F. ANN RODRIGUEZ, RECORDER

RECORDED BY: JSH

DEPUTY RECORDER

0497 EAST-2

TTISE

TITLE SECURITY

PICKUP



N S

DOCKET: 13818
PAGE: 286
NO. OF PAGES: 48

SEQUENCE: 20101020093 05/27/2010

ARSTRT 11:42

PICKUP

AMOUNT PAID \$ 55.00

AMENDED AND RESTATED DECLARATION OF CONDOMINIUM AND OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR

a resubdivision of Stone Crossing A RESIDENTIAL CLUSTER PROJECT

STONE CROSSING, RESIDENTIAL CLUSTER PROJECT A RESUBDIVISION OF STONE CROSSING AS SHOWN IN THE FINAL PLAT RECORDED IN BOOK 64 OF MAPS AND PLATS AT PAGE 62

40 CONDOMINIUM UNITS COMMON AREA "A" (PRIVATE STREETS AND UTILITIES), COMMON AREA "B", (LANDSCAPE, PEDESTRIAN, UTILITIES AND OPEN SPACE) COMMON AREA "C" (LIMITED USE OPEN SPACE) COMMON AREA "D", (RECREATION) AND COMMON AREA "E" (RETENTION BASIN)

TABLE OF CONTENTS

ARTICLE 1		
DEFINITIONS	S	
Section 1.1	General Definitions. 2	
Section 1.2	Defined Terms	,
	1.2.1 "Act"	
	1.2.2 "Articles"	
	1.2.3 "Assessments"	
	1.2.4 "Assessment Lien"	
	1.2.5 "Association"	
	1.2.6 "Board",	
	1.2.7 "Building")
	1.2.8 "Bylaws"	
	1.2.9 "Common Elements".	2
	1.2.10 "Common Element Ownership Percentage"	,
	1.2.11 "Common Expenses"	3
	1.2.12 "Common Expense Liability"	3
	1.2.13 "Condominium"	3
	1.2.14 "Condominium Documents"	3
	1.2.15 "Declarant"	
	1.2.16 "Declaration"	3
	1.2.17 "Development Rights"	3
	1.2.18 "Eligible Insurer or Guarantor"4	4
	1.2.19 "Eligible Mortgage Holder"4	4
	1.2.20 "First Mortgage".	4
	1.2.21 "Improvement"	7
	1.2.22 "Limited Common Elements"	4
	1.2.23 "Member"	4
	1.2.24 "Mortgagee"	4
	1.2.25 "Period of Declarant Control"	4
	1.2.26 "Person".	5
	1.2.27 "Plat"	5
	1.2.28 "Purchaser",	5
	1.2.29 "Rules"	5
	1.2.30 "Special Declarant Rights".	5
	1.2.31 "Unit"	5
	1.2.32 "Unit Owner"	5
ARTICLE 2	- A V - W - E W - E	er.
SUBMISSIC	ON OF PROPERTY; UNIT BOUNDARIES; ALLOCATIONOR	F
	GE INTERESTS, VOTES ANDCOMMON EXPENSE LIABILITIES	6
Section 2.1	Submission of Property	6
Section 22	Name of Condominium	6

