard or other rules of the Association the Unit or any Limited Common Element which he is obligated to maintain under this Declaration or any other recorded document and the required maintenance, repair or replacement is not performed within fifteen (15) days after written notice has been given to the Unit Owner by the Association, the Association shall have the right, but not the obligation, to perform the required maintenance, repair or replacement and the cost of any such maintenance, repair or replacement shall be assessed against and collected from the nonperforming Unit Owner in the manner provided for in this Declaration for the collection of Assessments pursuant to Article 7.

## ARTICLE 6

### THE ASSOCIATION; RIGHTS AND DUTIES, MEMBERSHIP

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