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**DECLARATION OF CONDOMINIUM
AND OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
37th STREET VILLAGE, a condominium
MARICOPA COUNTY, ARIZONA**

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**DECLARATION OF CONDOMINIUM AND OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
37th STREET VILLAGE, a condominium**

THIS DECLARATION OF CONDOMINIUM AND OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR 37TH STREET VILLAGE, a condominium is made this 30th day of September, 2004 by 37th Street Village, LLC, an Arizona limited liability company (the "**Declarant**").

RECITALS:

- A.** 37th Street Village L.L.C. is the owner of that certain real property situated in the City of Phoenix, Arizona, which is **more** particularly described in **Exhibit "A"** attached to this Declaration and incorporated herein by **this** reference (the "**Land**").

NOW, THEREFORE, Declarant, for the purposes hereinafter set forth, hereby incorporates the foregoing Recitals into this Declaration and declares as follows:

ARTICLE 1**DEFINITIONS**

1.0 General Definitions. Capitalized terms not otherwise defined in this Declaration shall have the meanings specified for such terms in the Arizona Condominium Act, A.R.S. §§33-1201 et seq., as the same may be amended from time to time (the "**Condominium Act**"). All definitions contained within the Recitals are incorporated herein by **this** reference.

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

(A) "Architectural Committee" means any committee that may be established pursuant to Section 6.3 of this Declaration.

(B) "Architectural Rules" means any **rules** adopted by the Board concerning matters governed by Section 4.3 below, as they maybe amended **from** time to time.

(C) "Areas of **Association Responsibility**" means those areas and Improvements located within the boundaries of a Unit which the Association is required to maintain, repair and replace pursuant to the **terms** of this Declaration or pursuant to any agreement whereby the Association undertakes repair, maintenance or replacement obligations, exclusive of the Common Elements, but including the areas **described in** Section 5.0 below.

(D) "Articles" means the Articles of Incorporation of the Association, as they may be amended from time to time.

(E) "Assessments means the Common Expense Assessment and Special Assessments levied and assessed against each Unit pursuant to Article 7 of this Declaration or any other amounts assessed by the Association pursuant to the terms of **this** Declaration, or any other amounts assessed by the Association pursuant to the terms of this Declaration.

(F) "Assessment Lien" means the lien granted to the Association by §331256 of the Condominium Act to secure the payment of Assessments, monetary penalties and other charges owed to the Association by a Unit Owner.

(G) "Association" means the Arizona nonprofit corporation organized by the Declarant to administer and enforce the Condominium Documents and to exercise the rights, powers and duties set forth therein, and its successors and assigns. Declarant intends to **organize** the Association under the name "37th Street Village Condominium Association," but if such name is not available, the Declarant may organize the Association under such other name as the **Declarant** deems appropriate.

(H) "Board and "Board of Directors" means the Board of Directors of the Association.

(I) "Bylaws" means the Bylaws of the Association. as they may be amended from time to time.

(J) "Capital Reserve **Fee**" means the fee due pursuant to Section 7.12 of this Declaration.

(K) "Common Elements" means all portions of the Condominium other than the Units, including, without limitation. Privacy **Gate(s)** and **related** privacy walls, if any, recreational amenities (including without limitation a pool and related facilities). drainage facilities and retention areas, Private Streets, bench seat and picnic areas and shade structures. if any. designated **walking** paths, and cluster mailboxes.

(L) "Common Expenses" means expenditures made by. or financial **liabilities** of, the Association, together with required allocations to reserves.

(M) "Common Expense Assessment" means the assessment levied against the Units pursuant to Section 7.1 (A) of this Declaration.

(N) "Common Expense Liability" means the liability for Common Expenses allocated to each Unit by this Declaration.

(O) "Common Wall" means any wall, floor or ceiling separating the interior of a Residential Dwelling from an adjoining Residential Dwelling with regard to Residential Dwellings situated on the boundary lines of their respective Units.

(P) "Condominium" means the real property located in Maricopa County, Arizona, which is described in Exhibit "A" attached to this Declaration and on the Plat, together with all Residential Dwellings and other Improvements located thereon and all easements, rights, and appurtenances belonging thereto. The name of the Condominium created by this Declaration, is "37th Street **Village**, a **condominium**."

(Q) "Condominium **Documents**" means this Declaration and the Plat. the Articles. Bylaws, Rules and **Architectural** Rules.

(R) "Declarant" means 37th Street Village LLC. an **Arizona** limited liability company, and its successors and any Person to whom it may transfer any Special **Declarant** Right.

(S) "Declaration" means this Declaration of Condominium and of Covenants. Conditions and Restrictions for 37th Street Village, a condominium, as it may be amended from time to time, together with the exhibits, and where appropriate by context, the Plat.

(T) "Designated LCE Area" means the Limited Common Elements described in Section 2.6(B).

(U) "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:

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

(ii) Subdivide Units, convert Units into Common Elements or convert Common Elements into Units;

(iii) Add additional property to the Condominium or to withdraw property therefrom;

(iv) Amend the Condominium Documents during the Period of Declarant Control to comply with applicable law or to correct any error or inconsistency in the Declaration as provided in the Condominium Act.

(v) Amend the Condominium Documents during the Period of Declarant Control as provided in Section 10.4(D) below.

(V) "Eligible Insurer or Guarantor" means an insurer or governmental guarantor of a First Mortgage who has requested notice of certain matters in accordance with Section 9.0 of this Declaration.

(W) "Eligible Mortgage Holder" means a First Mortgagee who has requested notice of certain matters from the Association in accordance with Section 9.0 of this Declaration.

(X) "First Mortgage" means any mortgage or deed of trust on a Unit with **first** priority over any other **mortgage** or deed of **trust**.

(Y) "First Mortgagee" means the holder of any First Mortgage.

(Z) "Garden Wall" means the **wall(s)** which the Declarant might install near the perimeter of certain Units or within the Designated LCE Area of certain Units, including any portion that encloses a rear or side patio **area**.

(AA) "**Improvement**" means all physical structures including, but not limited to, Residential Dwellings, Garden Walls, Privacy Gates, Private Streets, drainage and retention facilities, recreational amenities, bench seat areas, picnic facilities and shade structures, if any, pedestrian paths and trails, fences, and walls, cluster mailboxes, poles and light fixtures, signs, and all landscaping, including, but not limited to, hedges, **plantings**, ~~trees~~ and shrubs of every ~~type~~ and **kind**.

(BB) "Limited Common Elements" means any portion of the Common Elements specifically designated in this Declaration or on the Plat as a Limited Common Element and allocated by this Declaration as it may be amended from time to time or by operation of the Condominium Act for the exclusive use of one or more, but fewer than all, of the Units.

(CC) "Member" means any Person who is or becomes a member of the Association.

(DD) **"Modification"** means any additions, alterations or improvements, repair, change or replacement of any Improvement.

(EE) **"Period of Declarant Control"** means the time period commencing on the date this Declaration is recorded in the Official Records of the Maricopa County, Arizona Recorder, and ending on the earlier of

(i) Ninety (90) days after the conveyance of seventy-five percent (75%) of the Units which may be created in the Condominium to Unit Owners other than the Declarant; or

(ii) Four (4) years after Declarant, and its successors, if any, have ceased to offer Units for sale in the ordinary course of business.

(FF) **"Person"** means a natural person, corporation, business trust, estate, trust, partnership, association, limited liability company, joint venture, government, government subdivision or agency, or other legal or commercial entity, and in the case of a subdivision trust, means the beneficiary of the trust who holds the right to subdivide, develop or sell the real estate rather than the trust or trustee.

(GG) **"Plat"** means the **Condominium Plat for 37th Street Village, a condominium**, which plat has been recorded in the Official Records of the Maricopa County, Arizona Recorder, in Book 17 of Maps, Page 29 (M.C.R. No.) and any amendments, supplements, or corrections thereto.

(HH) **"Privacy Gate"** means an electronically-controlled gate that permits ingress and egress to the Condominium from public roads outside the Condominium and which is maintained by the Association.

(II) **"Private Streets"** means Easements or Tracts, as shown on the Plat, **which** are private streets providing vehicular ingress and egress within the Condominium.

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

(KK) **"Resident"** means any Person residing on a temporary or permanent basis within a Residential Dwelling in the Condominium, including a Unit Owner, family members of a Unit Owner, a lessee of a Unit Owner, or any guest, invitee, or licensee thereof.

(LL) **"Residential. Dwelling"** means the structure or structures intended for dwelling use by a Single Family and built upon a Unit, the boundaries of which are described in **Section 2.2** of this Declaration.

(MM) **"Rules"** means the rules and regulations adopted by the Association, as they may be amended from time to time.

(NN) "Single Family" means a group of one or more persons maintaining a common household in a Unit.

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

on the Plat:

(i) Construct Improvements provided for in this Declaration or shown

(ii) Exercise any Development Right:

(iii) Maintain sales **offices**, management offices, models and signs advertising the Condominium:

(iv) Use the Common Elements or easements thereon for the purpose of making Improvements within the **Condominium**;

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

(PP) "**Unit**" means a portion of the Condominium as described in this Declaration and as shown on the Plat that is designated for separate ownership or occupancy. Each Unit shall consist of the land or space lying within the boundaries of the Unit and where the context requires, shall include all Improvements situated thereon or therein, including without limitation, any Residential Dwelling and any Garden Walls located within Unit boundaries.

(QQ) ("Unit Owner" means the record owner, whether one or more Persons, of beneficial or equitable title (and legal title if the **same** has merged **with** the beneficial or equitable title) to the fee simple interest of a Unit. Unit Owner shall not include (i) Persons having an interest in a Unit merely as security for the performance of an obligation, or (ii) a lessee or tenant of a Unit. Unit Owner shall include a purchaser under a contract for the conveyance of real property, a contract for deed, a contract to convey, an agreement for sale or any similar **contract** through which a seller has conveyed to a purchaser equitable title to a Unit under which the seller is obligated to convey to the purchaser the remainder of seller's title in the Unit, whether legal or equitable, upon payment in full of all monies due under the contract. Unit Owner shall not include a purchaser under a purchase contract and receipt, escrow instructions or similar executory contract which is intended to control the rights and obligations of the parties to the executory contract pending the closing of a sale or purchase transaction. In the case of Units the fee simple title to which is vested in a trustee pursuant to A.R.S. §§33-801 et seq., the **Trustor**, shall be deemed to be the Unit Owner.

(RR) "Working Capital **Fee**" means the fee due pursuant to Section 7.11 of this Declaration.

ARTICLE 2

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

2.0 Submission of Property. Declarant hereby submits the real property described on Exhibit "A" attached to this Declaration and on the Plat, together with all Improvements, easements, rights and appurtenances thereto, to a Condominium in accordance with the provisions of the Condominium Act. The identifying numbers of the Units submitted to the Condominium are Unit Nos. I through 14. inclusive.