S	ection 2	2.3	Name of Association.	6
S	ection 2	2.4	Identification of Units.	6
	ection 2	2.5	Unit Boundaries.	6
	Section 2	2.6	Allocation of Common Element Ownership Percentages	7
	Section 2	2.7	Allocation of Votes in the Association.	7
	Section 2	2.8	Allocation of Limited Common Elements.	7
	Section 2	2.0	Rights Reserved to Declarant	7
	occion .	۷.۶	rugina reserved to Decidant.	
ARTICI	E 3 EA	SEMI	ENTS.	8
	ection :	3.1	Utility Easements.	8
	ection	3.2	Easements for Ingress and Egress.	8
	Section	3.3	Unit Owners' Easements of Enjoyment	8
	Section	3.4	Declarant's Rights and Easements	9
	Section	3.5	Easement for Support.	9
	Section	3.6	Common Elements Easement in Favor of the Association	9
	Section		Common Elements Easement in Favor of Unit Owners.	9
	Section	3.8	Units and Limited Common Elements Easement in Favor of Association	
	occion	5.0	Omis und Paratise Columns 25-44-45	0
ç	Section	3.9	Landscape and Drainage Easement. 1	1
Š	Section	3.10	Easement for Unintended Encroachments	1
	Jeenon	5.10	I MOUNTAIN TO CAMPAGE AND COMMENT OF THE COMMENT OF	
ARTICI	E 4			
I	ISE AN	D OC	CUPANCY RESTRICTIONS1	1
	Section	4.1	Use Restrictions	1
0.77	Section		Antennas	1
	Section		Utility Service	2
	Section		Improvements and Alterations	2
	Section		Trash Containers and Collection.	2
	Section		Machinery and Equipment.	2
	Section		Animals	13
	Section		Temporary Occupancy	13
	Section		Removal of Minerals.	13
	Section		Diseases and Insects.	13
	Section	Control of the Control	Vehicles.	13
,	DOUBLI	7,11	4.11.1 Trucks, Trailers, Commercial Vehicles, Campers and Boats	13
			4.11.2 Motor Vehicles	13
			4.11.3 Towing of Vehicles.	14
	Section	4 12	Signs.	14
	Section	4 13	Lawful Use.	14
	Section	4.14	Nuisances and Offensive Activity.	14
	Section	4.15	Window Coverings.	15
	Section	4.16	Rentals.	15
	~~~			
ARTIC	LE 5			

OPERATION, MAINTENANCE AND REPAIR OF COMMON ELEMENTS AND UNITS

		15	
Section 5.1 Duties of the Association			
Section 5.2	Duties of Unit Owners.	16	
Section 5.3	Repair or Restoration Necessitated by Unit Owner.	16	
Section 5.4	Unit Owner's Failure to Maintain.	16	
Section 5.5	Utilities	16	
Section 5.6	Shared Walls and Fences,	16	
Section 5.7	Detention/Retention and Drainage Facility Maintenance.	17	
ARTICLE 6			
THE ASSOC	CIATION; RIGHTS AND DUTIES, MEMBERSHIP	18	
Section 6.1	Rights, Powers and Duties of the Association.	18	
Section 6.2	Directors and Officers	18	
Section 6.3	Rules.	19	
Section 6.4	Members of the Association.	19	
ARTICLE 7			
ACTICLE /	NTS	19	
Section 7.1	Preparation of Budget.	19	
Section 7.1	Common Expense Assessment.	20	
Section 7.3	Special Assessments.	22	
Section 7.4	Exceptional Maintenance Assessments.	22	
Section 7.5	Working Capital Fund	22	
Section 7.6	Initial Contributions to Reserve Fund	23	
Section 7.7	Transfer Fee.	23	
Section 7.8	Effect of Non-Payment of Assessments; Remedies of the Association		
13237722		23	
Section 7.9	Subordination of Assessment Lien to Mortgages.	24	
Section 7.10	No Exemption of Unit Owner	24	
Section 7.17	Certificate of Payment,	24	
Section 7.12	No Offsets.	24	
Section 7.13	Surplus Funds	25	
Section 7.14	Monetary Penalties.	25	
ARTICLE 8			
INSURANC	E	25	
Section 8.1	Scope of Coverage.	25	
Section 8.2	Payment of Premiums.	27	
Section 8.3	Insurance Obtained by Unit Owners.	28	
Section 8.4	Payment of Insurance Proceeds	28	
Section 8.5	Restoration	28	
Section 8.6	Certificate of Insurance.	28	

ARTICLE 9

20	RIGHTS O	F MORTGAGEES	28
	Section 9.	Notification to Mortgagees.	28
	Section 9.3	Approval Required for Amendment to Declaration, Articles or Bylaws	
			29
	Section 9.3	Right of Inspection of Records.	30
	Section 9.4	Prior Written Approval of Mortgagees.	. 30
	Section 9.	Liens Prior to First Mortgage	. 30
	Section 9.	6 Condemnation or Insurance Proceeds	. 30
	Section 9.	Limitation on Partition and Subdivision.	. 31
	Section 9.		. 31
		tand the state of	
ARTIC	CLE 10		
	CLAIM A	ND DISPUTE RESOLUTION/LEGAL ACTIONS	. 31
	Section 10	.1 Alternative Dispute Resolution.	. 31
	Section 10	.2 Negotiation.	. 32
	Section 10	3 Mediation.	. 32
	Section 10	.4 Position Memoranda; Pre-Mediation Conference	, 32
	Section 10	.5 Conduct of Mediation.	. 32
	Section 10	.6 Exclusion Agreement	. 33
	Section 10	.7 Parties Permitted at Sessions.	. 33
	Section 10	.8 Expenses of Mediation	. 33
	Section 10	9.9 Final and Binding Arbitration.	. 33
	Section 10	10 Place	. 33
	Section 10	.11 Arbitration	. 33
	Section 10	2.12 Enforcement of Resolution,	. 34
	Section 10	0.13 Conflicts.	. 34
	Section 10	0.14 Arizona Statute Compliance.	. 34
ARTI	CLE 11		24
	DISCLOS	URES AND OWNER ACKNOWLEDGMENTS	. 34
	Section 1	.1 Disclosures and Owner Acknowledgments.	. 34
	Section 1	.2 No Security.	. 33
	Section 1	.3 Sound Insulation.	. 33
	Section 1	.4 Construction of Units 1 through 12	. 35
ARTI	CLE 12	L PROVISIONS	25
	GENERA	L PROVISIONS	35
	Section 13	2.1 Enforcement,	35
		12.1.1 Enforcement by Association.	JJ 77
		12.1.2 Notice of Violation.	ונ מינ
		12.1.3 Board's Discretion in Taking Action.	., 37 27
		12.1.4 Rights are Cumulative	ɔ/
		12.1.5 No Delays or Omissions.	., J/
		12.1.6 No Invalidation of Mortgage	Jo
		12.1.7 Non-Waiver	50

Section	12.2	Unit Owners' Rights to Enforce	38
Section	12.3	Attorney Fees.	38
Section	12.4	<u>Severability.</u>	38
Section	12.5	Term.	38
Section	12.6	Termination of Condominium.	38
Section	12.7	Amendment.	38
Section	12.7	Remedies Cumulative.	39
Section	12.0	Notices.	39
Section	12.2	Binding Effect.	39
Section	12.10	Gender	40
Section	12.11	Topic Headings.	40
Section	12.12	Survival of Liability.	40
Section	12.13	Survival of Liability.	40
Section	12.14	Construction	40
Section	12.15	Joint and Several Liabilities.	40
Section	12.16	Guests and Tenants.	40
		Number of Days	

# SECOND AMENDED AND RESTATED DECLARATION OF CONDOMINIUM AND OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR STONE CROSSING

THIS SECOND AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS ("Declaration") for Stone Crossing is made this _____ day of April, 2010, by Title Security Agency, Inc., an Arizona corporation as Trustee under Trust #1093 ("Declarant") and amends and supercedes the Amended and Restated Declaration of Condominium and of Covenants, Conditions and Restrictions for Stone Crossing ("Previous Declaration"), recorded on May 26, 2009 in Docket 13565 at Page 138, et. seq.

Whereas, the Previous Declaration designates Title Security Agency, Inc., as the Declaration, but in Section 1.2 (o) defines the Declarant as Thurston Village, LLC, an Arizona limited liability company; and

Whereas, HSL Stone Crossing, LLC was the beneficiary of Trust #1093 at the time of recordation of the Previous Declaration as evidenced by the Affidavit and Declaration of Trust recorded on September 9, 2008 in Docket 13387 at Page 425 and as such, HSL Stone Crossing, LLC should have been named as the beneficiary of Declarant, and Thurston Village, LLC should not have been designated as the Declarant in the Previous Declaration, as it had no right, title or interest in any portion of Stone Crossing; and

Whereas, Article 11, Section 11.5(a) of the Previous Declaration provides that it may be amended by Declarant in the exercise of its Special Declarant Rights; and

Whereas, Article 1, Section 1.2(dd)(ii) defines Special Declarant Rights to include Development Rights and;

Whereas, Article 1, Section 1.2(q)(i) of such Declaration defines Development Rights to include the right to create easements, Units, Common Elements or Limited Common Elements within the Condominium; and

Whereas, Title Security Agency of Arizona, Inc., as Trustee under Trust #1093, therefore, has the right, as the Declarant to restate and amend the Previous Declaration and desires to do so.

NOW THEREFORE, all of the property described as Lots 1 through 40 and all Common Elements of Stone Crossing (referred to as "Common Areas" on the Plat), a subdivision of Pima County, Arizona, as shown on the plat recorded Book 64 of Maps and Plats at Page 62, Office of the Pima County Recorder, will be held, sold, and conveyed subject to the following easements, restrictions, covenants and conditions, all of which are for the purpose of enhancing and protecting the value, desirability, and attractiveness of the Condominium. These easements, covenants, restrictions, and conditions run with title to any Lot within the Condominium, bind all parties having or acquiring any right, title, or interest in the Condominium and inure to the benefit of each such Owner.

The Declaration of Condominium and of Covenants, Conditions and Restrictions for Stone Crossing, which was recorded in the office of the Pima County Recorder on May 26, 2009 in Docket 13565 at page 138, et seq. is superceded in its entirety by this Amended and Restated Declaration and such previously recorded Declaration will no longer be in effect as of the date of recording of this Second Amended and Restated Declaration. All other Declarations for Stone Crossing are also superseded in their entirety by this Amended and Restated Declaration of Condominium and of Covenants, Conditions and Restrictions.

### ARTICLE 1 DEFINITIONS

- Section 1.1 <u>General Definitions</u>. Capitalized terms not otherwise defined in this Declaration have the meanings delineated in the Arizona Condominium Act, A.R.S. §33-1201, et seq., as amended from time to time ("Act").
- Section 1.2 <u>Defined Terms</u>. The following capitalized terms have the general meanings described in the Act and for purposes of this Declaration have the specific meanings set forth below:
  - 1.2.1 "Act" means the Arizona Condominium Act, A.R.S. §33-1201, et seq., as amended from time to time.
  - 1.2.2 "Articles" refer to the Articles of Incorporation of the Association, as amended from time to time.
  - 1.2.3 "Assessments" mean the Common Expense Assessments, Special Assessments, and Exceptional Maintenance Assessments levied and assessed against each Unit pursuant to this Declaration.
  - 1.2.4 "Assessment Lien" means the lien in favor of the Association to secure the payment of Assessments, monetary penalties and other charges owed to the Association.
  - 1.2.5 "Association" means Stone Crossing Condominium Association, Inc., an Arizona nonprofit corporation, its successors and assigns.
  - 1.2.6 "Board" means the Board of Directors of the Association.
  - 1.2.7 "Building" means a structure containing one or more Units that has been or will be constructed on the land included in the Condominium, as shown on the Plat.
  - 1.2.8 "Bylaws" refer to the Bylaws of the Association, as amended, modified, supplemented, restated or replaced from time to time.
  - 1.2.9 "Common Elements" means all portions of the Condominium other than the

Units. The Common Areas shown on the Plat are actually the Common Elements of the Condominium and all references to Common Areas as shown on the Plat refer to the Common Elements as defined herein and used in this Declaration.

- 1.2.10 "Common Element Ownership Percentage" means each Unit's percentage interest in the Common Elements. Each Owner has an undivided 1/40th interest in the Common Elements.
- 1.2.11 "Common Expenses" means expenditures made by or financial liabilities of the Association, together with any allocations to reserves. "Common Expense Assessment" means the assessment levied against the Units pursuant to Section 7.2 of this Declaration.
- 1.2.12 "Common Expense Liability" means the liability for Common Expenses allocated to each Unit by this Declaration. Each Owner has 1/40th of the Common Expenses allocate to that Owner's Unit.
- 1.2.13 "Condominium" means the real property located in Pima County, Arizona, which is more particularly described in <a href="Exhibit A">Exhibit A</a> attached to this Declaration, together with all Buildings and other Improvements located on the real property.
- 1.2.14 "Condominium Documents" means this Declaration, the Articles, the Bylaws and the Rules.
- 1.2.15 "Declarant" means Title Security Agency, Inc., an Arizona corporation as Trustee under Trust #1093 and the beneficiary of such trust, which as of the date of recordation of this Declaration is HSL Stone Crossing, LLC, an Arizona limited liability company, their successors and assigns.
- 1.2.16 "Declaration" means this Declaration of Condominium and of Covenants, Conditions and Restrictions, as amended from time to time, together with the exhibits.
- 1.2.17 "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 during the period of Declarant Control:
  - 1.2.17.1 Create easements, Units, Common Elements or Limited Common Elements within the Condominium;
  - 1.2.17.2 Determine Unit sizes, subdivide Units, convert Units into Common Elements or convert Common Elements into Units;
  - 1.2.17.3 Add real estate to the Condominium in accordance with the Act;

- 1.2.17.4 Withdraw real estate from the Condominium;
- 1.2.17.5 Amend the Declaration during the Period of Declarant Control to comply with the Act or any other applicable law, to specify Unit sizes, to add development percentages pursuant to Section 2.7 of this Declaration, and to correct any error or inconsistency in the Declaration;
- 1.2.17.6 Make the Condominium part of a larger condominium or planned community;
- 1.2.17.7 Amend the Declaration during the Period of Declarant Control, to grant or accept easements, and/or comply with the rules or guidelines, in effect from time to time, of any governmental or quasi-governmental entity or federal corporation guaranteeing or insuring mortgage loans or governing transactions involving mortgage instruments.
- 1.2.18 "Eligible Insurer or Guarantor" means an insurer or governmental guarantor of a First Mortgage who has requested notice of certain matters.
- 1.2.19 "Eligible Mortgage Holder" means a Mortgagee who has requested notice of certain matters from the Association.
- 1.2.20 "First Mortgage" means any mortgage or deed of trust on a Unit with first priority over any other mortgage or deed of trust on the same Unit.
- 1.2.21 "Improvement" means any physical structure, fixture or facility existing or constructed, placed, erected or installed on the land included in the Condominium, including, but not limited to, buildings, private drives, paving, fences, walls, hedges, plants, trees and shrubs of every type and kind.
- 1.2.22 "Limited Common Elements" means a portion of the Common Elements specifically designated in the Plat or this Declaration 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.
- 1.2.23 "Member" means any Person who is or becomes a Unit Owner and by virtue of owning a Unit is entitled to automatic membership in the Association.
- 1.2.24 "Mortgagee" means the holder of any First Mortgage.
- 1.2.25 "Period of Declarant Control" means the time period beginning on the date this Declaration is recorded with the County Recorder of Pima County, Arizona, and

ending on the earlier of (i) ninety days after substantial completion of 75% of the Units, or (ii) the date that the Declarant notifies the Association in writing that it is electing to terminate the Period of Declarant Control.

- 1.2.26 "Person" means a natural person, corporation, limited liability company, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.
- 1.2.27 "Plat" means the "Final Plat for Stone Crossing", a residential cluster project, as recorded on May 26, 2009 in Book 64 of Maps at Page 62, Pima County Recorder, and any amendments, supplements or corrections thereto.
- 1.2.28 "Purchaser" means any Person, other than the Declarant, who by means of a voluntary transfer becomes a Unit Owner, except a Person who, in addition to purchasing a Unit, is assigned any Special Declarant Right.
- 1.2.29 "Rules" mean the rules and regulations adopted by the Board and as amended from time to time.
- 1.2.30 "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:
  - 1.2.30.1 Construct Improvements as provided for in this Declaration or shown on the Plat;
  - 1.2.30.2 Exercise any Development Right;
  - 1.2.30.3 Maintain sales offices, management offices, models, and signs advertising the Condominium;
  - 1.2.30.4 Use, grant or accept easements through the Common Elements for the purpose of making Improvements within the Condominium;
  - 1.2.30.5 Appoint or remove any officer of the Association or any member of the Board during the Period of Declarant Control;
  - 1.2.30.6 Assign initial parking spaces to a Unit, which may be changed by the Board.
- 1.2.31 "Unit" means a portion of the Condominium designated for separate ownership or occupancy, the boundaries of which are described in Section 2.5 of this Declaration.
- "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 to a Unit. "Unit Owner" does not include Persons having an interest in a Unit merely as security for the performance of an obligation. "Unit Owner" does not include a lessee or tenant of a Unit, or an owner of a timeshare interest in a Unit, or any interest that

resembles a timeshare interest. "Unit Owner" includes 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. "Unit Owner" does 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 will be deemed to be the Unit Owner.

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

- Section 2.1 Submission of Property. The Declarant submits the real property located in Pima County, Arizona described in the Plat, together with all Improvements situated thereon and all easements, rights and appurtenances thereto, for the purpose of creating a condominium in accordance with the provisions of the Act and declares that the real property described in the Plat, together with all Improvements situated thereon, and all easements, rights and appurtenances thereto, will be held and conveyed subject to the terms, covenants, conditions and restrictions set forth in this Declaration.
- Section 2.2 Name of Condominium. The name of the Condominium created by this Declaration is Stone Crossing.
- Section 2.3 Name of Association. The name of the Association is Stone Crossing Condominium Association, Inc.
- Section 2.4 <u>Identification of Units</u>. The identifying numbers of the Units are 1 through 40. The legal description of a Unit which will be used to describe the Unit and all Common Elements, rights, obligation and interests appurtenant to that Unit will be as follows: "Unit (1-40), Stone Crossing, as shown on the Plat recorded in Book 64 of Maps and Plats at Page 62, Pima County Recorder, together with an undivided 1/40th interest in the Common Elements".
- Section 2.5 <u>Unit Boundaries</u>. The lower boundary of each Unit is the bottom surface of the slab. The side boundaries are the exterior surface of the stucco, and all exterior wall surfaces including windows and doors, and the middle of any shared or demising wall, as applicable. The side boundaries extend to the top surface of the highest portion of the roof. The roofs are part of the Units, including the surfaces of the roofs. Patios and balconies are also part of the Units.
  - 2.5.1 Except as otherwise provided in this Declaration or Plat, any window, door, skylight, chimney, fascia, trim, weather-stripping, air conditioning or heating unit, chute, flue, pipe, duct, wire, conduit, bearing wall, bearing column or other fixture, whether located within or outside of the boundaries of a Unit, which

serve only one Unit, is part of the Unit served.

- 2.5.2 Subject to the provisions of Subsection 2.5.1 of this Declaration, all spaces, utilities, fixtures, appliances, interior partitions and other fixtures and Improvements within the boundaries of a Unit are part of the Unit.
- 2.5.3 The physical boundaries of a Unit will be considered to be the proper boundaries regardless of the settling, rising or lateral movement of the Buildings and regardless of any variances between the boundaries shown on the Plat and the actual physical boundaries.
- Section 2.6 <u>Allocation of Common Element Ownership Percentages</u>. Each Unit's percentage interest in the Common Elements is 1/40th.
- Section 2.7 <u>Allocation of Votes in the Association</u>. There will be 40 total votes in the Association and one vote is allocated to each Unit.
- Section 2.8 Allocation of Limited Common Elements.
  - 2.8.1 The driveway that adjoins each Unit is a Limited Common Element appurtenant to the adjoining Unit. A Limited Common Element may be reallocated by an amendment to this Declaration made in accordance with the provisions of the Act.
  - 2.8.2 The Board has the right, without a vote of the Members, to allocate as a Limited Common Element, any portion of the Common Elements not previously allocated as a Limited Common Element. Any such allocation by the Board must be made by an amendment to this Declaration and an amendment to the Plat if required by the Act.
  - 2.8.3 Certain designated parking spaces are Limited Common Elements as assigned to the Units by the Declarant. The Board reserves the right to reassign parking spaces that are Limited Common Elements to comply with law, including the Federal Fair Housing Act, which provides for reasonable accommodations to persons with disabilities. Parking on the streets is not permitted.
  - 2.8.4 The back patio that adjoins each Unit is a Limited Common Element appurtenant to the adjoining Unit. Each Unit Owner is required to maintain, repair and replace, at his/her own expense, all portions of the appurtenant back patio.
- Section 2.9 <u>Rights Reserved to Declarant.</u> Declarant reserves the right at any time and from time to time, subject to the provisions of the Act, to exercise any or all of the Special Declarant Rights.

ARTICLE 3

#### **EASEMENTS**

- Section 3.1 <u>Utility Easements</u>. There is an easement upon, across, over, under, and through the Common Elements for reasonable ingress, egress, installation, replacing, repairing or maintaining of all utilities, including, but not limited to, gas, water, sewer, chilled water, telephone, fiber optic cable or other communications facilities, cable television, connections to antennae permitted hereunder, and electricity. By virtue of this easement, it is expressly permissible for the providing utility company, Declarant, or the Association to erect and maintain the necessary equipment on the Common Elements, but no sewers, electrical lines, water lines, or other utility or service lines may be installed or located on the Common Elements except as initially designed, approved and constructed by the Declarant or as approved by the Association. This easement does not, in any way affect any other recorded easements on the Common Elements.
- Section 3.2 Easements for Ingress and Egress. There are easements for ingress and egress for pedestrian traffic over, through and across sidewalks, paths, walks, and lanes that from time to time may exist upon the Common Elements. An easement is created for ingress and egress for pedestrian traffic to and from the U.S. Post Office mailbox. There is also created an easement for ingress and egress for pedestrian and vehicular traffic over, through and across such driveways and parking areas as from time to time may be paved and intended for such purposes except that such easements do not extend to any parking facilities that are Limited Common Elements, which are reserved exclusively for the use of the applicable Unit. Such easements will run in favor of and be for the benefit of the Unit Owners and occupants of the Units and their guests, families, tenants, invitees, and contractors.
- Section 3.3 Unit Owners' Easements of Enjoyment.
  - 3.3.1 Every Unit Owner has a right and easement to enjoy and use the Common Elements, which right and easement is appurtenant to and passes with the title to every Unit, subject to the following provisions:
    - 3.3.1.1 The right of the Board to adopt reasonable rules and regulations governing the use of the Common Elements and Units;
    - 3.3.1.2 The right of the Board 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 Act; and
    - 3.3.1.3 All rights and easements set forth in this Declaration and the Act including, but not limited to, the rights and easements granted to the Declarant by this Declaration.
  - 3.3.2 A Unit Owner's right and easement of enjoyment in and to the Common Elements cannot be conveyed, transferred, alienated or encumbered separate and apart from a Unit. Such right and easement of enjoyment in and to the Common

Elements is 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.

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

- 3.4.1 The Declarant has the right and an easement on and over the Common Elements to construct the Common Elements and the Units shown on the Plat and all other Improvements the Declarant may deem necessary and to use the Common Elements and any Units owned by the Declarant for construction or renovation related purposes including the storage of tools, machinery, equipment, building materials, appliances, supplies and fixtures, and the performance of work in the Condominium.
- 3.4.2 The Declarant has the right and an easement on, over and under those portions of the Common Elements not located within the Buildings for the purpose of maintaining and correcting drainage of surface, roof or storm water. The easement created by this Subsection expressly includes the right to cut any trees, bushes, or shrubbery, to grade the soil or to take any other action reasonably necessary.
- 3.4.3 The Declarant has an easement through the Units for any access necessary to complete any renovations, warranty work or modifications to be performed by the Declarant.
- 3.4.4 The Declarant has the right and an easement on, over, and through the Units and Common Elements as reasonably necessary for the purpose of discharging its obligations and exercising Special Declarant Rights whether arising under the Act or reserved in this Declaration.
- Section 3.5 <u>Easement for Support</u>. To the extent necessary, each Unit has an easement for structural support over every other Unit in the Condominium, the Common Elements and the Limited Common Elements, and each Unit and the Common Elements is subject to an easement for structural support in favor of every other Unit in the Condominium, the Common Elements and the Limited Common Elements.
- Section 3.6 Common Elements Easement in Favor of the Association. The Unit and Common Elements is subject to an easement in favor of the Association and the directors, officers, agents, employees and independent contractors of the Association for the purpose of the inspection, upkeep, maintenance, repair and replacement of the Common Elements and for the purpose of exercising all rights of the Association and discharging all obligations of the Association.
- Section 3.7 <u>Common Elements Easement in Favor of Unit Owners.</u> The Units and Common Elements are subject to the following easements in favor of the Units benefitted:

- 3.7.1 For the installation, repair, maintenance, use, removal or replacement of pipes, ducts, heating and air conditioning systems, electrical, telephone and other communication wiring and cables and all other utility lines and conduits which are a part of or serve any Unit and which pass across or through a portion of the Common Elements; 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.
- 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 any Common Element adjacent to such Unit; provided that the installation, repair, maintenance, use, removal or replacement of any such item does not unreasonably interfere with the common use of any part of the Common Elements, adversely affect either the thermal or acoustical character of the Building or impair or structurally weaken the Building.
- 3.7.3 For driving and removing nails, screws, bolts and other attachment devices into the Unit side surface of the stone, block, brick or other masonry walls bounding the Unit and the Unit side surface of the studs which support the dry wall or plaster perimeter walls bounding the Unit, the bottom surface of floor or roof joists or concrete floors (as applicable) above the Unit and the top surface of the floor joists or concrete floors below the Unit to the extent such nails, screws, bolts and other attachment devices may encroach into a part of a Common Element adjacent to such Unit; provided that any such action does not unreasonably interfere with any other Unit, the common use of any part of the Common Elements, adversely affect either the thermal or acoustical character of the Building or impair or structurally weaken the Building.
- 3.7.4 For the maintenance of any lighting devices, outlets, medicine cabinets, exhaust fans, grease traps, ventilation ducts, registers, grilles and similar fixtures which serve only one Unit but which encroach into any part of the Common Elements.
- 3.7.5 For the performance of the Unit Owners' obligation to maintain, repair, replace and restore those portions of the Units and Limited Common Elements that the Unit Owner is obligated to maintain under this Declaration or in the Act.
- Section 3.8 <u>Units and Limited Common Elements Easement in Favor of Association.</u> The Units and the Limited Common Elements are subject to the following easements in favor of the Association and its directors, officers, agents, employees and independent contractors:
  - 3.8.1 To inspect the Units and Limited Common Elements in order to verify the performance by Unit Owners of all items of maintenance and repair for which

they are responsible;

- 3.8.2 To inspect, maintain, repair and replace portions of the Units, Common Elements or the Limited Common Elements situated in or accessible from such Units or Limited Common Elements;
- 3.8.3 To correct, in the case of an emergency, conditions in one or more Units or Limited Common Elements or casualties to the Common Elements, the Limited Common Elements or the Units.
- 3.8.4 To enable the Association, the Board or any committees appointed by the Board to exercise and discharge their respective rights, powers and duties under the Condominium Documents.
- 3.8.5 To inspect, at reasonable times and upon reasonable notice to the Unit Owner, the Units and the Limited Common Elements to verify that the provisions of the Condominium Documents are being complied with by the Unit Owners, their family members, guests, tenants, contractors, invitees and the other occupants of the Unit.
- Section 3.9 <u>Landscape and Drainage Easement</u>. The Association is the grantee of a ten-foot landscape and drainage easement in the eastern ten feet of the Limited Common Elements (in the backyard) allocated to Units 22-40 as shown on the Plat. The Owners of Units 22-40 are responsible for maintaining the landscaping within the easement and providing for the general maintenance of such easement. However, no Owner may alter or change the grading, slope, or landscaping within the ten-foot easement area without the written permission of the Association.
- Section 3.10 <u>Easement for Unintended Encroachments</u>. To the extent that any Unit or Common Element encroaches on any other Unit or Common Element, as a result of original construction, shifting or settling, or alteration or restoration authorized by this Declaration or any reason other than the intentional encroachment on the Common Elements or any Unit by a Unit Owner, a valid easement for the encroachment, and for the maintenance thereof, exists.

## ARTICLE 4 USE AND OCCUPANCY RESTRICTIONS

- Section 4.1 <u>Use Restrictions.</u> No Unit can be used for any purpose prohibited by this Declaration.
- Section 4.2 Antennas. No antenna, satellite television dish or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation can be erected, used or maintained outdoors on any portion of the Condominium whether attached to a Unit, Building, structure or otherwise, unless located within the Unit or in any Limited Common Element appurtenant to the Unit to which the Owner has exclusive use.

- Section 4.3 <u>Utility Service</u>. No lines, wires, solar energy devices or other devices for the communication or transmission of electric current or power, including telephone, television, and radio signals, except those installed by Declarant, can be erected, placed or maintained anywhere in the Condominium unless they are installed and maintained underground or concealed in, under or on the Units, Buildings or other structures and are not visible from the Common Elements. Nothing in this Section prohibits the erection of temporary power or telephone structures incident to the construction of Buildings or structures permitted under this Declaration.
- Improvements and Alterations. Unit Owners may make nonstructural additions, Section 4.4 alterations and improvements within their Units without the prior written approval of the Association. No Unit Owner can make any structural additions, alterations or improvements within a Unit, unless prior to the commencement of each addition, alteration or improvement, the Unit Owner has provided plans and specifications for the proposed alteration, addition or improvement to the Board on which an architect or engineer, licensed in Arizona, has certified that such addition, alteration or improvement will not impair the structural integrity of the Building within which such addition, alteration or improvement is to be made, and the Board has given its written approval thereof. The Association may, in its discretion, require that the Unit Owner submit a fee to the Association for the review of any plans for structural additions, alterations or improvements and pay a deposit to be used by the Board in the event that any other Unit or the Common Elements are damaged as a result of the Unit Owner's construction activities. The Association may, in its discretion, establish guidelines for types of additions, alterations, or improvements that may be exempt from the approval process. The Unit Owners will, to the extent permitted by Arizona law, be responsible for any damage to other Units and to the Common Elements and, if an addition, alteration or improvement voids any warranty, held by the Association or another Unit Owner, the Unit Owner will be liable for the costs incurred to obtain a replacement warranty that results from any such additions, alterations or improvements. No Unit Owner can make any addition, alteration or improvement to the Common Elements without the prior written approval of the Board.