2.1 Unit Boundaries

(A) Each of the Units is separately shown, numbered and designated on the Plat. The location and dimensions of each Unit are set forth on or can be calculated from the Plat. The Unit does not include those areas and those things which are defined as Common Elements below. Each Unit and appurtenant area is subject to an easement for unintended encroachments and certain other encroachments as provided in Section 3.9 below. To the extent necessary, each Unit shall have an easement for structural support over other Unit(s), the Common Elements and Limited Common Elements as provided in Section 3.5, below.

(B) If any apparatus or other fixture lies partially within the boundaries of a Unit and partially within the Common Elements, any portion serving only that Unit is a Limited Common Element allocated solely to that Unit and any portion serving more than one Unit is a Limited Common Element allocated to those Units.

(C) Subject to the provisions of subsections (A) and (B) of this section and the provisions of Section 22 (D) below, the land, space and all Improvements within the boundaries of a Unit are part of the Unit.

(D) In the event of an inconsistency or conflict between the provisions of this section and the Plat, this section shall control.

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

2.2 Residential Dwelling Boundaries

(A) The vertical boundaries of each Residential Dwelling are the exterior **finished** surfaces of the perimeter walls of the residential structures within the Unit (including the attached garage and any attached or detached guest house, and including the exterior doors and windows, any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, fireplaces, and entryways).

(B) The horizontal boundaries of the Residential Dwelling are the horizontal boundaries of the Unit as shown on the Plat.

(C) All spaces, interior partitions and other fixtures and Improvements within the boundaries of a Residential Dwelling are part of the Residential Dwelling.

(D) The physical boundaries of a Residential Dwelling shall be considered to be the proper boundaries regardless of the settling, rising or lateral movement of the buildings and regardless of any variances between any boundaries shown on the Plat and the actual physical boundaries. Each Unit and appurtenant area is subject to an easement for unintended encroachments and certain other encroachments **as** provided in Section 3.9 below. To the extent necessary, each Unit shall have an easement for structural support over every other Unit, the Common Elements and Limited Common Elements as provided in Section 3.5, below.

2.3 Allocation of Common Element Interests. The undivided interests in the Common Elements of the Association shall be allocated equally among the Units. Accordingly, each Unit's percentage interest in the Common Elements shall be one-fourteenth (1/14th).

2.4 Allocation of Common Expense Liabilities. The Common Expense Liability of the Association shall be allocated equally among the Units. Accordingly, each Unit shall be responsible for one-fourteenth (1/14th) of the Common Expenses.

2.5 Allocation of Votes in the Association. The votes in the Association shall be allocated equally among all the Units with each Unit having one (1) vote.

2.6 Allocation of Limited Common Elements.

(A) Each Unit is allocated those portions of the Common Elements designated as Limited Common Elements in Sections 2.1 (B) of this Declaration that serve the Unit.

(B) Certain Units have been allocated a designated area (the "Designated LCE Area") adjacent to the Unit, **as** shown on the Plat, in which the Declarant may construct or install certain Improvements immediately adjacent to the Unit, which Improvements, upon such construction or installation by Declarant, shall become Limited Common Elements allocated to that Unit. The Improvements the Declarant intends to construct within the Designated LCE Area consist of Garden Walls and patios. The exact location and dimension of the Limited Common Elements shall be determined by Declarant, upon construction of the Garden Walls, but the Declarant does not intend to exceed the dimensions or locations of the Designated LCE Areas shown on the Plat except for minor encroachments as may be permitted pursuant to Section 3.9 below. Neither Declarant nor any Unit Owner may construct habitable structures or structures under the roof line of the Residential Dwelling within the Designated LCE Area. No Improvements within the Designated LCE Area shall be constructed in such a way **as** to interfere with any drainage, utility or other service easements in favor of a regulated utility or the City of Phoenix.

(C) A Limited Common Element may be reallocated by an amendment to this Declaration made in accordance with the provisions of §33-1218(B) of the Condominium Act.

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

ARTICLE 3

EASEMENTS

3.0 Utility Easement. There is hereby created an easement upon, across, over and under the Common Elements for reasonable ingress, egress, installation, replacing, repairing or maintaining of all utilities, including, but not limited to, gas, water, sewer, telephone, cable television and electricity. By virtue of this easement, it shall be expressly permissible for the providing utility company to install and maintain the necessary equipment and lines on, across, over, through, and under the Common Elements and Units, but no sewers, electrical lines, water lines, or other utility or service lines may be installed or located on the Common Elements or Units except as initially **designed**, approved and constructed by Declarant or **the** Board of Directors. This easement shall in no way affect any other recorded easements on the Common Elements. Water lines within the Common Elements shall be maintained by the Association, provided, however, that any service lines to the individual Residential Dwellings **from** the Common Element water main are private and shall be maintained by the Unit Owner. In the event of any inconsistency between this **Section 3.0** and the Plat, the Plat and City of Phoenix plans shall control. Private sewer mains within the Common Elements shall be maintained by the Association, provided, however, that any service lines to the individual Residential Dwellings from the Common Element sewer lines shall be maintained by the Unit Owner.

3.1 Easements for Ingress and Egress. There are hereby created easements for ingress and egress for pedestrian traffic over, through and across sidewalks, paths, **walks**, and lanes that from time to time may exist upon the Common Elements. Subject to the provisions and/or limitations of **Sections 3.1**, and **4.11** below, there is also created an easement for ingress and egress for pedestrian and vehicular traffic, including, without limitation, emergency access and utility repair vehicles, over, through and across the Private Streets, sidewalks, paths, trails, walks, lanes and other areas, if any, as **from** time to time may be paved and intended for such purposes.

3.2 Unit Owners' Easements of Enjoyment.

(A) Every Unit **Owner** shall have a right and easement of enjoyment in and to the Common Elements, except for **any** Limited Common Elements, if any, allocated to specific Units, which right and easement in the Common Elements shall be **appurtenant** to and shall pass with the title to every Unit, subject to the following provisions:

(i) The right of the Association to adopt reasonable Rules governing **the** use of the Common Elements:

(ii) The right of the Association to suspend the voting rights of a Unit Owner for any period during which any Assessment against his Unit remains unpaid more **than** fifteen (15) days after its due date and for any period during which the Unit Owner is in violation of any provision of the Condominium Documents;

(iii) The right of the Association to convey the Common Elements or subject the Common Elements to a mortgage, deed of trust, or other security interest, in the manner and subject to the limitations set forth in the Condominium Act, but in no event without the **vote** or written assent of those Unit Owners representing at least eighty percent (80%) of the votes in the Association, and of Declarant during the Period of Declarant Control; and in all events, subject to a Unit Owner's easement for ingress and egress if access to such Unit Owner's Residential Dwelling is through the Common Elements to be so conveyed or mortgaged.

(iv) All rights and easements set forth in this Declaration, including, but not limited to, the rights and easements granted to the Declarant by Sections 3.3 and 3.4 of this Declaration

(B) If a Residential Dwelling is leased or rented, the lessee and other **lawful** Residents of the Unit shall have the right to use the Common Elements during the term of the lease (subject to the provisions of this Declaration), and neither the Unit Owner nor his family members shall have any right to use the Common Elements until the termination or expiration of the lease.

(C) The **guests** and **invitees** of any Resident or other person entitled to **use** the Common Elements may use the Common Elements **provided** they are accompanied by a Member, Resident or other person entitled to use the Common Elements pursuant to subsection (A) or (B) above. The Board of Directors shall have the right to establish Rules which limit the use of **the** Common Elements by **guests and invitees**.

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

(E) The rights and privileges set forth in **this Section 3.2** shall not apply to Limited Common Elements, if any, allocated to a particular **Unit** or Units.

3.3 Declarant's Use for Sales and Leasing Purpose.

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

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

(C) So long as Declarant is marketing Units in the Condominium, Declarant shall have the right to reserve the use of any **parking** spaces which are not allocated as Limited Common Elements to **particular Units** for use by prospective Unit **Purchasers**, Declarant's employees and others engaged in sales, leasing, **maintenance**, construction or management activities.

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

3.3 Declarant's Rights and Easements.

(A) Declarant shall have the right and an easement on and over the Common Elements to alter or improve the Common Elements and the Units shown on the Plat and all other Improvements the Declarant may deem necessary and to use the Common Elements and any Units **owned** by Declarant for construction related purposes including the storage of tools, machinery, equipment, building materials, appliances, supplies and fixtures, and the performance of work respecting the Condominium.

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

(C) The Declarant shall have an easement through the Units and the Common Elements for any access necessary to complete any construction, renovations, warranty work or **modifications** to be **performed** by the Declarant, irrespective of whether Declarant then owns any Units in the Condominium.

(D) The Declarant shall have the right and an easement on, over, and through the Common Elements as may be reasonably necessary for the purpose of discharging its obligations and exercising **Special Declarant Rights** whether arising under the Condominium Act or reserved in this Declaration. Without limitation, the Declarant reserves the right to subdivide Units **pursuant** to A.R.S. §33-1223, relocate boundaries between adjoining Units pursuant to A.R.S. §33-1222, relocate boundaries and Improvements within the Designated LCE Area prior to the conveyance of Units to which such Designated LCE Area is allocated and to convert Units into Common Elements and Common Elements into Units subject to any further restrictions set forth in this Declaration, the Condominium Act and by applicable City of Phoenix zoning ordinances.

3.5 Easement for Support, Maintenance and Drainage. To the extent necessary, each **Improvement** (including a Residential Dwelling) within or located on the boundary of a Unit or located on the Common Elements, shall have an easement for structural support over adjacent Units, the Limited Common Elements and the Common Elements in the Condominium. Each Residential Dwelling shall have an easement, as applicable, for **storm** water drainage from its roof and eaves over adjoining Residential Dwellings, Units and Common Elements in accordance with the original approved drainage plan. Each Unit Owner shall maintain all **storm** water and drainage ways and easements located on his Unit to the extent such drainageways and easements serve his Unit or adjoining Units and the Association shall maintain all such easements and drainageways on the Common Elements. In the **event** an Owner or the Association fails to maintain such areas to the detriment of another Owner or the Association, as applicable, each Unit Owner **and/or** the **Association** shall have **such** rights of enforcement an abatement of the detriment as for the abatement of a nuisance under **this** Declaration, **including** without limitation, all rights of the Association set **forth** in **Section 5.3** below.

3.6 Common Elements Easement in Favor of the Association. The Common Elements shall be subject to an easement in favor of the Association and the Gents. employee and independent contractors of the Association for the purpose of the inspection, upkeep, maintenance, repair and replacement of the Common Elements.

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

(A) For the installation, repair, maintenance, use, removal or replacement of pipes, ducts, heating and air conditioning systems, swimming pool or recreational equipment, 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 or any other Unit if the installation was originally designed or constructed by or on behalf of the Declarant or is subsequently approved by the Board, as applicable.