- Section 4.5 Trash Containers and Collection. No garbage or trash can be placed or kept in the Condominium except in covered containers of a type, size and style that are approved by the Board. The Board has the right to subscribe to a single source 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 may charge a supplemental assessment for the trash collection service, as an additional common expense assessment. If the Association does not subscribe to a single source service, Unit Owners are required to arrange for and pay directly for trash and refuse collection and are entitled to convenient placement of standard commercial-type refuse containers in locations designated by the Board. No incinerators can be kept or maintained in any Unit.
- Section 4.6 Machinery and Equipment. No machinery or equipment of any kind can be placed, operated or maintained upon the Condominium: (i) 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, (ii) except that which the Declarant or the Board may require for the construction, operation and maintenance of the Common Elements; and (iii) except machinery or equipment related to any common residential

activities conducted within Units.

- Section 4.7 Animals. No farm animals, birds, fowl, poultry or livestock can be maintained or kept in any Units or on any other portion of the Condominium. The Board may enact rules and regulations related to house pets, including, but not limited to: the number of such house pets that are permitted, the right of the Board to remove house pets that become a nuisance, requirements regarding cleaning up after pets and any other reasonable Rule related to keeping such house pets.
- Section 4.8 <u>Temporary Occupancy</u>. Temporary buildings or structures used during the construction of buildings or structures by the Declarant, or as approved by the Board, are permitted but must be removed promptly upon completion of the construction of the building or structure.
- Section 4.9 <u>Removal of Minerals</u>. No portion of the Condominium can be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth, or any earth substance of any kind.
- Section 4.10 <u>Diseases and Insects</u>. No Unit Owner will permit any thing or condition to exist upon the Condominium that could induce, breed or harbor infectious plant diseases or noxious insects.

#### Section 4.11 Vehicles.

4.11.1 Trucks, Trailers, Commercial Vehicles, Campers and Boats. Private, noncommercial, passenger automobiles or pickup trucks which, when including all attachments (including, without limitation, racks and shells), do not exceed one-ton in carrying load or cargo capacity, 84" in height or width or 222" in length, may be parked in the Condominium within a garage or in a private driveway appurtenant to a Unit but, except as provided in the next sentence, may not be parked elsewhere in the Condominium. No commercial vehicle, mobile home, travel trailer, tent trailer, trailer, tractor trailer, commercial truck or van, camper shell, detached camper, recreational vehicle, all-terrain vehicle, boat, boat trailer, golf cart, or other similar equipment or vehicle may be parked, kept, maintained, constructed, reconstructed or repaired on any part of the Condominium. A commercial automobile that contains any commercial decals, insignia or other markings can only be parked in garages.

#### 4.11.2 Motor Vehicles.

- 4.11.2.1 Except for emergency repairs, no automobile, motorcycle, motorbike, or other motor vehicle can be constructed, reconstructed, serviced or repaired on any portion of the Condominium. No inoperable vehicle may be stored or parked on any portion of the Condominium. The Board has the authority to define the term "inoperable vehicle."
- 4.11.2.2 No automobile, motorcycle, motorbike, or other motor vehicle can be

parked upon any part of the Condominium except in designated parking areas and no Unit Owner can park or allow its guests, tenants or invitees to park in any parking space or driveway assigned to another Unit. The Unit Owners and their guests, tenants, invitees and licensees may only park in the garages, designated parking spaces or on the driveways. Parking on the streets is not permitted. The Board may enact rules providing for temporary parking elsewhere in the event of social gatherings.

- 4.11.3 Towing of Vehicles. The Board has the right to have any truck, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, recreational vehicle, boat, boat trailer or similar equipment or vehicle or any automobile, motorcycle, motorbike, all-terrain vehicle, golf cart or other motor vehicle parked, kept, maintained, constructed, reconstructed or repaired in violation of the Condominium Documents towed away at the sole cost and expense of the owner of the vehicle or equipment. Any expense incurred by the Association in connection with the towing of any vehicle or equipment will be paid to the Association upon demand by the owner of the vehicle or equipment. In addition to the above, each Unit Owner has a similar right to tow vehicles or equipment parked in violation of the Condominium Documents in parking spaces assigned to that Unit as Limited Common Elements.
- Section 4.12 <u>Signs.</u> No emblem, logo, sign or billboard of any kind (including, but not limited to, "For Sale" or "For Rent" signs) is permitted on the exterior of any Unit or Building or any other portion of the Condominium or visible from the exterior of any Unit except in conformance with the sign rules adopted by the Association; provided, however, that one "For Sale" sign may be placed in the Unit in conformance with the Act. The Board will determine whether any Unit Owner is in compliance with the sign Rules. The Unit Owner is responsible for any damage caused by installation or removal of any sign age.
- Section 4.13 <u>Lawful Use</u>. No immoral, improper, offensive, or unlawful use can be made of any part of the Condominium. All laws, zoning ordinances, and regulations of all governmental bodies having jurisdiction over the Condominium must be observed. Any violation of such laws, zoning ordinances or regulations is a violation of this Declaration.
- Section 4.14 <u>Nuisances and Offensive Activity</u>. No nuisance is permitted to exist or operate upon the Condominium, and no activity can be conducted upon the Condominium which is unreasonably offensive or detrimental to any portion of the Condominium or to any Unit Owner or other occupant of the Condominium or which is an unreasonable annoyance to any Unit Owner or other resident, as determined by the Board. No exterior speakers, horns, whistles, bells or other sound devices, except security or other emergency devices used exclusively for security or emergency purposes, can be located, used or placed on the Condominium except as approved by the Board. The Board has the sole discretion to determine whether a particular activity constitutes a nuisance.

- Section 4.15 <u>Window Coverings</u>. No reflective materials, including, but without limitation, aluminum foil, reflective screens or glass, mirrors, or similar items, can be installed or placed upon the outside or inside of any windows of a Unit without the prior written approval of the Board. No enclosures, drapes, blinds, shades, screens or other items affecting the exterior appearance of a Unit or any Limited Common Elements allocated to the Unit can be constructed or installed without the prior written consent of the Board.
- Section 4.16 <u>Rentals</u>. The Board has the authority to regulate rentals or charge a registration fee for rentals; provided, however, that the Board cannot prohibit any Unit Owner from renting his/her Unit.

#### ARTICLE 5 OPERATION, MAINTENANCE AND REPAIR OF COMMON ELEMENTS AND UNITS

- Section 5.1 <u>Duties of the Association</u>. The Association will operate, maintain, repair and replace all Common Elements (but not the Limited Common Elements). The Association will also maintain the driveways, and all paved areas within the Condominium, even if part of a Unit. Except as otherwise provided in Sections 5.3 and 5.4 and to the extent actually collected from a Unit Owner, the cost of all such operation, maintenance, repairs and replacements is a Common Expense and will be paid for by the Association. Except for the driveways, the Units will be maintained, repaired and replaced by the Unit Owner pursuant to Section 5.2 of this Declaration.
  - 5.1.1 The Association will maintain, repair and replace the areas between the Buildings from the front of the Buildings up to the entryways of the Buildings.
  - 5.1.2 The Association will maintain all utilities in the Common Elements up to the exterior surface of a Unit.
  - 5.1.3 The Association will maintain the irrigation system within the 10-foot landscape/drainage easement located in the Limited Common Elements of Units 22-40, as more particularly described in Section 3.8.1, above. The Association will also prune any trees located within such easement at least once per year.
  - 5.1.4 Notwithstanding any provision in this Declaration to the contrary, the Association is responsible for painting the walls, fences and trim on the exterior of the Buildings (but not the roofs, balconies, patios, doors, windows), and will paint the Buildings as needed and as determined in the sole and absolute discretion of the Board. The Unit Owners are responsible for preparing the surfaces, including making any necessary repairs or replacement of stucco and/or trim, but the Board has the right to effectuate that work and to charge the Unit Owners for the costs of doing so. The Association will maintain any and all perimeter fences; however the Unit Owners is responsible for painting those interior surfaces of the perimeter walls that are located adjacent to a Unit, although the Board, in its sole discretion, may paint those surfaces and charge the

costs to the responsible Unit Owner.

#### Section 5.2 Duties of Unit Owners.

- 5.2.1 Each Unit Owner will maintain, repair and replace, at its own expense, all portions of the Unit, each Limited Common Element allocated to that Unit, except the driveways, and the portions of the Condominium that are depicted on the Plat as being part of the Unit.
- 5.2.2 Each Unit Owner is responsible for the maintenance and repair of the following portions of the Common Elements: (i) the Limited Common Elements, allocated to the Unit, except the driveways; (ii) roofs, exterior doors, entryways and windows of the applicable Unit; (iii) all other Improvements allocated to the Unit as a Limited Common Element pursuant to the Plat; and (iv) any and all utilities from the exterior of any Building inward.
- Section 5.3 Repair or Restoration Necessitated by Unit Owner. Each Unit Owner is liable to the Association, to the extent permitted by Arizona law, for any damage to the Common Elements or the Improvements, landscaping or equipment thereon that results from the conduct of the Unit Owner, or the Unit Owner's tenants, guests or invitees. The cost to the Association of any such repair, maintenance or replacements required by an act or the inaction of a Unit Owner will 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.
- Section 5.4 <u>Unit Owner's Failure to Maintain</u>. If a Unit Owner fails to maintain the Unit or any Limited Common Element appurtenant to the Unit, in good condition and repair, and the required maintenance, repair or replacement is not performed within 15 days after written notice has been given to the Unit Owner by the Board, the Board has the right, but not the obligation, to perform the required maintenance, repair or replacement. The cost of any such maintenance, repair or replacement will be assessed against the nonperforming Unit Owner pursuant to Article 7 of this Declaration. The Association's entry to perform the maintenance or repair will not be deemed to be a trespass.
- Section 5.5 <u>Utilities</u>. The Association will provide each Unit with the means to connect to the following utilities and services, subject to interruption from causes beyond the Association's control: electrical power, municipal water and sewer service, natural gas and a point of presence for connection to telephone and fiber optic cable communications facilities. The Association is not responsible for any failure or interruption of service by any utility provider. The Declarant will install separate meters for the utilities. The Association will maintain the meters. Meters may be located in Units or in Common Elements.
- Section 5.6 <u>Shared Walls and Fences</u>. Except as hereinafter provided, the rights and duties of Owners with respect to interior or exterior shared walls between Units or fences between the Limited Common Elements, are as follows:

- As for shared walls, the boundaries of the Units will extend to the middle of each such wall. As for shared fences between the Limited Common Elements allocated to the Units, the boundaries of such shared fences extend to the middle of each such fence. Each respective Unit Owner is responsible for maintaining the utilities within a shared wall that serves the respective Unit. The adjoining Unit Owners will both equally have the right to use such wall or fence for support and otherwise, provided that such use by one Owner does not interfere with the use and enjoyment of same by the other Owner.
- If any shared wall or fence is damaged or destroyed through the act of an Owner or any of his/her family members, tenants, guests or invitees, or by any vegetation located in the Limited Common Elements (regardless of whether the act is negligent or intentional), it is the obligation of the Owner to rebuild and repair the shared wall or fence without any costs being charged to the Owner of the adjoining Unit. Any dispute over an Owner's liability for such damage will be resolved as provided in Section 5.6.5, but any liability imposed on an Owner does not prevent the Owner from seeking indemnity from the Person who caused the damage.
- 5.6.3 If any shared wall or fence is destroyed or damaged (including deterioration from ordinary wear and tear and lapse of time), other than by the act of an adjoining Owner, his/her family, tenants, guests or invitees, or from any vegetation or irrigation systems in the Limited Common Elements, it is the obligation of all Owners whose Lots adjoin such shared wall or fence to rebuild and repair the wall or fence at their joint expense, such expense to be allocated among the Owners in accordance in proportion to each Owner's part of the shared wall or fence compared to the entire portion of such shared wall or fence.
- 5.6.4 Notwithstanding anything to the contrary, the structural integrity of any shared wall or fence cannot be impaired without the prior consent of all holders of any interest in the shared wall or fence.
- In the event of a dispute between Owners regarding the construction, repair or rebuilding of a shared wall or fence, or regarding sharing the costs thereof, the adjacent Owners will submit the dispute to the Board, the decision of which is final and binding on all parties. If a Director is a party to the dispute, that Director must immediately resign, and the Board will elect a replacement Director, who will serve the remainder of the term of the Director who resigned.
- Section 5.7 Detention/Retention and Drainage Facility Maintenance.
  - 5.7.1 The Association is solely responsible for operation, maintenance and liability for the retention basin and facilities shown as Common Area "E" on the Plat.
  - 5.7.2 At a minimum, the Association will do the inspections of and make repairs to the retention basin in accordance with the requirements of the City of Tucson.

- 5.7.3 The City of Tucson may periodically inspect the retention basin to verify that the required maintenance activities are being adequately performed and an easement in favor of the City of Tucson, its staff, agents and contractors is granted so that it can perform any required inspections and tests.
- 5.7.4 The Association will reimburse the City for any and all costs associated with maintaining the retention basin, if the City finds the Association deficient in its maintenance responsibilities.

## ARTICLE 6 THE ASSOCIATION; RIGHTS AND DUTIES, MEMBERSHIP

Section 6.1 Rights, Powers and Duties of the Association. The Association has all of the rights, powers and duties prescribed by law and as 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 Act. The Association has the right to finance capital improvements in the Condominium by encumbering future Assessments if such action is approved by the written consent or affirmative vote of Unit Owners representing at least 51% of a quorum of the Members voting in person or by absentee ballot at any meeting of the Association. Unless the Condominium Documents or the Act specifically requires a vote of the Members, approvals or actions to be given or taken by the Association are valid if given or taken by the Board.

#### Section 6.2 <u>Directors and Officers.</u>

- 6.2.1 During the Period of Declarant Control, the Declarant has the right to appoint and remove the members of the Board and the officers of the Association, none of whom are required to be Unit Owners.
- Upon the termination of the Period of Declarant Control, the Unit Owners will elect the Board which must consist of at least three (3) directors, all of whom must be Unit Owners (or, in the case of Unit Owners who are not natural persons, legal representatives of Unit Owners). The Board elected by the Unit Owners will then elect the officers of the Association. All of the officers must be Members. Only one Person per household may serve as a director. Only one person per household may serve as an officer.
- 6.2.3 The Declarant may voluntarily surrender its right to appoint and remove the members of the Board and the officers of the Association before termination of the Period of Declarant Control, and in that event the Declarant may require, for the duration of the Period of Declarant Control, that specified actions of the Association or the Board, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

- Section 6.3 Rules. The Board, from time to time and subject to the provisions of this Declaration and the Act, may adopt, amend, and repeal Rules. The Rules may, among other things, restrict and govern the use of any area by any Unit Owner, by the family of such Unit Owner, or by any invitee, contractor, licensee or lessee of such Unit Owner.
- Section 6.4 <u>Members of the Association</u>. Each Unit Owner, including the Declarant, is a Member of the Association. The membership of the Association at all times will consist exclusively of all the Unit Owners. Membership in the Association is mandatory for all Unit Owners.

### ARTICLE 7 ASSESSMENTS

#### Section 7.1 Preparation of Budget.

- 7.1.1 At least 60 days before the beginning of each fiscal year, commencing with the fiscal year in which the first Unit is conveyed to a Purchaser, the Board will adopt a budget for the Association containing an estimate of the total amount of funds which the Board believes will be required, during the ensuing fiscal year, to pay all Common Expenses, including, but not limited to:
  - 7.1.1.1 the amount required to pay the costs of maintenance, management, operation, repair and replacement of the Common Elements and those parts of the Units, if any, which the Association is required to maintain, repair and replace;
  - 7.1.1.2 the cost of wages, materials, insurance premiums, taxes, services, supplies and other expenses required for the administration, operation, maintenance and repair of the Condominium;
  - 7.1.1.3 the amount required to provide the Unit Owners with all services required to be rendered by the Association under the Condominium Documents; and
  - 7.1.1.4 such amounts as may be necessary to fund a reserve account.
- 7.1.2 The budget will separately reflect any Common Expenses to be assessed against less than all of the Units.
- 7.1.3 In establishing and maintaining a reserve fund after the expiration of the Period of Declarant Control, the Board will select a funding method that is generally accepted in the industry. The Board will contribute to the reserve fund in an industry standard funding method and as reflected in the Association's initial reserve study or any later supplements to that study. If the total amount in the reserve fund is 10% below the amount required to be funded on the reserve study

and as required in the industry accepted funding method adopted by the Board, the Association's Common Expense Assessments will automatically increase by 20% every year until the reserve fund equals or is greater than the amount required in the reserve study. This 20% increase in the Annual assessments occurs by operation of this Declaration and does not require an act or resolution of the Board or the Association members. When an automatic 20% increase occurs, the entire 20% increase will be placed in the reserve fund and may not be used for any other purpose. Nothing contained in this Section 7.1.3. prohibits the Board from imposing any additional increases, if necessary to meet the Common Expense liabilities of the Association.

- 7.1.4 The Association will provide each Unit Owner with a summary of the budget and a statement of the amount of the Common Expense Assessment assessed against that Unit Owner and his/her Unit in accordance with Section 7.2 of this Declaration. The failure or delay of the Board to adopt a budget for any fiscal year does not constitute a waiver or release in any manner of a Unit Owner's obligation to pay its allocable share of the Common Expenses as provided in Section 7.2, and each Unit Owner will continue to pay the Common Expense Assessment against his/her Unit as established for the previous fiscal year until notice of the Common Expense Assessment for the new fiscal year has been established by the Board.
- 7.1.5 The Board is expressly authorized to adopt and amend budgets for the Association, and no ratification of any budget by the Unit Owners is required.

#### Section 7.2 Common Expense Assessment.

- 7.2.1 For each fiscal year of the Association commencing with the fiscal year in which the first Unit is conveyed to a Purchaser, the total amount of the estimated Common Expenses set forth in the budget adopted by the Board (except for the Common Expenses which are to be assessed against less than all of the Units pursuant to this Declaration) will be assessed against each Unit in proportion to the Unit's Common Expense Liability. The amount of the Common Expense Assessment assessed pursuant to this Section 7.2.1 is in the sole discretion of the Board. If the Board determines during any fiscal year that its funds budgeted or available for that fiscal year are, or will, become inadequate to meet all Common Expenses for any reason, including, without limitation, nonpayment of Assessments by Members, it may increase the Common Expense Assessment for that fiscal year, and the revised Common Expense Assessment will commence on a date designated by the Board.
- 7.2.2 A portion of the Common Expense Assessment levied by the Association will be used to establish and maintain a reserve fund. The reserve funds will be deposited in a segregated account with a safe and responsible depository, and may be in the form of a cash deposit or invested in obligations of, or fully

guaranteed as to principal by the United States of America. The Declarant intends that the Association may only use the reserve funds for the purpose of effecting replacements and maintenance of capital and structural elements and mechanical equipment in the Common Elements, including Limited Common Elements. Reserve funds may not be expended for any purpose other than the repair, restoration, replacement or maintenance of, or litigation involving the repair, restoration, replacement or maintenance of the Common Elements.

- 7.2.3 The Common Expense Assessments will commence as to all Units on the first day of the month following the conveyance of the first Unit to a Purchaser. The first Common Expense Assessment is adjusted according to the number of months remaining in the fiscal year of the Association. The Board may require that the Common Expense Assessments or Special Assessments be paid in installments. If the Board requires installments, a late fee can be charged on each installments that is not timely paid.
- 7.2.4 A portion of the Common Expense Assessment levied by the Association may be an insurance assessment, in the event a Unit Owner has not provided the Association with satisfactory evidence of insurance on a Unit.
- 7.2.5 Except as otherwise expressly provided for in this Declaration, all Common Expenses, including, but not limited to, Common Expenses associated with the maintenance, repair and replacement of a Limited Common Element, will be assessed against all of the Units in accordance with Section 7.2.1. of this Declaration.
- 7.2.6 If any Common Expense is caused by the negligence or willful misconduct of any Unit Owner, the Association will assess that Common Expense exclusively against the Unit Owner's Unit.
- 7.2.7 Assessments to pay a judgment against the Association may be made only against the Units in the Condominium at the time the judgment was entered, in proportion to that Unit's payment of the Common Expense Liabilities.
- All Assessments, monetary penalties and other fees and charges levied against a Unit are the personal obligation of the Owner of the Unit at the time the Assessments, monetary penalties or other fees and charges became due. The personal obligation of a Unit Owner for Assessments, monetary penalties and other fees and charges levied against the Unit will not become the responsibility of any bona fide third-party who succeeds to the title of the Unit Owner unless expressly assumed by such successor, but such Assessments, monetary penalties and other fees and charges will constitute an Assessment Lien on the Unit, regardless whether they are assumed as personal obligations of the successor Owner. Each Unit Owner directs the Association to apply payments made to any outstanding sums due from an Owner in such order and in such amounts as the

Association chooses, in its sole and absolute discretion.

- The Declarant is obligated to pay an assessment equal to 25% of the Common Expense Assessment for each Unit that has not been substantially completed and will pay the full amount of the Common Expense Assessment on all Units that have been substantially completed. As used in this Section 7.2.9. "substantially completed" means that a Certificate of Occupancy has been issued by the City of Tucson, or the appropriate governmental agency has conducted its final inspection, whichever occurs later. In consideration of the reduction of the Common Expense Assessment on Units that have not been substantially completed, the Declarant agrees to pay the Association such sum as is necessary to cover any deficiency caused by the Declarant paying a reduced Common Expense Assessment so that the Association can timely pay all of its Common Expenses.
- Section 7.3 Special Assessments. In addition to Common Expense Assessments, the Association may levy a special assessment for any of the following purposes: (1) constructing capital improvements; (2) correcting an inadequacy in the current operating account; (3) defraying, in whole or in part, the cost of any construction, reconstruction, unexpected repair or replacement of improvements in the Common Area; (4) paying for any other matters which the Board deems appropriate. Any Special Assessment must be approved by a vote of a majority of the Owners voting at any meeting of the Association in person or by absentee ballot. Once approved, the Board will determine the due date of any Special Assessment and may determine that a Special Assessment is payable in installments and with interest.
- Section 7.4 Exceptional Maintenance Assessments. In addition to the Common Expense and Special Assessments, the Association may levy an Exceptional Maintenance Assessment against a specific Unit Owner for the purposes of defraying, in whole or in part, the costs of any maintenance required as a result of the Unit Owner of his/her tenant's or guest's exceptional use of a Unit, e.g., more frequent refuse removal, exceptional traffic, etc.... Unless otherwise specified by the Board, this Exceptional Maintenance Assessment is due 30 days after notice of the Exceptional Maintenance Assessment is given to the Unit Owner.
- Section 7.5 Working Capital Fund. To ensure that the Association has adequate funds to meet its expenses or to purchase necessary equipment or services, each Person who purchases a Unit will pay the Association an amount equal to 1/6th of the annual Common Expense Assessment, or such other amount, as determined form time to time by the Declarant, during the Period of Declarant Control and the Board, thereafter. Funds paid the Association pursuant to this Section 7.5 may be used by the Association for the payment of common expenses or any other purpose permitted under this Declaration. Payments made pursuant to this Section 7.5 are not refundable and will not be offset or credited or considered as an advance payment of the Common Expense Assessment or any other Assessments levied by the Association. The Board has the right to temporarily or permanently cease assessing contributions to the Working Capital Fund. If the Board ceases requiring contributions to the Working Capital Fund, it has the right to reinstate assessment to the Working Capital Fund.

Initial Contributions to Reserve Fund. To assist the Association in establishing Section 7.6 an adequate reserve fund to meet its Capital Expenses, each Owner at the time of his/her purchase of a Unit will pay \$250.00 to the Association ("Initial Reserve Contribution"). Such reserve contribution is required upon each transfer of title to a Unit. The Board has the discretion to increase this initial contribution to the reserve fund to an amount greater than \$250,00. The funds paid to the Association pursuant to this Section 7.6 are to be used by the Association solely to establish and maintain reserves. Such funds may also be used to repair or reconstruct the Common Elements including Limited Common Elements. Payments made pursuant to this Section 7.6 are not refundable and are not considered as advance payments of any other Assessments levied by the Association pursuant to this Declaration. Upon termination of the Period of Declarant Control, the Board has the right, by affirmative vote of the majority of the members of the Board, based upon the Board's analysis of the replacement and repair reserves, using an industry accepted funding method, to permanently or temporarily cease to assess the Reserve Fee, and having ceased to assess the Reserve Fee, the Board reserves the right to reinstate the Reserve Fee at anytime thereafter. Declarant intends that the Board has the right to begin or cease the Reserve Fee as the Board deems appropriate from time to time. Declarant is not liable for any past or future reserve fund contributions. By agreeing to be bound by this Declaration, each Owner purchasing a Unit agrees and acknowledges that this method of establishing and maintaining a reserve fund is adequate to meet the anticipated costs to maintain, replace or make improvements on the Common Elements.

Section 7.7 <u>Transfer Fee.</u> The Association has the right to charge a reasonable transfer fee upon the sale of any Unit to cover the administrative expenses incurred in changing its records, in furnishing the buyer with copies of the Condominium Documents and in acquaint the Buyer with the policies and procedures of the Association.

#### Section 7.8 Effect of Non-Payment of Assessments; Remedies of the Association.

- 7.8.1 If the Annual Assessments is payable in installments, the installment will be due on the first day of each installment period (monthly, quarterly or semi-annually). Special Assessments must be paid in accordance with Section 7.3. An installment will be deemed as late if not paid within 15 days of its due date. Aside from the notice to the Owners of the amount of the Annual Assessment, the Association is not required to send statements to the Owners and it is the Owner's responsibility to ensure that all Assessments are timely paid. Any Assessment, or any installment of an Assessment, which is not paid within 30 days after its due date is deemed delinquent and interest will accrue at the rate of 18% per annum. In addition to interest assessed on any delinquent balance, the Board will charge a reasonable late fee against the Unit Owner against the Unit if the installment is not paid within 15 days of its due date.
- 7.8.2 All Assessments, late charges, interest, monetary penalties and other fees and charges imposed or levied against any Unit or Unit Owner, including attorney fees, litigation expenses and court costs, are secured by the Assessment Lien as provided for in the Act. The recording of this Declaration constitutes record notice and perfection of the Assessment Lien, and no further recordation of any

claim of lien is required. Although not required in order to perfect the Assessment Lien, the Association has the right, but not the obligation, to record a notice of lien setting forth the amount of any delinquent assessments, monetary penalties, attorney fees or other fees or charges imposed or levied against a Unit or the Unit Owner which are secured by the Assessment Lien, to give third-parties notice of the Association's claim against the Unit.