(B) For the performance of the Unit Owner's obligation to maintain, repair, replace and restore those portions of the Limited Common Elements, if any, that the Unit Owner is obligated to maintain under **Section 2.1(B)** of **this** Declaration.

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

(A) For inspection of the exterior of the Residential Dwellings and Limited Common Elements in order to verify the **performance** by Owners of all items of maintenance and repair for which the Owners are responsible and for inspection, maintenance, repair and painting of the exterior of the Residential Dwelling for which the Association is responsible.

(B) For inspection, maintenance, repair and replacement of **Limited** Common Elements or other Areas of Association Responsibility situated in or accessible **from** the Units.

(C) For correction of **emergency** conditions in one or more Units or Limited Common Elements or casualties to the Common Elements, the Limited Common Elements or the Residential Dwellings.

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

(E) For inspection, at reasonable times and upon reasonable notice to the Unit Owner, of a Unit to verify that the provisions of the Condominium Documents are being complied with by the Unit **Owners**, their guests, tenants, invitees and the other occupants of the Residential Dwelling.

3.9 Easement for Unintended Encroachments/Encroachments by Declarant Improvements. To the extent that any Improvement on a Unit, Limited Common Element or Common Element encroaches on **any** other Unit or Common Element as a result of original construction, alteration or restoration authorized by this Declaration, settling or shifting, or any reason other than the intentional encroachment onto the Limited Common Elements, the Common Elements or any Unit by a Unit Owner, a valid easement for the encroachment, and for the maintenance thereof, exists. The **Declarant** intends to construct certain Residential Dwellings on the boundary lines between Units and an easement in perpetuity shall exist for such structures (or their reconstruction in the event of damage)

as provided in Section 3.5, above and as further provided in Section 8.5, of this Declaration. Each Unit Owner also understands and accepts that certain roof overhangs, eaves, window trim and casings may overhang onto their Unit or onto the Common Elements due to the Declarant's placement of a Residential Dwelling on or in proximity to the boundary line of a Unit or the Common Elements and an easement in perpetuity is created for such encroachment of overhanging structures.

ARTICLE 4 USE AND OCCUPANCY RESTRICTIONS

4.0 Single Family Residential Use. All Units and Limited Common Elements shall be used, improved and devoted exclusively to residential use by a Single Family. No gainful occupation, profession, trade or other nonresidential use shall be conducted on or in any Unit or Limited Common Element, but a Unit Owner or other resident may conduct a business activity within a Unit so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Unit; (ii) the business activity conforms to all applicable zoning ordinances or requirements for the Condominium; (iii) the business activity does not involve persons coming to the Unit or the door-to-door solicitation of Unit Owners or other residents in the Condominium; (iv) the trade or business conducted by the Unit owner or resident shall not require more than one (1) employee working in or from such Unit who is not a lawful resident thereof; (v) the volume of vehicular or pedestrian traffic or parking generated by such trade or business does not result in congestion or parking violations; (vi) the trade or business does not use flammable liquids or hazardous materials in quantities not customary for residential use; and (vii) the business activity is consistent with the residential character of the Condominium and does not constitute a nuisance or a hazardous or offensive use or threaten security or safety of Unit Owners or other residents in the Condominium, as may be determined from time to time in the sole and absolute discretion of the Board of Directors. The terms "business" and "trade" as used in this section shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether (a) such activity is engaged in full or part time; (b) such activity is intended to or does generate a profit; or (c) a license is required for such activity. The leasing of a Unit by the Unit Owner thereof shall not be considered a trade or business within the meaning of this section.

4.1 Antennas. Subject to the Telecommunications Act of 1996, no antenna, satellite television dish or other device for the transmission or reception of television or radio signals or any other form of electro-magnetic radiation shall be erected, used or maintained outdoors on any portion of the Condominium whether attached to a Residential Dwelling or otherwise, unless the same are ground mounted and/or attractively screened from view of neighboring Units, as determined by the Board; provided further, that nothing shall preclude the Association from adopting reasonable safety and/or architectural aesthetics Rules which do not impede the Owner's ability to obtain adequate reception from a protected class of satellite dishes or antennas within the scope of the FCC Rules adopted pursuant to the Telecommunications Act.

4.2 Utility Service. Except for lines, wires and devices existing on the Condominium on the date the first Unit is conveyed to a Purchaser and maintenance and replacement of the same, no lines, wires or other devices for the communication or transmission of electric current or power, including telephone, television, and radio signals, shall be erected, placed or maintained anywhere in or upon the Condominium unless they are contained in conduits or cables installed and maintained underground or concealed in, under or on Improvements or other structures approved

by the Board. No provision hereof shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of Improvements by Declarant or structures approved by the Board. All utilities and/or trash collection services not separately metered to the Units or billed to the Unit Owners shall be paid by the Association as a Common Expense.

4.3 Improvements and Alterations. After the initial construction of a Residential Dwelling on a Unit, a Unit Owner may make nonstructural Modifications within the interior of the Residential Dwelling without the prior written approval of the Board, but such Unit Owner shall, to the extent permitted under Arizona law, be responsible for any damage to other Units, Residential Dwellings, Limited Common Elements and Common Elements which results from any such Modifications. No Person shall make any structural Modifications to or within a Unit or Limited Common Elements allocated to his Unit, unless prior to the commencement of each Modification, the Unit Owner obtains all necessary permits and licenses, receives the prior written approval of the Board, and an architect or engineer licensed in Arizona certifies that such Modification will not impair the structural integrity of existing Improvements on the Unit or Limited Common Elements or any adjacent Unit. Limited Common Elements or Common Elements. The Unit Owner shall, to the extent permitted by Arizona law, be responsible for any damage to other Units, Limited Common Elements and/or Common Elements which results from any such Modifications. Notwithstanding the foregoing, no Modification, whether structural or not, shall be made to the exterior of a Unit or Limited Common Elements allocated to his Unit without the prior written consent of the Board, which approval shall only be granted if the Board affirmatively finds, in its sole and absolute discretion, that the proposed Modification is aesthetically pleasing and in harmony with the surrounding Improvements.

(A) The Board shall consider and act upon any and all plans and specifications submitted for its approval under this Declaration, including the inspection of construction in progress to assure its conformance with plans approved by the Board. No Modifications which are subject to the Board's review as provided in this **Section 4.3**, shall be commenced or maintained until the plans and specifications therefor showing the nature, kind, shape, height, width, color, materials and location of the same have been submitted to the Board and approved by the Board. It shall be the responsibility of the Unit Owner to submit the written plans and specifications to an authorized agent of the Board. Until changed by the Board, the address for the submission of such plans and specifications shall be the principal office of the Association. The Board may condition its approval of proposals or plans and specifications for any Improvement (i) upon the Unit Owner's furnishing the Association with security acceptable to the Association against any mechanics' liens or other encumbrance which may be recorded against the Condominium as a result of such work; (ii) on such changes therein as it deems appropriate; (iii) upon the Unit Owner's agreement to complete the proposed work within a stated period of time, or (iv) all of the above, and may require submission of additional plans and specifications or other information prior to approving or disapproving material submitted.

(B) The Board may issue Architectural Rules setting forth procedures for the submission of plans for approval, requiring a fee to accompany each application for approval, or stating additional factors which it will take into consideration in reviewing submissions.

(C) Notwithstanding the foregoing provisions of this **Section 4.3** Improvements within a Unit or within the Designated LCE Area allocated to that Unit which are damaged or destroyed may be repaired, restored, replaced and/or reconstructed in conformance with

previously approved plans, specifications and materials without the necessity of submitting additional plans and specifications to the Board or obtaining the Committee's approval.

(D) Until receipt by the Board of any required plans and specifications, the Board may postpone review of any plans submitted for approval. Decisions of the Board and the reasons therefor shall be transmitted by the Board to the Unit Owner at the address set forth in the application for approval within **forty-five** (45) days after receipt by the Board of all materials required by the Board. Any application submitted pursuant to this **Section 1.3** shall be deemed approved unless written disapproval or a request for additional information or materials by the Board have been transmitted to the Unit Owner within forty-five (45) days after the date of receipt by the Board of all required materials.

(E) The approval of the Board of any proposals or plans and specifications or drawings for any work done or proposed or in connection with any other matter **requiring** the approval and consent of the Board shall not be deemed to constitute a waiver of any right to withhold approval or consent to any similar proposals, plans and specifications, drawings or matters subsequently or additionally submitted for approval or consent. The approval by the Board of any Modification pursuant to this section shall not be deemed a warranty or representation by the Board as to the quality of such Modification or that such Modification conforms to any applicable building codes or other federal, state or local law, statute, ordinance, rule or **regulation**.

(F) The Board may authorize variances from compliance with any of the architectural provisions of this Declaration, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental considerations may require. Such variances must be evidenced in writing and must be signed by a majority of the Board. If such variances are granted, no violation of the covenants, conditions and restrictions contained in this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration for any purpose **except** as to the particular improvement and provision hereof covered by the variance. nor shall it affect in any way the Unit Owner's obligation to comply with all governmental laws and regulations affecting the use of **his** Unit.

(G) Upon receipt of approval from the Board pursuant to this **Section 4.3**, the Owner requesting such approval shall proceed to **perform** and complete the Modification approved by the Board as soon as practicable and shall diligently pursue such work so that it is completed as soon as reasonably practicable and within such time as may be prescribed by the Board.

(H) The approval required of the Board pursuant to this **Section 4.3**, shall be in addition to, and not in lieu of, any approvals or permits which may be required under any federal, state or local law, statute, ordinance, rule or regulation.

(I) No Unit Owner, other than **Declarant**, may subdivide his Unit **without** the written approval of the Board,

(J) Declarant is exempt from the provisions of this **Section 4.3** and need not seek nor obtain the Board's approval of any Improvements constructed on the Condominium by, or on behalf of, Declarant; provided however, that nothing shall be deemed to exempt Declarant from the approvals required under **Section 4.3 (1)** above.

4.4 Trash Containers and Collection. No garbage or trash shall be placed or kept on the Condominium except in covered containers of a type, size and style which are approved by the Board or as are provided by the City of Phoenix. The Board of Directors shall have the right to require all **Owners** to place trash and garbage in containers located in areas designated by the Board, or the City of Phoenix. No incinerators shall be kept or maintained on any Unit. All garbage containers must be removed from any designated trash collection place on the Common Elements and stored within the garage of the Residential Dwelling or other attractively screened area on the Unit within twenty-four (24) hours of trash pick up. The Board of Directors shall have the right to subscribe to a trash service for the use and benefit of the Association and all Unit Owners, and to adopt and promulgate Rules regarding trash collection and containers.

4.5 Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated or maintained upon any Unit or elsewhere within the Condominium except such machinery and equipment as is usual and customary in connection with the use, maintenance or construction of Improvements or structures which are within the permitted uses of such property: and except that which Declarant or the Association may require for the construction; improvement, operation and maintenance of the Common Elements and Areas of Association Responsibility.