- 7.8.3 The Association has the right, at its option, to enforce collection of any delinquent Assessments, monetary penalties, attorneys' fees and all other fees and charges owed to the Association in any manner allowed by law, including, but not limited to: (i) bringing an action at law against the Unit Owner personally obligated to pay the delinquent amounts and such action may be brought without waiving the Assessment Lien securing any such delinquent amounts; or (ii) bringing an action to foreclose its Assessment Lien against the Unit in the manner provided by law for the foreclosure of a realty mortgage. The Association has the power to bid at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any and all Units purchased at such sale upon such terms and conditions as the Board will determine.
- Section 7.9 <u>Subordination of Assessment Lien to Mortgages</u>. The Assessment Lien is subordinate to the lien of any First Mortgage. Any Mortgagee or any other party acquiring title or coming into possession of a Unit through foreclosure of a First Mortgage, purchase at a foreclosure sale or trustee's sale, or through any equivalent proceedings, such as, but not limited to, the taking of a deed in lieu of foreclosure (in its own name or in the name of an affiliate owned and controlled by it), will acquire title free and clear of any claims for unpaid Assessments, monetary penalties and other fees and charges against the Unit which became payable prior to such sale or transfer. Such Person is, however, subject to all subsequently accruing Assessments. Any delinquent Assessments, monetary penalties and other fees and charges which are extinguished pursuant to this Section may be reallocated and assessed to all Units (including the foreclosed Unit) as a Common Expense. Any Assessments, monetary penalties and other fees and charges against the Unit which accrue prior to such sale or transfer will remain the personal obligation of the defaulting Unit Owner.
- Section 7.10 No Exemption of Unit Owner. No Unit Owner may exempt him/herself from liability for payment of Assessments, monetary penalties and other fees and charges levied pursuant to the Condominium Documents by waiver and non-use of any of the Common Elements and facilities, by the abandonment of its Unit, or for any other reason.
- Section 7.11 <u>Certificate of Payment</u>. The Association, upon receipt of a written request, will furnish to a lienholder, Unit Owner or Person designated by a Unit Owner, a statement setting forth the amount of unpaid Assessments against a Unit. The Association may charge a reasonable fee in an amount established by the Board for each such statement.
- Section 7.12 No Offsets. All Assessments, monetary penalties and other fees and charges are payable in accordance with the provisions of this Declaration, and no offsets, recoupment or claim against such Assessments, monetary penalties and other fees and charges are permitted for any

reason, including, without limitation, a claim that the Association is not properly exercising its duties and powers as provided in the Condominium Documents or the Act.

- Section 7.13 <u>Surplus Funds</u>. Surplus funds of the Association remaining after payment of or provisions for Common Expenses and any reserves may, in the discretion of the Board, be returned to the Unit Owners pro rata in accordance with each Unit Owner's Common Expense Liability, be credited on a pro rata basis to the Unit Owners to reduce each Unit Owner's future Common Expense Assessments, or be retained by the Association to offset future increases in Assessments.
- Section 7.14 Monetary Penalties. In accordance with the procedures set forth in the Act, the Bylaws or the Rules, the Association, after notice of the violation and an opportunity for hearing has been provided to the Unit Owner, has the right to levy reasonable monetary penalties against a Unit Owner for violations of the Condominium Documents.

## ARTICLE 8 INSURANCE

- Section 8.1 Scope of Coverage.
  - 8.1.1 Commencing not later than the date of the first conveyance of a Unit to a Purchaser, the Association will maintain, to the extent reasonably available, the following insurance coverage:
    - Property insurance on the Common Elements and Limited Common 8.1.1.1 Elements, exclusive of improvements installed in Units by Unit Owners, issued under a standard special form "All Risk of Direct Physical Loss Form" in an amount equal to the maximum insurable replacement value of the Common Elements, as determined by the Board; provided, however that the total amount of insurance after application of any deductibles cannot be less than 100% of the current replacement cost of the insured property, exclusive of land, excavations, and other items normally excluded from a property insurance policy. The Unit Owners must purchase insurance for the Units in such forms as required by the Board, but in no event will any policy obtained by a Unit Owner provide for less than full replacement cost in the event of casualty. Unit Owners will provide the Board with proof of insurance at least annually. In the event a Unit Owner does not provide such proof, the Board may purchase a policy for the Unit Owner, and assess the cost to the Unit Owner under Article 7.
    - 8.1.1.2 Broad form commercial general liability insurance, for a limit to be determined by the Board, but not less than \$1,000,000 per occurrence; \$1,000,000 personal injury and advertising injury; \$2,000,000 products and completed operations aggregate; and

\$2,000,000 annual aggregate with an umbrella liability policy with limits no less than \$4,000,000 per occurrence. Such insurance will cover all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Common Elements. Such policy will include a cross-liability clause to cover liabilities of the Unit Owners as a group to a Unit Owner.

- 8.1.1.3 Automobile liability insurance arising out of the use of hired and owned or non-owned automobiles for a limit not less than \$1,000,000.00.
- 8.1.1.4 At the option of the Board, employment practices liability insurance for a limit not less than \$500,000.00 providing coverage for any legal liability that results from lawsuits related to employment contracts to which the Association is a party.
- 8.1.1.5 Worker's compensation insurance to the extent necessary to meet the requirements of Arizona law and employer's liability insurance with limits not less than \$1,000,000 each accident; \$1,000,000 disease policy limit; and \$1,000,000 disease each employee.
- 8.1.1.6 Directors and officers' liability insurance covering all the directors and officers of the Association in such limits as the Board may determine from time to time.
- 8.1.1.7 Fidelity Insurance covering all Persons who handle the funds belonging to the Association in such amounts as determined by the Board from time to time.
- 8.1.1.8 Boiler and machinery insurance providing coverage (including business income coverage) in the minimum amount of \$500,000 per accident per location.
- 8.1.1.9 Such other insurance as the Association determines from time to time to be appropriate to protect the Association, the members of the Board, the members of any committee or the Board or the Unit Owners, including officers', directors' and employees' errors and omissions coverage.
- 8.1.1.10 If the Condominium is located in an area identified by the Secretary of Housing & Urban Development as an area having special flood hazards, a "blanket policy" of flood insurance on the Condominium in the lesser of 100% of the current replacement cost of the buildings and any other property covered on the required form of policy or the

maximum limit of coverage available under the National Insurance Act of 1968, as amended.

- 8.1.2 The insurance policies purchased by the Association will, to the extent reasonably available, contain the following provisions:
  - 8.1.2.1 Each Unit Owner is an insured or additional insured under the policy with respect to liability arising out of its ownership of an undivided interest in the Common Elements or its membership in the Association.
  - 8.1.2.2 There is no subrogation with respect to the Association, its agents, servants, and employees against Unit Owners and members of their household.
  - 8.1.2.3 No act or omission by any Unit Owner, unless acting within the scope of its authority on behalf of the Association, will void the policy or be a condition to recovery on the policy.
  - 8.1.2.4 The coverage afforded by such policy is primary and cannot be brought into contribution or proration with any insurance which may be purchased by Unit Owners or their mortgagees or beneficiaries under deeds of trust.
  - 8.1.2.5 A "severability of interest" endorsement which will preclude the insurer from denying the claim of a Unit Owner because of the negligent acts of the Association or other Unit Owners.
  - 8.1.2.6 The Association is the insured for use and benefit of the individual Unit Owners (designated by name if required by the insurer).
  - 8.1.2.7 For policies of hazard insurance, a standard mortgagee clause providing that the insurance carrier does notify the Association and each Mortgagee named in the policy at least 10 days in advance of the effective date of any substantial change in coverage or cancellation of the policy.
  - 8.1.2.8 "Agreed Amount" endorsements.
- 8.1.3 If, at the time of a loss insured under an insurance policy purchased by the Association, the loss is also insured under an insurance policy purchased by a Unit Owner, the Unit Owner's policy will provide primary coverage.
- Section 8.2 <u>Payment of Premiums</u>. Premiums for all insurance obtained by the Association pursuant to this Article are part of the Common Expenses and will be paid for by the Association.

- Section 8.3 <u>Insurance Obtained by Unit Owners.</u> All Unit Owners and their tenants will at all times maintain or cause to be maintained contents and casualty insurance with respect to their Units. In the event of a casualty, the Unit Owner must rebuild the Unit exactly as originally built.
- Section 8.4 <u>Payment of Insurance Proceeds</u>. Any loss covered by property insurance obtained by the Association in accordance with this Article will be adjusted with the Association and the insurance proceeds will be payable to the Association and not to any Unit Owner, mortgagee or beneficiary under a deed of trust. The Association will hold any insurance proceeds in trust for Unit Owners and lienholders as their interests may appear, and the proceeds will be disbursed and applied as determined in the sole and absolute discretion of the Board or as provided for in Arizona law.
- Section 8.5 <u>Restoration</u>. In the event of damage or destruction of any portion of the Condominium, the damage or destruction is repaired or replaced by the Association so that the damaged portion of the Common Elements, including Limited Common Elements, is restored to substantially its prior condition, except as may otherwise be provided in the Act.
- Section 8.6 Certificate of Insurance. An insurer that has issued an insurance policy pursuant to this Article 8 will issue certificates or memoranda of insurance to the Association and, on written request, to any mortgagee, or beneficiary under a deed of trust, or Unit Owner. Each Unit Owner will provide proof of insurance to the Association. The insurer issuing the policy does not cancel or refuse to renew the policy until 30 days (10 days in the case of nonpayment of any premium) after notice of the proposed cancellation or non-renewal has been mailed to the Association, each Unit Owner, and each mortgagee or beneficiary under a deed of trust to whom a certificate or memorandum of insurance has been issued at their respective last known addresses.

## ARTICLE 9 RIGHTS OF MORTGAGEES

- Section 9.1 <u>Notification to Mortgagees</u>. Upon receipt by the Association of a written request from a holder or insurer or governmental guarantor of a First Mortgage informing the Association of its correct name and mailing address and number or address of the Unit to which the request relates, the Association will provide such Eligible Mortgage Holder or Eligible Insurer or Guarantor with timely written notice of the following:
  - 9.1.1 Any condemnation loss or any casualty loss which affects a material portion of the Condominium or any Unit on which there is a First Mortgage held, insured or guaranteed by such Eligible Mortgage Holder or Eligible Insurer or Guarantor;
  - 9.1.2 Any delinquency in the payment of Assessments or charges owed by a Unit Owner subject to a First Mortgage held, insured or guaranteed by such Eligible Mortgage Holder or Eligible Insurer or Guarantor or any other default in the performance by the Unit Owner of any obligation under the Condominium Documents, which delinquency or default remains uncured for the period of 60 days;

- 9.1.3 Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and
- 9.1.4 Any proposed action which requires the consent of a specified percentage of Eligible Mortgage Holders as set forth in Section 9.2 of this Declaration.
- Section 9.2 Approval Required for Amendment to Declaration, Articles or Bylaws. Subject to the right of the Board or the Association to amend this Declaration as established in other provisions, the approval of at least 51% of all Eligible Mortgage Holders (based upon one vote for each vote allocated under Section 2.7 to the Unit encumbered by the First Mortgage owned) is required to add or amend any material provisions of the Declaration, Articles or Bylaws which establish, provide for, govern or regulate any of the following (an addition or amendment to such documents does not be considered material if it is for the purpose of correcting technical errors of for clarification only):
  - 9.2.1 Voting rights;
  - 9.2.2 Elimination of Assessments, assessment liens or subordination of assessment liens:
  - 9.2.3 Reserves for maintenance, repair and replacement of Common Elements;
  - 9.2.4 Insurance or fidelity bonds;
  - 9.2.5 Responsibility for maintenance and repairs;
  - 9.2.6 Expansion or contraction of the Condominium, or the addition or annexation of property to the Condominium, except an annexation or addition pursuant to the Act;
  - 9.2.7 Boundaries of any Unit or Building;
  - 9.2.8 Reallocation of interests in the Common Elements or Limited Common Elements or rights to their use, except adjustments to percentage interests upon the addition or deletion of Units as otherwise provided in this Declaration;
  - 9.2.9 Convertibility of Units into Common Elements or of Common Elements into Unit:
  - 9.2.10 Imposition of any restrictions on a Unit Owner's right to sell or transfer its Unit;
  - 9.2.11 A decision by the Association to establish self-management when professional management had been required previously by an Eligible Mortgage Holder;
  - 9.2.12 Restoration or repair of the Condominium (after a hazard damage or partial condemnation) in a manner other than that specified in the Condominium Documents;
  - 9.2.13 Any action to terminate the legal status of the Condominium after substantial destruction or condemnation occurs; and
  - 9.2.14 Any provisions which expressly benefit holders of First Mortgages, Eligible Mortgage Holders or Eligible Insurers or Guarantors.
  - 9.2.15 Any action to terminate the legal status of the Condominium for reasons other than substantial destruction or condemnation of the Condominium must be approved by at least 67% of all Eligible Mortgage Holders (based upon one vote for each vote allocated under Section 2.7 to the Unit encumbered by the First Mortgage owned).

- 9.2.16 Any Eligible Mortgage Holder who receives a written request to approve additions or amendments to the Declaration, Articles or Bylaws, and who does not deliver or mail to the requesting party a negative response within 15 days, is deemed to have approved such request.
- 9.2.17 The approvals required by this Section do not apply to amendments that may be executed by the Declarant in the exercise of its Special Declarant Rights.
- Section 9.3 <u>Right of Inspection of Records</u>. Any Unit Owner, Mortgagee or Eligible Insurer or Guarantor will, upon written request, be entitled to: (a) inspect the current copies of the Condominium Documents and the books, records and financial statements of the Association during normal business hours; (b) receive within 90 days following the end of any fiscal year of the Association, a financial statement of the Association for the immediately preceding fiscal year of the Association, at a reasonable charge to the requesting party; and (c) receive notice of all meetings of the Members of the Association in accordance with Arizona law.
- Section 9.4 Prior Written Approval of Mortgagees. Except as provided by statute in case of condemnation or substantial loss to the Units or the Common Elements, unless at least 67% of all Eligible Mortgage Holders (based upon one vote for each vote allocated under Section 2.7 to the Unit encumbered by the First Mortgage owned) or 67% of the votes of all Unit Owners (other than the Declarant or other sponsor, developer or builder of the Condominium) of the Units have given their prior written approval, the Association does not be entitled to:
  - 9.4.1 By act or omission, seek to abandon or terminate this Declaration or the Condominium;
  - 9.4.2 Except for adjustments made to percentage interests in accordance with Section 2.6 upon addition or deletion of Units as otherwise provided in this Declaration, change the pro rata interest or obligations of any individual Unit for the purpose of: (i) levying Assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or (ii) determining the pro rata share of ownership of each Unit in the Common Elements;
  - 9.4.3 By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Elements. The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements does not be deemed a transfer within the meaning of this Subsection; and
  - 9.4.4 Use hazard insurance proceeds for losses to any Units or the Common Elements for any purpose other than the repair, replacement or reconstruction of such Units or the Common Elements.
- Section 9.5 <u>Liens Prior to First Mortgage</u>. All taxes, assessments, and charges that may become liens prior to the First Mortgage relate only to the individual Unit and not to the Condominium as a whole.
- Section 9.6 <u>Condemnation or Insurance Proceeds</u>. No Unit Owner, or any other party, has priority over any rights of any holder of a First Mortgage of the Unit pursuant to its mortgage in the

case of a distribution to such Unit Owner of insurance proceeds or condemnation awards for losses to or a taking of Units or Common Elements.

- Section 9.7 <u>Limitation on Partition and Subdivision.</u> Nothing contained in this Section or any other provisions of this Declaration gives the Association the right to partition any Unit without the consent of the Unit Owner thereof. Any partition of a Unit is subject to such limitations and prohibitions as may be set forth elsewhere in this Declaration or as provided under Arizona law. No Unit can be partitioned or subdivided without the prior written approval of the holder of any First Mortgage on such Unit.
- Section 9.8 <u>Conflicting Provisions.</u> In the event of any conflict or inconsistency between the provisions of this Article and any other provision of the Condominium Documents, the provisions of this Article will prevail; provided, however, that in the event of any conflict or inconsistency between the different Sections of this Article or between the provisions of this Article and any other provision of the Condominium Documents with respect to the number or percentage of Unit Owners, Mortgagees, Eligible Mortgage Holders or Eligible Insurers or Guarantors that must consent to (i) an amendment of the Declaration or Bylaws, or (ii) a termination of the Condominium, the provision requiring the consent of the greatest number or percentage of Unit Owners, Mortgagees, Eligible Mortgage Holders or Eligible Insurers or Guarantors will prevail.

# ARTICLE 10 CLAIM AND DISPUTE RESOLUTION/LEGAL ACTIONS

- Section 10.1 Alternative Dispute Resolution. Any dispute or claim between or among (a) Declarant or any builder (or its respective brokers, agents, consultants, contractors, subcontractors, or employees) on the one hand, and any Owner who is not the Declarant or a Builder or the Association, on the other hand; or (b) any Owner and another Owner arising out of this Declaration; or (c) the Association and any Owner regarding any controversy or claim between the parties, including any claim based on contract, tort, or statute, arising out of or relating to (i) the rights or duties of the parties under this Declaration; (ii) the design or construction of any Improvements; (iii) or an alleged defect, but excluding disputes relating to the payment of any type of Assessment or enforcement of this Declaration against an Owner (collectively a "Dispute"), is subject first to negotiation, then mediation, and then binding arbitration as set forth in this Section 10.1.
  - 10.1.1 This Article does not apply to (1) actions brought by the Association to enforce the Governing Documents (including, without limitation, the foreclosure of liens); (2) the imposition and collection of assessments and/or fines/penalties; (3) proceedings involving challenges to ad valorem taxation; or (4) counterclaims brought by the Association in proceedings instituted against it.
  - 10.1.2 Prior to the Association or any Member commencing any proceeding to which Declarant is a party, including but not limited to an alleged defects in any portion of the Properties, Declarant has the right to be heard by the Members, or any particular Member, and to access, inspect, correct the condition of, or redesign

any portion of any Improvement as to which a defect is alleged, or otherwise correct the alleged disputed item.

- Section 10.2 <u>Negotiation</u>. Each party to a Dispute will make every reasonable effort to meet in person and confer for the purpose of resolving a dispute by good faith negotiation. Upon receipt of a written request from any party to the Dispute, the Board may appoint a representative to assist the parties in resolving the dispute by negotiation, if in its discretion the Board believes its efforts will be beneficial to the parties and to the welfare of the community. Each party to the Dispute is liable for his/her/its own attorney fees and costs in connection with such negotiation.
- Mediation. If the parties cannot resolve their Dispute pursuant to the procedures Section 10.3 described in Section 10.2 above within such time period as may be agreed upon by such parties (the "Termination of Negotiations"), the party instituting the Dispute (the "Disputing Party") has 30 days after the Termination of Negotiations within which to submit the Dispute to mediation pursuant to the mediation procedures adopted by Community Association Dispute Resolution Center ("CADRC") or any successor thereto or to any other commercially reasonable independent entity providing similar services chosen by the Board. No Person will serve as a mediator in any Dispute in which such Person has a financial or personal interest in the result of the mediation, except by the written consent of all parties to the Dispute. Prior to accepting any appointment, the prospective mediator will disclose any circumstances likely to create a presumption of bias or to prevent a prompt commencement of the mediation process. If the Disputing Party does not submit the Dispute to mediation within 30 days after Termination of Negotiations, the Disputing Party is deemed to have waived any claims related to the Dispute and all other parties to the Dispute is released and discharged from any and all liability to the Disputing Party on account of such Dispute; provided, nothing herein will release or discharge such party or parties from any liability to Persons not a party to the forgoing proceedings.
- Section 10.4 <u>Position Memoranda; Pre-Mediation Conference.</u> Within 10 days of the selection of the mediator, each party to the Dispute will submit a brief memorandum setting forth its position with regard to the issues to be resolved. The mediator has the right to schedule a pre-mediation conference and all parties to the Dispute will attend unless otherwise agreed. The mediation will commence within 10 days following submittal of the memoranda to the mediator and will conclude within 15 days from the commencement of the mediation unless the parties to the Dispute mutually agree to extend the mediation period. The mediation will be held in Pima County, Arizona or such other place as is mutually acceptable by the parties to the Dispute.
- Section 10.5 <u>Conduct of Mediation</u>. The mediator has discretion to conduct the mediation in the manner in which the mediator believes is appropriate for reaching a settlement of the Dispute. The mediator is authorized to conduct joint and separate meetings with the parties to the Dispute and to make oral and written recommendations for settlement. Whenever necessary, the mediator may also obtain expert advice concerning technical aspects of the dispute, provided the parties to the Dispute agree to obtain and assume the expenses of obtaining such advice as provided in Section 10.8 below. The mediator does not have the authority to impose a settlement on any party to the Dispute.

- Section 10.6 <u>Exclusion Agreement</u>. Any evidence of admissions offers of compromise or settlement negotiations or communications at the mediation is excluded in any subsequent dispute resolution forum.
- Section 10.7 <u>Parties Permitted at Sessions</u>. Persons other than the parties to the Dispute may attend mediation sessions only with the permission of all parties to the Dispute and the consent of the mediator. Confidential information disclosed to a mediator by the parties to the Dispute or by witnesses in the course of the mediation is confidential. There is no stenographic record of the mediation process.
- Section 10.8 Expenses of Mediation. All 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, is borne equally by the parties to the Dispute unless agreed to otherwise. Each party to the Dispute will pay his/hers/its own expert fees, attorney fees and costs in connection with such mediation.
- Section 10.9 Final and Binding Arbitration.
  - 10.9.1 If the parties cannot resolve their Dispute pursuant to the procedures described above, the Disputing Party has 30 days following termination of mediation proceedings (as determined by the mediator) to submit the Dispute to arbitration in accordance with the procedures of CADRC, as modified or as otherwise provided in the Section 10.3. If the Disputing Party does not submit the dispute to arbitration within 30 days after termination of mediation proceedings, the Disputing Party is deemed to have waived any claims related to the Dispute and all other parties to the Dispute is released and discharged from any and all liability to the Disputing Party on account of such Dispute; provided, nothing herein will release or discharge such party or parties from any liability to Persons not a party to the forgoing proceedings.
  - 10.9.2 The existing parties to the Dispute will cooperate in good faith to ensure that all necessary and appropriate parties are included in the arbitration proceeding. The Declarant does not be required to participate in the arbitration proceeding if all parties against whom the Declarant would have necessary or permissive crossclaims or counterclaims are not or cannot be joined in the arbitration proceedings. Subject to the limitations imposed in this Section 10.3, the arbitrator has the authority to try all issues, whether of fact or law.
- Section 10.10 Place. The arbitration proceedings will exclusively be heard in Pima County, State of Arizona.
- Section 10.11 Arbitration. In accordance with the procedures of CADRC, a single arbitrator will be selected with experience in all relevant matters that are the subject of the Dispute. The arbitrator will not have any relationship to the parties or interest in the Property. The parties to the Dispute will meet to select the arbitrator within 10 days after service of the initial complaint on all defendants

named therein.

Section 10.12 <u>Enforcement of Resolution</u>. If the parties to a Dispute resolve such Dispute though negotiation or mediation, and any party thereafter fails to abide by the terms of such negotiation or mediation, or if the parties accept an award of arbitration and any party to the Dispute thereafter fails to comply with such award, then the other party to the Dispute may file suit or initiate proceedings to enforce the terms of such negotiation, mediation, or the award without the need to again comply with the procedures set forth in this Article. In such event, the party taking action to enforce the terms of the negotiation, mediation, or the award is entitled to recover from the noncomplying party (or if more than one noncomplying party, from all such parties pro rata), all costs incurred to enforce the terms of the negotiation or mediation or the award including, without limitation, attorney fees and court costs.

Section 10.13 <u>Conflicts</u>. Notwithstanding anything to the contrary in this Declaration, if there is a conflict between this Article and any other provision of the Condominium Documents, this Article will control

Section 10.14 <u>Arizona Statute Compliance</u>. In the event a court of competent jurisdiction invalidates all or part of this Article 10 regarding the resolution of Disputes, and litigation becomes necessary, the Declarant, each builder, the Association, the Board, and all Owners are bound by the applicable Arizona Construction Defect Statute presently codified at A.R.S. §33-1901.

### ARTICLE 11 DISCLOSURES AND OWNER ACKNOWLEDGMENTS

Disclosures and Owner Acknowledgments. By accepting a deed to a Unit, each Section 11.1 Unit Owner is deemed to agree and accept the following: (1) that in all likelihood, Units contain some variations and deviations from the original plans and specifications including, but not limited to, minor variations as to the location of the walls of a Unit; (2) that there may be minor deviations in the Common Elements, Limited Common Elements, and in a Unit from Declarant's model Units located within the Condominium and from illustrations and designs shown in promotional materials; (3) that floor plans, maps, landscaping and elevation renderings included within promotional brochures and Condominium information are based upon an architect's rendering, which may not coincide with a survey done by a licensed surveyor, may not have been drawn to scale, and any square footage or dimensions shown in such materials are only approximations; (4) that the as-built location of utility lines, utility improvements (such as, but not limited to, junction boxes, transformers or pedestals) and sewer taps, may vary from locations shown on site layout plans; (5) that the character and uses of property surrounding and in the vicinity of the Condominium may change; (6) construction activity (including, but not limited to, noise and the transportation of labor, material and equipment) will continue in the Condominium until all Units have been sold and may cause varying degrees of increased traffic, dust, noise, and other inconveniences to the Owners and Occupants; and (7) in any multi-family dwelling, sound may be audible between Units (particularly where the sound level of the source is sufficiently high and the background noise in an adjacent Unit is very low) and each Owner and Occupant agrees to accept their Unit subject to sound impacts from adjacent Units and properties, to accept responsibility for minimizing noise transmission from their Unit, and adhere to any Rules which are designed to minimize noise transmission. Declarant disclaims and has no liability or responsibility in connection with the foregoing and by accepting a deed, each Owner for itself and its respective Occupants and guests and invitees releases Declarant from any and all responsibility, obligation or liability resulting from the existence or effect of any of the foregoing items.

- Section 11.2 No Security. From time to time the Association may, but is not required to, provide measures or take actions which directly or indirectly are intended to improve safety at the Condominium, provided, however, the Association is not a provider of security services and has no duty to provide security at the Condominium. It is the responsibility of each Unit Owner to protect his/her person and property and all responsibility to provide such security is solely the Unit Owners'. Neither Declarant nor the Association will be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of safety measures undertaken at the Condominium.
- Section 11.3 <u>Sound Insulation</u>. Each Unit Owner understands and acknowledges that Declarant has not made any written or oral representation or warranty concerning the sound insulation capabilities of the Unit and that in any multi-family dwelling, sound may be audible between units, particularly where the sound level of the source is sufficiently high and the background noise in an adjacent unit is low. Each Unit Owner agrees to accept his/her Unit subject to sound impacts from adjacent Units and to accept responsibility for minimizing noise transmission from the Unit and adhering to any Association rules and regulations which are designed to minimize noise transmission.