4.6 Animals. No animals, birds, fowl, poultry, or livestock, other than a reasonable number of house pets, shall be maintained in or on any Unit or any Limited Common Elements allocated thereto and then only if such reasonable number of house pets are kept solely as domestic pets and not for commercial purposes. No pet or other animal shall be allowed to make an unreasonable amount of noise, cause an odor, or to become a nuisance. All dogs shall be kept on a leash not to exceed six (6) feet in length when outside a Unit, and all pets shall be directly under the Unit Owner's control at all times. No Unit Owner or any lessee or guest of a Unit Owner shall permit its household pets to defecate on any portion of the Common Elements. It shall be the responsibility of the Unit Owner, lessee or guest to immediately remove any droppings from pets, should they occur. No structure for the care, housing, confinement, or training of any animal or pet shall be maintained on any portion of the Common Elements or on any Unit so as to be visible from the exterior of the Residential Dwelling. Upon the written request of any Unit Owner, the Board of Directors shall determine whether, for the purposes of this section, a particular animal or bird is a generally recognized house pet, a nuisance, or whether the number of pets on any Unit or the Limited Common Elements allocated thereto is reasonable. The right of Unit Owners and other occupants of Units to maintain a reasonable number of house pets on a Unit pursuant to this section is expressly subject to the right of the Board of Directors to restrict such house pets to only certain portions of the Condominium and to prospectively restrict the size and number of dogs or other pets which may be maintained or kept on the Units.

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

4.8 Clothes Drying Facilities. No clotheslines or other facilities for drying or airing clothes shall be erected, placed or maintained on any Unit outside of a Residential Dwelling.

4.9 Mineral Exploration/Environmental Restrictions. No portion of the Condominium shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth, or any earth substance of any kind. All residents of the Condominium shall be **responsible** for complying with **all** federal and **state** environmental and health laws. Without limiting the foregoing, no Unit Owner or other resident may dispose of, transport, or store "hazardous materials" in his Unit or elsewhere in the Condominium other than small amounts of ordinary household non-combustible cleaning agents maintained in the Unit or Limited Common Element storage areas and in no event may any Unit Owner or resident dispose of any hazardous materials, including without limitation, motor oil, hydrocarbons. or. other petroleum products, in or down a dry well on or adjacent to **the** Condominium.

4.10 Diseases and Insects. No Unit Owner shall **permit any** thing or condition to exist upon his Unit which could induce, breed or harbor **infectious plant diseases** or noxious insects.

4.11 Parking and Vehicular Restrictions. No Owners may park, store or keep within **the** Condominium any vehicle. irrespective of whether it is operable, licensed or of a commercial nature. outside of the fully enclosed garage of his Residential Dwelling. There is no recreational vehicle parking allowed: therefore, no truck of more than **3/4** ton capacity or with camper shell exceeding eight (8) feet in height measured **from** ground level, mobile home, travel trailer, tent trailer, trailer, bus, camper shell, detached camper, recreational vehicle, boat, boat trailer, or other similar equipment or vehicle may be parked, kept, or maintained on any part of the Condominium except within the Owner's enclosed garage. Except for emergency repairs, no motorized vehicle of any type or nature shall be constructed, reconstructed, serviced or repaired on any portion of the **Condominium**, and no inoperable vehicle may be stored on any portion of the Condominium unless it is stored within the fully **enclosed** garage of the Residential Dwelling. Garage doors must be kept closed except when necessary for entering or exiting the garage or loading or unloading a vehicle. No Person may park on the Private **Streets** at any time, except within the specified parking **areas**, if any, designated by the Board. No Person may park within specified guest parking for a period exceeding three (3) consecutive days. The Board shall have the right from time to time to adopt and amend Rules with **regard** to parking.

4.12 Signs. No signs (including, but not limited to, "For Sale" or "For Rent" signs) visible from neighboring Units or the Common Elements (other than a standard name **and/or** address identification sign on the exterior of a Residential Dwelling or signs required by legal proceedings) shall be permitted on' a Unit or any other portion of the Condominium without the prior written approval of the Board.

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

4.14 Nuisances and Offensive Activity/Unsightly Articles. No nuisance shall be permitted to exist or operate upon the Condominium, and no activity shall be conducted upon the Condominium **which** is offensive or detrimental to **any** portion of the Condominium or any Unit Owner or other occupant of the Condominium. No exterior speakers, horns, whistles, bells or other sound devices, except security or other emergency devices used **cxclusively for** security or emergency **purposes**, shall be located, used or placed on the Condominium. No unsightly articles shall be **permitted** to remain on any Unit or within any Residential Dwelling visible from any portion of the Condominium.

4.15 Window Coverings. No reflective materials, including, without limitation, **aluminum** foil, reflective screens or glass, mirrors or similar items. **shall be** installed or placed upon the outside or inside of any windows of a Residential Dwelling without the prior written, approval of the Board. The exterior of all drapes, curtains or **other** window coverings shall be white, off-white, beige or natural wood-toned in color or such other colors as permitted by the Board.

4.16 Limitation on Leasing of Units. No Unit Owner may lease less than his entire Unit and the Residential Dwelling thereon. All leases shall be in writing and shall provide that the terms of the lease shall be subject in all respects to the provisions of the Condominium Documents. and any failure by the **lessee** to comply with the terms of the Condominium Documents shall be a default under the lease. Upon leasing his Unit, a Unit Owner shall promptly notify the Association of the commencement date and termination date of the lease and the names of each lessee or other person who will be occupying the Unit and the Residential Dwelling thereon during the term of the lease.

4.17 Resale of Units. Each Unit Owner, other than Declarant, shall provide the information required by §33-1260 of the Condominium Act to a purchaser of his Unit in the time and manner provided therein.

4.18 Basketball Goals and Backboards. No basketball goal, pole, backboard or other similar structure, whether portable or permanent, may be installed on any portion of the Condominium unless installed by the Declarant or the Board as a component of the Common Elements recreational facilities.

4.19 Community Privacy Measures. Each Unit Owner understands and agrees that neither the Association (nor its officers, directors, employees, and agents) nor the Declarant (nor, its members, managers, **officers**, directors, shareholders or other owners, employees and agents) is responsible for the acts and omissions of any third parties or of any other Owner or Owner's family members, guests, tenants and invitees resulting in damages or injury to person or, property. The Privacy Gate features or common privacy measures that may be used in **the** Condominium (as installed by Declarant, at its option, or by the Board on behalf of the Association) will be maintained by the Association, and each Unit Owner understands that any Privacy Gate features that are in effect at the time he becomes a Unit Owner may be abandoned, terminated **and/or** modified by a majority vote of the Board. The commencement of any such devices or controls shall not be deemed to be an assumption of any duty on the part of the Association or the Declarant with respect to the Condominium and neither Declarant, the Board (nor any committee thereof) make any representation or warranty concerning the efficacy of such devices relating to security or the ease of entry of fire, police or other emergency personnel. Without limiting the foregoing, to accommodate **Declarant's** sales efforts, Declarant reserves the Special Declarant Right to control the hours of operation of the Privacy Gates until the last Unit in the Condominium is sold.

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

4.21 Enforcement of Use and Occupancy Restrictions. If a Unit Owner is in violation of any of the use and occupancy restrictions set forth in this Article 4 and such violation continues more than fifteen (15) days after written notice has been given to the Unit Owner by the Association, then, in addition to any other rights or **remedies** therefor under this Declaration, the Association shall have the right to levy against his Unit reasonable monetary penalties as an Assessment against the Unit Owner.

ARTICLE 5

MAINTENANCE AND REPAIR OF COMMON ELEMENTS AND UNITS

5.0 Duties of the Association.

(A) The Association shall maintain, repair and make necessary improvements to all Common Elements and the cost thereof shall be a Common Expense. Without limitation, the Association shall be responsible for maintaining the Private Streets, Private Water and Sewer System, Privacy Gates, sidewalks, landscaping, lighting and light fixtures in the Common Elements, recreational areas, including any pedestrian and other paths and walkways over the Common Elements within the Condominium.

(B) The Association shall also maintain, repair and replace the following, portions of the Units as an Area of Association Responsibility: (i) periodic painting and routine, maintenance of the exteriors of the Residential Dwellings, including the roofs of the Residential Dwellings and outdoor screening of air conditioning units (but specifically excluding repair or replacement of all windows, doors and air conditioning units); (ii) all landscaping (but specifically excluding all landscaping Improvements on a Unit Owner's patio as enclosed by Garden Walls), walkways; (iii) the periodic painting and routine maintenance of Garden Walls.

(C) The Board shall determine, in its sole discretion, the level and frequency of maintenance of the Common Elements and those portions of the Units within an Area of Association Responsibility.

(D) The cost of all such Association inspection, maintenance, repairs and replacements shall be paid for by the Association and allocated and assessed against all of the Units.

5.1 Duties of Unit Owners.

(A) Each Unit Owner shall maintain, repair, replace and restore, at his own expense: (i) the interior of the Residential Dwelling structure; (ii) all exterior windows and doors (including garage doors) and air conditioning units; (iii) landscaping on his Unit and all landscaping Improvements on his patio as enclosed by Garden Walls; and (iv) lighting fixtures and poles, fences, walls and other Improvements on the Unit or within the Limited Common Elements allocated thereto. In addition to the foregoing, each Unit Owner is responsible to maintain and repair and is liable for any expense related to the utility connections with the Unit, such as the sewer cleanout and line between the house and the cleanout; the water valve and line between the house and the valve and power meter appurtenant to said Unit except to the extent the regulated utility maintains the same.