- Section 11.4 Construction of Units 1 through 12. Each Unit Owner of Units 1-12, but taking title to such Units understand and acknowledge that neither the Declarant, nor the beneficiary of Declarant, was responsible for the construction of such Units, nor the acquisition or installation of any of the appliances or fixtures located therein. Declarant's predecessor in interest, Thurston Village, LLC was responsible for such construction. All appliances, heating and cooling systems and lighting fixtures in such Units are warranted only by the manufacturers and if there are any warranties, the only warranties are those provided by such manufacturers. Declarant disclaims any and all express and/or implied warranties regarding these Units and any of the Common Elements constructed by Thurston Village, LLC. The Unit Owners of these Units release the Declarant from all responsibility and liability regarding the condition, valuation or use of those Units arising out of the construction thereof. Such Unit Owners acknowledge that any and all information of any kind received from the Declarant regarding these Units was furnished without any warranty whatsoever and that Declarant is not liable for any construction defects or damages to the Unit arising out of the such construction.

#### ARTICLE 12 GENERAL PROVISIONS

#### Section 12.1 Enforcement.

12.1.1 <u>Enforcement by Association</u>. The Association may enforce the Governing Documents in any manner provided for in such Governing Documents or by law

or in equity, including, but not limited to:

- 12.1.1.1 Imposing reasonable monetary penalties after notice and an opportunity to be heard is given to the Unit Owner or other violator.

  A Unit Owner is responsible for the payment of any penalty which is imposed against a tenant or resident in the Unit Owner's Unit or by any guest or invitee of the Unit Owner, Lessee or Resident;
- 12.1.1.2 After notice and an opportunity for a hearing, suspending any services provided by the Association to a Unit Owner or to the Unit if the Unit Owner is more than 15 days delinquent in paying any assessment or other charge owed to the Association. This includes terminating water service until satisfactory arrangements for the payment of such sums has been made with the Board;
- 12.1.1.3 Exercising self-help or taking action to abate any violation of the Governing Documents in a non-emergency situation;
- Requiring a Unit Owner, at the Unit Owner's expense, to remove any 12.1.1.4 personal property placed in the Unit if in violation of any of the Use Restrictions if that property is Visible; or requiring the Unit Owner, at the Unit Owner's expense to remove any structure or Improvement installed by the Unit Owner either in the Unit, when Visible from Adjoining Units or the Common Elements or if placed in the Limited Common Elements or Common Elements. After Notice and a time within which the Unit Owner must perform, if the Unit Owner fails to take action, the Board or its designee has the right to remove the structure or other improvement in violation and restore the Unit, the Limited Common Elements or the Common Elements to substantially the same condition as previously existed and any such action will not be deemed a trespass. The costs of doing so will become a Reimbursement Assessment;
- 12.1.1.5 Without liability to the Association or any Person, prohibiting any contractor, subcontractor, agent, employee or other invitee of a Unit Owner who fails to comply with the terms and provisions of this Declaration or the Design Guidelines from continuing or performing any further activities in the Properties;
- 12.1.1.6 Towing vehicles that are parked in violation of this Declaration or the Rules;
- 12.1.1.7 Filing a suit at law or in equity to enjoin a violation of the Governing Documents, to compel compliance with the Governing Documents, to recover fines or money damages or to obtain such other relief as

to which the Association may be entitled.

- Notice of Violation. A Unit Owner who breaches the Governing Documents, or 12.1.2 permits a breach by any Person over whom the Unit Owner exercises either direct or indirect control, will be given written notice of the violation, sent by first class mail to the Unit Owner's address in the records of the Association, advising that the breach must be cured within 10 days from the date the notice is mailed. If the breach is not remedied as provided in the notice, the Board has the right to record a Notice of Violation in the office of the Pima County Recorder. The notice must be executed and acknowledged by an officer or any agent of the Association (including the attorney for the Association) and must contain substantially the following information: (i) the name of the Unit Owner; (ii) the legal description of the Unit against which the notice is being recorded; (iii) a brief description of the nature of the violation; (iv) a statement that the notice is being recorded by the Association pursuant to this Declaration; and (v) a statement of the specific steps which must be taken by the Unit Owner to cure the violation. A Notice of Compliance will be recorded when the Unit Owner has cured the breach. The Notice of Violation, if recorded, may constitute an exception to the title to the Unit and as notice to the Unit Owner and to any subsequent purchaser of the Unit that there is a violation of the provisions of the Governing Documents. Such Notice of Violation may affect a Unit Owner's ability to convey marketable title to the Unit. Nothing in this Section limits any other remedy available in law or equity for breach of these covenants.
- 12.1.3 Board's Discretion in Taking Action. The Association is not obligated to take any enforcement action if the Board determines, in its sole discretion, that because of the strength of the Association's finances, possible defenses, the time and expense of litigation or other enforcement action, the likelihood of a result favorable to the Association, or other facts deemed relevant by the Board, enforcement action would not be appropriate or in the best interests of the Association.
- Rights are Cumulative. All rights and remedies of the Association under the Governing Documents or at law or in equity are cumulative, and the exercise of one right or remedy will not waive the Association's right to exercise another right or remedy. The failure of the Association or a Unit Owner to take enforcement action with respect to a violation of the Governing Documents will not constitute or be deemed a waiver of the right of the Association or any Unit Owner to enforce the Governing Documents in the future.
- 12.1.5 No Delays or Omissions. No delay or omission on the part of the Association or any Member in exercising its right to enforce any provision of the Governing Documents is a waiver or breach of such provisions of the Governing Documents or an acquiescence in any breach of these Governing Documents and no right of action will accrue against the Board, the Association, the Declarant or any

Member for their neglect or refusal to exercise such right of enforcement.

- 12.1.6 No Invalidation of Mortgage. A breach of the foregoing provisions, conditions, restrictions or covenants will not defeat or render invalid the lien of any mortgage or deed of trust made in good faith for value as to any portion of the Properties. Such provisions, conditions, restrictions and covenants will be enforceable against any portion of the Properties acquired by any person through foreclosure for any breach occurring after such acquisition.
- 12.1.7 Non-Waiver. Failure by the Association or by any Unit Owner to enforce any covenant or restriction contained in the Condominium Documents will not be deemed a waiver of the right to do so thereafter.
- Section 12.2 <u>Unit Owners' Rights to Enforce</u>. In addition to any rights which the Association has to enforce the Governing Documents, each Unit Owner has the right to bring any action against any other Unit Owner, in law or equity, to abate any violation of the Governing Documents.
- Section 12.3 <u>Attorney Fees.</u> If any action is brought by any person to enforce the provisions of the Governing Documents, the successful party is entitled to judgment for all costs, attorney fees, litigation expenses and any other sums expended in the pursuit thereof.
- Section 12.4 Severability. Invalidation of any one of these covenants or restrictions by judgment or court order will in no way affect any other provisions that will remain in full force and effect.
- Section 12.5 <u>Term.</u> The provisions of this Declaration run with the land and will continue and remain in full force and effect at all times and against all persons.
- Section 12.6 <u>Termination of Condominium</u>. The Condominium may be terminated as specifically provided for in the Act.

#### Section 12.7 Amendment.

- 12.7.1 Except in cases of amendments that may be executed by a Declarant in the exercise of its Special Declarant Rights or under Section 33-1220 of the Act, by the Association under Section 33-1206 or 33-1216(D) of the Act, or by certain Unit Owners under Section 33-1218(B), Section 33-1222, Section 33-1223 or Section 33-1228(B) of the Act, the Declaration, including the Plat, may be amended only by a vote of the Unit Owners to which at least 67% of the votes in the Association are allocated.
- 12.7.2 Except to the extent expressly permitted or required by the Act or this Declaration, an amendment to the Declaration cannot create or increase Special Declarant Rights, increase the number of permitted Units or change the boundaries of any Unit, the allocated Interest of a Unit, or the use as to which

any Unit is restricted, in the absence of unanimous consent of the Unit Owners.

- 12.7.3 An amendment to the Declaration cannot terminate or decrease any unexpired Development Right, Special Declarant Right or Period of Declarant Control unless the Declarant approves the amendment in writing.
- 12.7.4 Any amendment adopted by the Unit Owners must be signed by the President or Vice President of the Association, certifying that the amendment was approved by the requisite number of Unit Owners. Such amendment becomes effective when recorded in the office of the Pima County Recorder. Any amendment made by the Declarant pursuant to its Special Declarant Rights or the Act must be executed by the Declarant and is recorded with the County Recorder of Pima County.
- Section 12.8 <u>Remedies Cumulative</u>. Each remedy provided herein is cumulative and not exclusive.
- Notices. All notices, demands, statements or other communications required or Section 12.9 permitted to be given to or served on a Unit Owner under this Declaration must be in accordance with Arizona law and if in writing, is deemed to have been duly given if delivered personally or deposited in the United States mail, postage prepaid, return receipt requested, addressed to the Unit Owner, at the address which the Unit Owner designates in writing and files with the Association or, if no such address has been designated, at the address of the Unit owned by the Unit Owner. Notice is deemed as given to the Association if addressed to the Association and mailed to the statutory agent of the Association as shown in the records of the Arizona Corporation Commission. A Unit Owner may change its address on file with the Association for receipt of notices by delivering a written notice of that change of address to the Association in accordance with the requirements of this Section. A notice given by mail, whether regular, certified, or registered, is deemed to have been received by the person to whom the notice was addressed on the earlier of the date the notice is actually received or three days after the notice is mailed. If a Unit is owned by more than one person, notice to one of the Unit Owners constitutes notice to all Unit Owners of the same Unit. Each Unit Owner must keep the Association informed of its correct mailing address and must promptly notify the Association in writing of any subsequent change of address.
- Section 12.10 <u>Binding Effect.</u> By acceptance of a deed or by acquiring any Unit Ownership interest in any portion of the Condominium, each Person, for itself, its heirs, personal representatives, successors, transferees and assigns, binds itself, its heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, rules, and regulations now or hereafter imposed by the Condominium Documents and any amendments thereof. In addition, each such Person by so doing acknowledges that the Condominium Documents set forth a general scheme for the improvement and development of the real property covered thereby and is evidence that all the restrictions, conditions, covenants, rules and regulations contained in the Condominium Documents will run with the land and be binding on all subsequent and future Unit Owners, grantees, purchasers, assignees, and transferees thereof. Furthermore, each such Person fully understands and acknowledges that the Condominium Documents are mutually

beneficial, prohibitive and enforceable by the various subsequent and future Unit Owners. The Declarant, its successors, assigns and grantees, covenants and agrees that the Units and the membership in the Association and the other rights created by the Condominium Documents will not be separated or separately conveyed, and each is deemed to be conveyed or encumbered with its respective Unit even though the description in the instrument of conveyance or encumbrance may refer only to the Unit.

- Section 12.11 Gender. The singular, wherever used in this Declaration, is construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions of this Declaration apply either to corporations or individuals, or men or women, will in all cases be assumed as though in each case fully expressed.
- Section 12.12 <u>Topic Headings</u>. The marginal or topical headings of the sections contained in this Declaration are for convenience only and do not define, limit or construe the contents of the sections or of this Declaration.
- Section 12.13 Survival of Liability. The termination of membership in the Association does not relieve or release any former Unit Owner from any liability or obligation incurred under, or in any way connected with, the Association during the period of such Unit Ownership, or impair any rights or remedies which the Association may have against such former Unit Owner or Member arising out of, or in any way connected with, such Unit Ownership or membership and the covenants and obligations incident thereto.
- Section 12.14 <u>Construction</u>. In the event of any discrepancies, inconsistencies or conflicts between the provisions of this Declaration and the Bylaws or the Association Rules, the provisions of this Declaration will prevail.
- Section 12.15 <u>Joint and Several Liabilities</u>. In the case of joint Unit Ownership of a Unit, the liabilities and obligations of each of the joint Unit Owners set forth in, or imposed by, the Condominium Documents is joint and several.
- Section 12.16 <u>Guests and Tenants</u>. Each Unit Owner is responsible for compliance by its agents, tenants, guests, invitees, licensees and their respective servants, invitees, licensees, agents, and employees with the provisions of the Condominium Documents. A Unit Owner's failure to insure compliance by such Persons is grounds for the same action available to the Association or any other Unit Owner by reason of such Unit Owner's own noncompliance.
- Section 12.17 Number of Days. In computing the number of days for purposes of any provision of the Condominium Documents, all days are counted including Saturdays, Sundays and holidays; provided, however, that if the final day of any time period falls on a Saturday, Sunday or holiday, then the next day is deemed to be the next day which is not a Saturday, Sunday or holiday.

IN WITNESS WHEREOF, the undersigned Declarant executes this Condominium Declaration on the 27th day of May ______, 2010

Title Security Agency of Arizona, Inc., an Arizona Corporation as Trustee under Trust No. 1093, only and not otherwise.

Diane L. Sloane - Trust Officer

State of Arizona

) ss

County of Pima

On this day of April, 2010, before me, the undersigned Notary Public, personally appeared Diane L. Sloane trust officer employed by Title Security Agency of Arizona, Inc., an Arizona Corporation, and that in such capacity, executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Commission Expires:

OFFICIAL SEAL
JOYCE M. RODDA
NOTARY PUBLIC-ARIZONA
PIMA COUNTY
My Comm. Exp. Dec. 31, 2012

## EXHIBIT A Legal Description

STONE CROSSING, RESIDENTIAL CLUSTER PROJECT A RESUBDIVISION OF STONE CROSSING M&P, BK. 60, PG. 84 40 CONDOMINIUM UNITS COMMON AREA "A" (PRIVATE STREETS AND UTILITIES), COMMON AREA "B", (LANDSCAPE, PEDESTRIAN, UTILITIES AND OPEN SPACE) COMMON AREA "C" (LIMITED USE OPEN SPACE) COMMON AREA "D", (RECREATION) AND COMMON AREA "E" (RETENTION BASIN) a subdivision according to the map or plat of record recorded in Book 64 of Maps and plats at page 62 records of the Pima County Recorders Office, Pima County, Arizona