(B) With respect to the Common Wall that may be constructed between one or more Residential Dwellings including any Improvement or fixture therein; each Unit Owner shall maintain such Common Wall as provided below and the Association shall be absolved of all responsibility for maintenance and repair of any portion of the Common Wall:

(i) With respect to any such Common Wall, each of the adjoining Owners shall assume the burden and be entitled to the benefit of the restrictive covenants contained in this Declaration, and to the extent not inconsistent with this Declaration, the general rules of law regarding Common Walls shall be applied:

(ii) The cost of reasonable repair and maintenance of a Common Wall shall be shared equally by the adjoining Unit Owners of such Common Wall without prejudice, however, to the right of any Owner to call for a larger contribution from the adjoining Unit Owner under any rule of law regarding liability for one's actions or omissions. excepting that utilities, conduit, facilities and appurtenances to the Common Wall serving only one Unit shall be maintained and repaired solely at the cost of the Unit Owner whose Unit is so benefited:

(iii) In the event that any Common Wall is damaged or destroyed through the act of an Owner. it shall be the obligation of such Owner to rebuild and repair the Common Wall without cost to the other Owner or Owners:

(iv) In the event any Common Wall is damaged or destroyed by some cause other than the act of one of the adjoining Unit Owners, his agents, tenants, licensees, guests or family (including ordinary wear and tear and deterioration from lapse of time), then, in such event, both such adjoining Unit Owners shall proceed forthwith to rebuild or repair the same to as good condition as formerly at their joint and equal expense:

(v) The right of any Owner to contribution from any other owner under this section shall be appurtenant to the title to the Unit and shall pass to such Owner's successors in title;

(vi) In addition to meeting the other requirements of this Declaration and of any other building code or similar regulations or ordinances, any Unit Owner proposing to modify, stake additions to, or rebuild a Common Wall shall first obtain the written consent of the adjoining Owners;

(vii) In the event of a dispute between Unit Owners with respect to the repair or the rebuilding of a Common Wall or with respect to sharing of the cost thereof, then, upon written request of one of such Unit Owners addressed to the Association, the matter shall be submitted to arbitration under such Rules from time to time adopted by the Association. If no such Rules have been adopted, then the matter shall be submitted to three (3) arbitrators, one chosen by each of the Owners, and the third by the two so chosen, or, if the arbitrators do not agree as to the selection of the third arbitrator within five (5) days, then by any judge of the Superior Court of Maricopa County, Arizona. A determination of the matter signed by any two of the arbitrators shall be binding upon the Unit Owners who shall share the cost of the arbitration equally. In the event one party fails to choose an arbitrator within ten (10) days after personal receipt of a request in writing for arbitration from the other party, then said other party, shall have the right and power to choose both arbitrators:

(viii) The provisions of this Section 5.1(B) shall be binding upon the heirs and assigns of any Unit Owners, but no Person shall be personally liable for any act or omission respecting the Common Wall except such as took place while he was a Unit Owner.

5.3 Repair or Restoration Necessitated by Owner. Each Unit Owner shall be liable to the Association, to the extent permitted by Arizona law, for any damage to the Common Elements or any Improvements which the Association is obligated to maintain pursuant to this Declaration whether located on Common Elements or the Units and which results from the negligence or willful misconduct or omission of the Unit Owner or parties for whose action or inaction the Unit Owner is

legally responsible. The cost to the Association of any such repair, maintenance or replacement required by such act or omission of a Unit Owner shall be paid by the Unit Owner, upon demand, to the Association. The Association may enforce collection of any such amounts in the same manner and to the same extent as provided for in this Declaration for the collection of Assessments.

5.3 Unit Owner's Failure to Maintain. Except to the extent the Association is obligated to maintain any Improvements on a Unit as provided in Article 5 above or elsewhere in this Declaration, if a Unit Owner fails to maintain and repair his Unit and all Improvements thereon in good condition and the required maintenance, repair or replacement is not performed within fifteen (15) days after written notice has been given to the Unit Owner by the Association, the Association shall have the right, but not the obligation, to perform the required maintenance, repair or replacement. The cost of any such maintenance, repair or replacement shall be assessed against the nonperforming Unit Owner pursuant to Section 7.1(E) of this Declaration.

ARTICLE 6 THE ASSOCIATION; RIGHTS AND DUTIES; MEMBERSHIP

6.0 Rights, Powers and Duties of the Association. No later than the date on which the first Unit is conveyed to a Purchaser, the Association shall be organized as a nonprofit Arizona corporation. The Association shall be the entity through which the Unit Owners shall act. The Association shall have such rights, powers and duties as are prescribed by law and as are set forth in the Condominium Documents together with such rights, powers and duties as may be reasonably necessary to effectuate the objectives and purposes of the Association as set forth in this Declaration and the Condominium Act. The Association shall have the right to finance capital Improvements in the Condominium by encumbering future Assessments if such action is approved by the written consent or affirmative vote of Unit Owners representing more than fifty percent (50%) of the votes in the Association and by Declarant during the Period of Declarant Control. Unless the Condominium Documents or the Condominium Act specifically require a vote of the Members, approvals or actions to be given or taken by the Association shall be valid if given or taken by the Board. The Association has the specific duty to make available to the Declarant, Eligible Mortgage Holders, Unit Owners, and insurers or guarantors of any First Mortgage, during normal business hours, current copies of the Condominium Documents and other books, records and financial statements of the Association as may be requested from time to time by such parties. Such requests shall be in writing, and the Association shall have the right to charge for reasonable copying expense.

6.1 Directors and Officers

(A) During the Period of Declarant Control, the Declarant shall have the right to appoint and remove the members of the Board of Directors and the officers of the Association, none of whom are required to be Unit Owners.

(B) Upon the termination of the Period of Declarant Control, the Unit Owners shall elect the Board of Directors which must consist of at least three (3) members, all of whom must be Unit Owners. The Board of Directors elected by the Unit Owners shall then elect the officers of the Association.

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

6.2 Rules. The Board of Directors, from time to time and subject to the provisions of this Declaration and the Condominium Act, may adopt, amend, and repeal rules and regulations ("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, licensee or lessee of such Unit Owner; provided, however, that the Rules may not unreasonably discriminate among Unit Owners and shall not be inconsistent with the Condominium Act, the applicable federal and state Fair Housing Acts, this Declaration, the Articles or Bylaws. A copy of the Rules, as they may from time to time be adopted, amended or repealed, shall be mailed or otherwise delivered to each Unit Owner and may be recorded.

6.3 Architectural Committee. The Board of Directors may, in its sole discretion, establish an Architectural Committee and delegate certain or all architectural review functions of the Board to such Architectural Committee. If established, the Architectural Committee shall consist of not less than three (3) members appointed by the Board of Directors to regulate the external design, appearance, use and maintenance of the Condominium and to perform such other ancillary functions and duties as are imposed upon it by the Board of Directors consistent with the Condominium Documents. Subject to the right and power of the Board to remove and replace, at any time, any member of the Architectural Committee, Architectural Committee **members** shall serve one (1) year terms. Plans submitted to the Architectural Committee shall be reviewed by the Architectural Committee with recommendations or comments to the Board. The Board shall be responsible for approval or disapproval of any Improvement submitted pursuant to Section 4.3 of this Declaration or any other section hereof, subject to final approval or disapproval by the Covenant Commission.

6.4 Composition of Members. Each Unit Owner shall be a Member of the Association. The membership of the Association at all times shall consist exclusively of all the Unit Owners. Membership in the Association is mandatory and such Membership and the allocated interests thereof as set forth in Article 2 above are appurtenant thereto, and may not be separated from, ownership of the Unit; provided, however, the allocated interests of Units from time to time may be modified or changed as expressly permitted in this Declaration and authorized under the Condominium Act. No Owner during his ownership of a Unit shall have the right to relinquish or terminate his membership in the Association.

6.5 Personal Liability. Neither Declarant nor any member of the Board or of any committee of the Association, any officer of the Association nor any manager, agent, or other employee of the Association, shall be personally liable to any Member, or to any other Person, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of the Declarant, the Association, the Board, the managing agent, any representative or employee of the Association, or any committee, committee member or **officer** of the Association; provided, however, the limitations set forth in this Section 6.5 shall not apply to any Person **who** has failed to act in good faith or has engaged in willful or intentional misconduct.

6.6 Implied Rights. The Association may exercise any right or privilege given to the Association expressly by the Condominium Documents and every other right or privilege reasonably to be implied from the existence of any right or privilege given to the Association by the Condominium Documents or reasonably necessary to effectuate any such right or privilege.

ARTICLE 7

ASSESSMENTS

7.0 Preparation of Budget.

(A) At least sixty (60) days before the beginning of each fiscal year of the Association commencing with the fiscal year in which the first Unit is conveyed to a Purchaser, the Board of Directors shall adopt a budget for the Association containing an estimate of the total amount of funds which the Board of Directors believes will be required during the ensuing fiscal year to pay all Common Expenses including, but not limited to: (i) the amount required to pay the cost of maintenance, management, operation, repair and replacement of the Common Elements and those parts of the Units, if any, which the Association has the responsibility of maintaining, repairing and replacing; (ii) the cost of wages, materials, insurance premiums, services, supplies and other expenses required for the administration, operation, maintenance and repair of the Condominium; (iii) the amount required to render to the Unit Owners all services required to be rendered by the Association under the Condominium Documents; and (iv) such amounts as are necessary to provide general operating reserves and a capital reserve fund for contingencies and replacements. The budget shall separately reflect any Common Expenses to be assessed against less than all of the Units pursuant to Section 7.1(E) or F of this Declaration and must include an adequate allocation to reserves for Assessments paid by Unit Owners other than Declarant, while Declarant is paying a reduced Assessment pursuant to Section 7.1(G), as part of the Common Expense Assessment.

(B) Within thirty (30) days after the adoption of a budget, the Board of Directors shall send to each Unit Owner a summary of the budget and a statement of the amount of the Common Expense Assessment assessed against the Unit of the Unit Owner in accordance with Section 7.1 of this Declaration. The failure or delay of the Board of Directors to prepare or adopt a budget for any fiscal year shall not constitute a waiver or release in any manner of a Unit Owner's obligation to pay his allocable share of the Common Expenses as provided in Section 7.1 of this Declaration and each Unit Owner shall continue to pay the Common Expense Assessment against his Unit as established for the previous fiscal year until notice of the Common Expense Assessment for the new fiscal year has been established by the Board of Directors.

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

7.1 Common Expense Assessment.

(A) For each fiscal year of the Association commencing with the fiscal year in which the first Unit is conveyed to a Purchaser, the total amount of the estimated Common Expenses set forth in the budget adopted by the Board of Directors (except for the Common Expenses which are to be assessed against less than all of the Units pursuant to subsections (E) and (F) of this section) shall be assessed against each Unit in the proportion to the Unit's Common Expense Liability as set forth in Section 2.4 of this Declaration. The amount of the Common Expense Assessment assessed pursuant to this subsection (A) shall be in the sole discretion of the Board subject to Section 7.1 (B) below. If the Board of Directors determines during any fiscal year that its funds budgeted or available for that fiscal year are, or will, become inadequate to meet all Common Expenses for any reason, including, without limitation, nonpayment of Assessments by Members, it may increase the Common Expense Assessment for that fiscal year within the limitations established by Section 7.1(B) and the revised Common Expense Assessment shall commence on the date designated by the Board of Directors.

(B) The maximum Common Expense Assessment for each fiscal year of the Association after the first fall or partial fiscal year thereof shall not be greater than an amount **equal** to one hundred ten percent of the previous year's Common Expense Assessment established by the **Board** and assessed against the Units. From and after January 1 of the year immediately following the conveyance of the first Unit to a Purchaser, the Common **Expense** Assessment for any fiscal year of the Association may be increased by an amount greater than the maximum increase allowed in this **Section 7.1(B)**, only by a vote of Members entitled to **cast** at least two-thirds (2/3) of the **votes** entitled to be cast by Members who are voting in person or by proxy at a meeting duly called for such purpose. The **maximum** Common Expense Assessment limitations herein contained shall apply only to the amount of the Common Expense Assessment assessed pursuant to subsection (A) of this section and shall not apply to the amount of Common Expenses assessed pursuant to subsection (E) or (F) of this section.

(C) The Common Expense Assessments shall commence as to all Units in the Condominium on the first day of the month following the conveyance of the first Unit to a Purchaser. The **first** Common Expense Assessment shall be adjusted according to the number of months remaining in the **fiscal** year of the Association. The Board of Directors may require that the **Common Expense** Assessments or Special Assessments be paid in monthly **installments**.

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

(E) If any Common Expense is caused by the negligence, omission or willful misconduct of any Unit Owner, the Association shall assess that Common Expense exclusively against his Unit.

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

(G) The Common Expense **Assessment** for any Unit in the Condominium on which construction has not been "substantially completed" shall be an amount **equal** to twenty five percent (25%) of the Common Expense Assessment for Units which have been substantially completed. So long as any Unit owned by the Declarant qualifies for the reduced Common Expense Assessment provided for in this subsection (G), and, only if Declarant elects to pay such reduced Assessment, the Declarant shall be obligated to pay to the Association any deficiencies in the monies resulting from the Declarant having paid a reduced Common Expense Assessment and necessary for the Association to be able to timely pay all Common Expenses. Declarant's reduced Assessment as set forth in this **Section 7.1(G)** and/or any obligation for shortfall shall not include any obligation to fund reserve amounts calculated as part of the full annual Common Expenses Assessment.

7.2 Special Assessments. In addition to Common Expense Assessments, the Association may levy, in any fiscal year of the Association, a special assessment for the **purpose** of defraying in whole or, in part, the cost of any construction, reconstruction, repair, or replacement of a capital improvement of the Common Elements, including fixtures and personal property related thereto, or for any other lawful Association purpose, provided that any Special Assessment shall have first been approved by Unit Owners representing a majority of the votes in the Association voting in person or by proxy at a meeting duly called for such purpose and approved by Declarant, during the Period of Declarant **Control**. Unless otherwise specified by the Board of Directors, Special Assessments shall be due thirty (**30**) days after they are levied by the Association and notice of the Special Assessment is **given** to the Unit Owners.

7.3 Effect of **Nonpavment** of Assessments: Remedies of the Association.

(A) Any Assessment, or any installment of an Assessment, which is not paid within **fifteen** (15) days after the Assessment first **became** due shall be deemed delinquent and shall bear interest from the date of the delinquency at the rate of eighteen percent (18%) per annum. In addition to or in lieu of interest, the Board of Directors may establish a reasonable late fee for delinquent assessments to be charged to a Unit Owner and assessed against his Unit as part of the Assessment Lien for each installment of an Assessment not paid within fifteen (15) days of its due date.

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

(C) The Association shall have the right, at its option, to enforce collection of any delinquent Assessments, monetary penalties and all other fees and charges owed to the Association in any manner allowed by law, including, but not limited to (i) bringing an action at law against the Unit Owner personally obligated to pay the delinquent amounts which came due, at the time he **was** the Owner thereof and such action may be brought without waiving the Assessment Lien securing any such delinquent amounts, provided, however, that the personal obligation to pay delinquent Assessments which came due prior to the transfer of ownership shall not pass to successors in title; (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; and (iii) suspending voting and recreational amenities use rights as provided in the Bylaws. The Association shall have the power to bid in at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any and all Units purchased at such sale.

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

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

7.6 Certificate of Payment. The Association, on written request, shall furnish to a lienholder, Unit Owner or Person designated by a Unit Owner, a recordable statement setting forth the amount of unpaid Assessments against his Unit. The statement shall be furnished within twenty (20) business days after receipt of the request and is binding on the Association, the Board of Directors, and every Unit Owner. The Association may charge a reasonable fee in an amount established by the Board of Directors for each such **statement**.

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

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

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

7.10 Transfer Fee. Each Unit Owner shall pay to the Association immediately upon becoming a Unit Owner a transfer fee in the amount of Fifty Dollars (\$50) or as established from time to time by the Board of Directors, which fee may be paid to the managing agent of the Association, other than Declarant, as partial compensation for maintaining the **books** and records of the Association. Such fee may be collected at the close of escrow for the Unit.

7.11 Working Capital Fee. To assist the Association in establishing adequate funds to meet its expenses or to purchase necessary equipment or services, upon the closing of the sale of each Unit, the Purchaser shall pay to the Association the greater of (i) One Hundred Dollars (\$100) or (ii) an amount equal to **two** (2) monthly installments of the then-current **Common** Expense Assessment assessed against the Unit (the "**Working Capital Fee**"). The Working Capital Fee shall be contributed as working capital to be used for operating expenses and maintenance of the Common Elements as provided in the budget prepared pursuant to **Section 7.0(A)**. The Working Capital Fee shall be nonrefundable to the Purchaser or any subsequent Unit Owner and shall not be considered as an advance payment of any Assessments levied by the Association pursuant to this Declaration. Following the Period of Declarant Control, the Board shall have the right to permanently or temporarily cease assessing the Working Capital Fee, as provided in **Section 7.12** below.

7.12 Capital Reserve Fee. To assist the Association in establishing adequate funds to meet is long-term expenses, upon the closing of the sale of each Unit, the Purchaser shall pay to the Association the greater of (i) One Hundred Dollars (\$100) or (ii) an amount equal to two (2) monthly installments of the then-current Common Expense Assessment assessed against the Unit (the "**Capital Reserve Fee**"). The Capital Reserve Fee shall be contributed to a capital reserve fund. The capital reserve fund shall be that component of the budget prepared pursuant to Section 7.0(A) allocated to long-term capital expenses and contingencies, such as but not limited to, roof replacements, pool re-plastering, fencing replacement, asphalt overlays and sewer main repair and replacement. The Capital Reserve Fee shall be nonrefundable to the Purchaser or any subsequent Unit Owner and shall not be considered as an advance payment of any Assessments levied by the Association pursuant to this Declaration. During the Period of Declarant Control, those funds contributed to the capital reserve fund shall not be used to defray Association expenses, or construction costs or to make up budget deficits; however, the Capital Reserve Fees collected by the Association pursuant to this Section 7.12 may be taken into account by the Board in determining the amount of reserves to be included in the annual Common Expense Assessment when preparing annual budgets for purposes of Section 7.1 of this Declaration. Following the Period of Declarant Control, the Board shall have the right, by an affirmative vote of the majority of the members of the Board, and based upon the Board's analysis of working capital and replacement and repair reserves, to permanently or temporarily cease assessing either or both of the Capital Reserve Fee and the Working Capital Fee. Having ceased to assess one or both of such fees, the Board shall have the right to reinstate assessment of, such fees at any time thereafter, it being the intent that the Board shall have the right to begin or cease assessment of the Capital Reserve Fee and the **Working Capital Fee** as the Board deems appropriate from time to time.

ARTICLE 8

INSURANCE

8.0 Scope of Coveraee.

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

(i) Property insurance on the Common Elements and Units, exclusive of improvements and betterments which were not part of the original construction. The policy is to be issued on a "Special Form" policy or its equivalent in an amount determined by the Board of Directors; provided, however, that the total amount of insurance shall not be less than one hundred percent (100 %) of the current replacement cost of the insured property, exclusive of land, excavations foundations and other items normally excluded from a master or blanket hazard and multi-peril property insurance policy.

(ii) Comprehensive General Liability insurance, for a limit to be determined by the Board, but not less than \$1,000,000.00 for any single occurrence and \$2,000,000 general aggregate. Such insurance shall cover all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use ownership or maintenance of the Common Elements and any Area of Association Responsibility.

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

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

(v) Fidelity bonds for one or more **officers**, directors, trustees and employees of the Association and all other Persons handling or responsible for funds of or **administered** by the Association, including, but without limitation, **officers**, directors and employees of any management agent of the Association. whether or not they receive compensation for their **services**. The total amount of the fidelity bonds maintained by the Association shall be based upon the best business judgment of the Board. and shall not be less than the **greater** of the estimated maximum funds, including reserve funds. in the custody of the Association or the management agent, as the case may be, at any given time during the term of each bond or the sum equal to three months' aggregate Common Expense Liability for all Units plus reserve funds.

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

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

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

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

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

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

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

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

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

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

(ix) Such coverage shall not be contingent upon action by the insurance carrier's board of directors, policyholders or members or permit claims for contribution or assessments to be made against Unit Owners or their Mortgagees including Eligible Mortgage Holders, or Eligible Insurers or Guarantors.

(x) if the Condominium is located in an area identified on Federal Emergency Management Association Maps within a one hundred year flood zone, a "blanket policy" of flood insurance on the Common Elements and the Units in the lesser of (i) the sum of the aggregate outstanding principal balance of all First Mortgage loans on the individual Units and one hundred percent (100%) of the current replacement cost of the Improvements, exclusive of land, excavations, foundations and other items normally excluded from a master or blanket hazard policy and exclusive of the cost of replacing landscaping on the individual Units or (ii) the maximum limit of coverage available under the National Insurance Act of 1968, as amended Each Unit Owner shall be solely responsible for obtaining flood hazard insurance as may be required by his First Mortgagee or by law covering any personal property located on his Unit or within his Residential Dwelling and any landscaping improvements on a Unit Owner's patio as enclosed by Garden Walls.

(xi) "Agreed Amount and Inflation Guard." and "Building Ordinance or Law" endorsements, except where expressly not applicable or not available.

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

8.2 Insurance Obtained by Unit Owners/Non-Liability of Association. The issuance of insurance policies to the Association pursuant to this **Article 8** shall not prevent a Unit Owner from obtaining insurance for his own benefit and at his own expense covering his Unit, his personal property and providing personal liability coverage. Notwithstanding the obligation of the Association to obtain insurance coverage as stated in this Declaration, neither the Declarant nor the Association, or their respective officers, directors, employees and agents, shall be liable to any Unit Owner or any other party if any risks or hazards (including, without limitation, flood damage) are not covered by the insurance to be maintained by the Association or if the amount of the insurance is not adequate. it is the responsibility of each Unit Owner to ascertain the coverage and protection afforded by the Association's insurance policies and to procure and pay for any additional insurance coverage and protection that the Unit Owner may desire. Each Unit Owner is further advised that insurance policies are generally subject to a number of exceptions and exclusions and such policy forms may change from time to time. Because of the complexities of such insurance it would be impractical to set forth such policy information in this Declaration. Each Unit Owner is charged with the obligation of determining what coverage the Association's insurance policies provide and to obtain his own individual and/or supplemental policies as the Unit Owner may deem prudent.

8.3 Payment of Insurance Proceeds. Any loss covered by property insurance obtained by the Association in accordance with this Article 8 shall be adjusted with the Association and the insurance proceeds shall be payable to the Association and not to any mortgagee or beneficiary under a deed of trust. The Association shall hold any insurance proceeds in trust for Unit Owners and lienholders as their interests any appear, and the proceeds shall be disbursed and applied as provided for in §33-1253 of the Condominium Act.

8.4 Certificate of Insurance. An insurer that has issued an insurance policy pursuant to this Article 8 of the Declaration shall issue certificates or memoranda of insurance to the Association and, on written request, to any Unit Owner, mortgagee, or beneficiary under a Deed of Trust. The insurer issuing the policy shall not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or nonrenewal has been mailed to the Association. 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** address.

8.5 Restoration of Condominium in Event of Destruction.

(A) Except as otherwise provided in this Declaration or required by the Condominium Act, in the event of any destruction of any portion of the Common Elements. the, repair or replacement of which is the responsibility of the Association, it shall be the duty of the Association to restore and repair the same to its **former** condition, as promptly as practical. The proceeds of any insurance maintained pursuant to this Article 8 for reconstruction or repair of the Common Elements shall be used for such purpose. unless (a) the Condominium is terminated; (b) repair or restoration would be illegal under any state or local statute or ordinance: governing health or safety; (c) eighty percent (80%) of the Unit Owners' vote not to rebuild. The Board shall be authorized to have prepared the necessary documents to effect such reconstruction as promptly as practical. The Common Elements shall be **reconstructed** or rebuilt substantially in accordance with the applicable Plat and construction plans if they are available, unless changes recommended by the Board have been approved in writing by sixty-seven percent (**67%**) of the Unit Owners and by the applicable number of First Mortgagees, Eligible Mortgage Holders and Eligible Lnsurers or Guarantors specified in Article 9 of this Declaration.

(B) No Unit Owner shall have the right to a partition of his interest in the Common Elements or Limited Common Elements and there shall be no judicial partition of the Condominium, or any part thereof. Nothing herein shall be deemed to prevent partition (a sale of the Unit and division of the sale proceeds) of a cotenancy in any Unit.

(C) Restoration and repair of any damage to an individual Residential Dwelling shall be made by and at the individual expense of the Unit Owner of the Residential Dwelling so damaged as promptly as possible after occurrence of the damage. In the event of a determination to rebuild after partial or total destruction. such repair or restoration shall be completed as promptly as practical and in a lawful and workmanlike manner, in accordance with plans approved by the Board as provided herein. Residential Dwellings and Garden Walls shall be reconstructed at their original location to the greatest **extent** possible.

ARTICLE 9

RIGHTS OF FIRST MORTGAGEES

9.0 Notification to First Mortgagees. Upon receipt by the Association of a written request from a First Mortgagee or insurer or governmental guarantor of a First Mortgage informing the Association of its correct name and mailing address and number or address of the Unit to which the request relates, the Association shall provide such Eligible Mortgage Holder or Eligible Insurer or Guarantor with timely written notice of the following:

(A) 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;

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

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

(D) Any proposed action which requires the consent of a specified percentage of Eligible Mortgage Holders ~~as~~ set forth in Section 9.1 of this Declaration.

9.1 Approval Required for Amendment to Condominium Documents.

(A) The approval of Unit Owners representing at least sixty-seven percent (67%) of the total allocated votes in the Association and of Eligible Mortgage Holders holding First Mortgages on Units the Unit Owners of which have at least fifty-one percent (51 %) of the votes in the Association allocated to Unit Owners of all Units subject to First Mortgages held by Eligible Mortgage Holders shall be required to add or amend any material provisions of the Condominium Documents which establish, provide for, govern or regulate any of the following:

- (i) Voting rights;
- (ii) Assessments, Assessment Liens, or subordination of Assessment Liens;
- (iii) Reserves for maintenance, repair and replacement of Common Elements;
- (iv) **Insurance** or fidelity bonds;
- (v) Responsibility for maintenance and repairs;
- (vi) Expansion or contraction of the Condominium, or the addition of property to the Condominium;

- (vii) Boundaries of any Unit:
 - (viii) Reallocation of interests in the Common Elements or Limited Common Elements or rights to their use:
 - (ix) Convertibility of Units into Common Elements or of Common Elements into Units:
 - (x) Leasing of Units:
 - (xi) Imposition of any restriction on a Unit Owner's right to sell or transfer his Unit:
 - (xii) A decision by the Association to establish self-management **when professional** management had been required previously by an Eligible Mortgage Holder,
 - (xiii) Restoration or repair of the Condominium (after a hazard damage or partial condemnation) in a manner other than specified in the Condominium Documents:
 - (xiv) Any action to terminate the legal status of the Condominium **after** destruction or condemnation occurs:
 - (xv) Any provisions **which** expressly benefit First Mortgagees, Eligible Mortgage Holders or Eligible ~~Insurers~~ or Guarantors.
- (B) 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 Unit Owners representing at least sixty-seven percent (67%) of the total allocated votes in the Association and by Eligible Mortgage Holders holding First Mortgages on Units the Unit Owners of which have at least sixty-seven percent (67%) of the votes in the Association allocated to Unit **Owners** of all Units subject to First Mortgages held by Eligible Mortgage Holders.
- (C) Any First Mortgagee who receives a written request to approve additions or amendments to any of the Condominium Documents, which additions or amendments are not material, who does not deliver or mail to the requesting party a negative response within thirty (30) days shall be deemed to have approved such request. Any addition or amendment to the Condominium Documents shall not be considered material if it is for the purpose of correcting technical errors or for clarification only.
- (D) The approvals required by this section shall not apply to amendments that may be executed by **the** Declarant in the exercise of its Development **Rights**.

9.2 Prohibition Against Right of First Refusal. The right of a Unit Owner to sell, transfer or otherwise convey his Unit shall not be subject to any right of **first** refusal or similar restriction. This **Section 9.2** may not be amended or modified **without** the prior written consent of all First Mortgagees of record at the time of the requested amendment or modification. This section shall not apply to Declarant or any affiliate of Declarant.

9.3 Right of Inspection of Records. Any Unit Owner, First Mortgagee or Eligible **Insurer** or **Guarantor** shall, upon written request, be entitled to (i) inspect the current copies of the Condominium Documents and the books, records and financial statements of the Association during normal business hours; (ii) receive within ninety (90) days following the end of any fiscal year of the Association, an audited financial statement of the Association for the immediately preceding fiscal year of the Association, free of charge to the requesting party; and (iii) receive written notice of all meetings of the Members of the Association and be **permitted** to designate a representative to attend all such meetings. Notwithstanding the foregoing, the Board of Directors may withhold from disclosure such books, records and documents of the Association, or portions thereof, designated under §33-1258 of the Condominium Act.

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

(A) By act or omission, seek to abandon or terminate this Declaration or the Condominium;

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

(C) Partition or subdivide any Unit;

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

(E) Use hazard insurance proceeds for losses to any Units or the Common Elements for any purpose other than the repair, replacement or reconstruction of such Units or the Common Elements.

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

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

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

losses to or a taking of Units **and/or** Common Elements. Subject to the foregoing, the allocation of awards for the exercise of eminent domain, or deeds in lieu thereof, shall be governed by the provisions of §33-1206 of the Condominium Act.

9.7 Limitation on Partition and Subdivision. No Unit shall be partitioned or subdivided without the prior written approval of any First Mortgagee of that Unit.

9.8 Conflicting Provisions. In the event of any conflict or inconsistency between the provisions of this Article 9 and any other provision of the Condominium Documents, the provisions of this Article 9 shall prevail: provided, however, that in the event of any conflict or inconsistency between the different sections of this Article 9 and any other provision of the Condominium Documents with respect to the number or percentage of Unit Owners, First Mortgagees, Eligible Mortgage Holders or Eligible Insurers or Guarantors that must consent to (i) an amendment to any of the Condominium Documents: (ii) a termination of the Condominium: or (iii) certain actions of the Association as specified in Sections 9.1 and 9.4 of this Declaration, the provision requiring the consent of the greatest number or percentage of Unit Owners, First Mortgagees, Eligible Mortgage Holders or Eligible Insurers or Guarantors shall prevail: provided, however, that the Declarant, without the consent of any Unit Owner or First Mortgagee being required, shall have the right to amend the Condominium Documents to comply with (i) the Condominium Act: (ii) the requirements or guidelines in effect from time to time of any governmental or quasi-governmental entity or federal corporation guaranteeing or, insuring mortgage loans or governing transactions involving mortgage instruments, including, without limitation, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, or (iii) the rules or requirements of any federal, state or local governmental agency whose approval of the Condominium or the Condominium Documents is required by law or requested by the Declarant.

ARTICLE 10

GENERAL PROVISIONS

10.0 Enforcement/Professional Management/Contracts with Declarant and Affiliates.

(A) Subject to the further provisions of Sections 10.20, 10.21, 10.22 and 10.23, the Association, or any Unit Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens or charges now or hereafter imposed by the provisions of the Condominium Documents. Failure by the Association or by any Unit Owner to enforce any covenant or restriction contained in the Condominium Documents shall in no event be deemed a waiver of the right to do so thereafter.

(B) To the extent that this Declaration grants Declarant, the Association or any Unit Owner the right to use summary abatement or similar means to enforce the restrictions set forth in this Declaration, judicial proceedings must be instituted before any items of construction can be altered or demolished. Each Unit Owner shall be subject to all -rights and duties assigned to Unit Owners under this Declaration.

(C) Any agreement for professional management of the Condominium, or any other Association contract or lease providing for services by the Declarant or any member, agent, representative or affiliate of Declarant to or for the benefit of the Association during the Period of Declarant Control may not exceed three (3) years. Any such agreements or leases must also provide for termination by either **party** without cause and without payment of a termination fee upon thirty (30) days or less written notice.

10.1 **Severability. Invalidation** of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

10.2 **Duration.** Except as they may be earlier terminated or amended pursuant to **Sections 10.3** and **10.4** below, the covenants and restrictions of this Declaration shall run with and bind **the** Condominium for a term of twenty (20) years from the date this Declaration is recorded after which time they shall be automatically extended for successive periods of ten (10) years.

10.3 **Termination of Condominium.** Subject to the further provisions of this Declaration regarding Mortgagee notice and consent requirements, the Condominium may be terminated only in **the** manner provided for in the Condominium Act.

10.4 **Amendment.**

(A) Except in cases of amendments that may be executed by the Declarant in the exercise of its Development Rights under this Declaration or under §33-1220 of the **Condominium Act**, by the Association under §§ 33-1206 or 33-1216(D) of the Condominium Act, or by certain Unit Owners under §§ 33-1218(B), 33-1222, 33-1223 or 33-1228(B) of the Condominium Act and this Declaration, and except to the extent permitted or required by other provisions of the Condominium Act or this Declaration, the Declaration, including the Plat, may be amended only by a vote of the Unit Owners to which at least sixty-seven percent (**67%**) of the votes in the Association are allocated, without regard to whether such amendment has uniform application to the Units or the Condominium as a whole.

(B) Except to the extent expressly permitted or required by the Condominium Act or this Declaration, an amendment to the Declaration shall not create or increase Special Declarant Rights, increase the number of Units, 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.

(C) An amendment to the Declaration shall not terminate or decrease any unexpired Development Right, Special Declarant Right or Period of Declarant Control unless the Declarant approves the amendment in writing.

(D) During the Period of Declarant Control, the Declarant shall have the right to amend the Declaration, including the Plat, to comply with (i) the Condominium Act; (ii) the rules or guidelines in effect from time to time of any **governmental** or quasi-governmental entity or federal corporation guaranteeing or insuring mortgage loans or governing transactions involving mortgage instruments, including, without limitation, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation; or (iii) the rules or requirements of any federal, state or local governmental entity or agency whose approval of the Condominium, the Plat or any other Condominium Document is required by law or requested by the Declarant.

(E) During the Period of Declarant Control, the Declarant shall have the right to amend the Condominium Documents to comply with applicable law or correct any error or inconsistency therein if the amendment does not materially adversely affect the rights of any Unit Owner or to exercise any Development Right or Special Declarant Right reserved herein in the manner provided in §33-1220 of the Condominium Act.

(F) Any amendment adopted by the Unit Owners pursuant to subsection (A) above shall be signed by the president or vice-president of the Association and shall be recorded in the Official Records of the Maricopa County, Arizona Recorder. Any such amendment shall certify that the amendment has been approved as required by this section. Any amendment made by the Declarant pursuant to subsection (D) or (E) of this section or the Condominium Act shall be executed by the Declarant and shall be recorded in the Official Records of the Maricopa County, Arizona Recorder.

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

10.6 Notices. All notices, demands, statements or other communications required to be given or served under this Declaration shall be in writing and shall be deemed to have been duly given and served if delivered personally or sent by United States mail, postage prepaid, return receipt requested, addressed as follows: (i) if to a Unit Owner, at the address at which the Unit Owner shall designate in writing and file with the Association or, if no such address is designated, at the address of the Unit of such Unit Owner; or (ii) if to the Association, the Declarant, or the Board, to 37th Street Village LLC, P.O. Box 6638, Scottsdale, Arizona 85261, or such other address as shall be designated by notice in writing to the Unit Owners pursuant to this section. A Unit Owner may change his address on file with the Association for receipt of notices by delivering a written notice of change of address to the Association pursuant to this section. A notice given by mail, whether regular, certified or registered, shall be deemed to have been received by the person to whom the notice was addressed on the earlier of the date the notice is actually received or three days after the notice is mailed. If a Unit is owned by more than one person, notice to one of the Unit Owners shall constitute notice to all Unit Owners of the same Unit. Each Unit Owner shall file his correct mailing address with the Association, and shall promptly notify the Association in writing of any subsequent change of address.

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

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

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

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

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

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

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

10.13 Compliance Obligations of Guests, Tenants and Other Persons. Each Unit Owner shall, to the extent permitted by Arizona law, be responsible for compliance with the provisions of the Condominium Documents by his agents, tenants, guests, invitees, licensees and their respective servants, agents, and employees and any other Residents of his Unit. A Unit Owner's failure to ensure compliance by such persons shall be grounds for the same action available to the Association or any other Unit Owner by reason of such Unit Owner's own noncompliance.

10.14 Attorneys' Fees. In the event the Declarant, the Association or any Unit Owner employs an attorney or attorneys to enforce an Assessment Lien or to collect any amounts due from a Unit Owner or to enforce compliance with or recover damages for any violation or noncompliance with the Condominium Documents, the prevailing party in any such action shall be entitled to recover from the other party his reasonable attorneys' fees incurred in the action, as set by a court of competent jurisdiction and not a jury. If both parties are awarded relief, then the award for attorneys' fees shall be apportioned in the discretion of the court.

10.15 Number of Days. In computing the number of days for purposes of any provision of the Condominium Documents, all days shall be counted including Saturdays, Sundays and holidays: provided, however, that if the final day of any time period falls on a Saturday, Sunday or holiday, then the final day shall be deemed to be the next day which is not a Saturday, Sunday, or holiday.

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

10.17 Declarant's Disclaimer of Representations. While Declarant has no reason to believe that any of the provisions contained in this Declaration are or may be invalid or unenforceable for any reason or to any extent, Declarant makes no warranty or representation as to the present or future validity or enforceability of any provisions of this Declaration. Any Unit Owner acquiring a Unit in reliance on one or more of the provisions in this Declaration shall assume all risks of the validity and enforceability thereof and by acquiring the Unit agrees to hold Declarant harmless therefrom.

10.18 No Absolute Liability. No provision of the Condominium Documents shall be interpreted or construed as imposing on Unit Owners absolute liability for damage to the Common Elements or the Units. Unit Owners shall only be responsible for damage to the Common Elements or Units caused by the Unit Owners' negligence or intentional acts.

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

10.20 Right to Cure Alleged Defects. It is Declarant's intent that the Common Elements (including the structural portions of any **Improvement** and any Limited Common Elements allocated to a Unit or Units), each Unit and all other Improvements constructed within the Condominium be built in compliance with all applicable building codes and ordinances and that they be of a quality that is consistent with good construction and development practices for production housing of this type. Nevertheless, due to the complex nature of construction and the subjectivity involved in evaluating such quality, disputes may arise as to whether a defect exists and Declarant's responsibility therefor. It is Declarant's intent to resolve all disputes and claims regarding "Alleged Defects" (as defined below) amicably, and without the necessity of time-consuming and costly litigation. Therefore, with respect to any Alleged Defects in the Common Elements, Residential Dwellings **and/or** any other Improvements constructed by or on behalf of Declarant, the Association, Board and all Owners shall be bound by the following claims resolution procedures.

(A) In the event that the Association, Board, or any Unit Owner or owners (collectively, "Claimant") claim, contend or allege that: (i) any portion of the Common Elements, Residential Dwellings **and/or** any other Improvements thereon are defective, or (ii) that Declarant, its agents, consultants, brokers, contractors or subcontractors (collectively, "Agents") were negligent or otherwise violated any contractual, statutory or other obligation imposed by tort, equity or otherwise in the planning, design, engineering, grading, construction, selling or other development of any Improvements within the Condominium (individually or collectively, an "Alleged Defect"), Declarant hereby reserves the right for itself to inspect, repair **and/or** replace such Alleged Defect as set forth herein. In the event that a Claimant discovers any Alleged Defect, Claimant shall, notify Declarant in writing within thirty (30) days of discovery of the Alleged Defect of the specific nature of such Alleged Defect ("Notice of Alleged Defect"), Within a reasonable time **after** the receipt by Declarant of a Notice of Alleged Defect, or the independent discovery of any Alleged Defect by Declarant, **as** part of Declarant's reservation of rights hereunder, Declarant shall have the right, upon reasonable notice to Claimant and during normal business hours, to enter onto or into, as applicable, the Common Elements (including Limited Common Elements) or any Unit for the purposes of inspecting **and/or** conducting testing and, if deemed necessary by Declarant, repairing **and/or** replacing such Alleged Defect. In conducting such inspection, testing, repairs **and/or** replacements, Declarant shall be entitled to take any actions as it shall deem reasonable and necessary under the circumstances.

(B) Nothing set forth in this Section 10.22 shall be construed to' (1) **impose** any obligation on Declarant to inspect, test, repair or replace any item or Alleged Defect for which Declarant is not otherwise obligated under applicable law or (ii) expand any limited warranty provided, by Declarant pursuant to its contract of sale in connection with the conveyance of Units to Purchasers. The right of Declarant to enter, inspect, test, repair **and/or** replace reserved hereby shall be irrevocable and may not be waived or otherwise terminated except by a writing, in recordable form, executed and Recorded by Declarant. In no event shall any statute of limitations be tolled during the period in which Declarant conducts any inspection or testing of any Alleged Defects.

10.21 Legal Actions. All legal actions initiated by Claimants (as defined in Section 10.20 above) shall be brought in accordance with and subject to Sections 10.22 and 10.23 below. In the event a Claimant initiates any legal action, cause of action, proceeding, reference or arbitration against Declarant alleging **damages** for: (i) an Alleged Defect, (ii) the diminution in value of any real or personal property resulting from such Alleged Defect, or (iii) any consequential damages

resulting from such Alleged Defect, any judgment or award in connection therewith shall first be used to correct **and/or** repair such Alleged Defect or to reimburse the Claimant for any costs actually incurred by such Claimant in correcting **and/or** repairing the Alleged Defect. In the event the **Claimant** is the Association, the Association must provide written notice to all Members prior to initiation of any legal action, cause of action, proceeding, or arbitration against Declarant which notice shall (at a minimum) include (a) a description of the Alleged Defect, (b) a description of the attempts of Declarant to correct such Alleged Defect and the opportunities provided to Declarant to correct such Alleged Defect, (c) a certification from an engineer licensed in the State of Arizona that such Alleged Defect exists along with a description of the scope of work necessary to cure such Alleged Defect and a resume of such engineer, (d) the estimated cost to repair such Alleged Defect, (e) the name and professional background of the attorney retained by the Association to pursue the claim against Declarant and a description of the relationship between such attorney and the **member(s)** of the Board, (f) a description of the fee arrangement between such attorney and the Association, (g) the estimated attorneys' fees and expert fees and costs necessary to pursue the claim against Declarant and the source of the funds which will be used to pay such fees and expenses, (h) the estimated time necessary to conclude the action against Declarant, and (i) an affirmative statement from the Board that the action is in the best interests of the Association and its Members. In the event the Association recovers any funds from Declarant (or any other Person) to repair an Alleged Defect, any excess funds remaining after repair of such Alleged Defect shall be paid into the Association's reserve fund.

10.22 Approval of Litigation. The Board shall not be authorized to incur legal expenses, including without limitation, attorneys' fees or bring any legal proceeding of a material nature for which the claimed or alleged **damages** or the current economic value of other available remedies would exceed **\$10.000** in the aggregate, unless the Association has received the consent of no less than **fifty** one percent (**51 %**) of the Membership (other than Declarant) to commence such an action or to incur such expenses. The foregoing restriction shall not apply to: (i) actions to enforce the collection of Assessments or an Assessment Lien; (ii) actions to challenge ad valorem taxation or condemnation proceedings; (iii) actions to defend claims filed against the Association or to assert mandatory counterclaims therein; (iv) actions to enforce any specific covenant hereunder; or (v) or claims brought by a Unit Owner in his individual capacity concerning his Unit and Improvements located solely within his Unit. In the event of any conflict **between** the arbitration provisions of **Section 10.23** and the contract of purchase, **the** contract of purchase shall prevail. Otherwise, all provisions of this **Article 10** shall be binding upon the Unit Owner. The Association must finance any legal proceeding with monies that are specifically collected for same and may not borrow money or use reserve funds or other monies; that are collected for specific Association obligations other than legal fees. In the event that the Association commences any legal proceedings, all Owners must notify prospective purchasers of such legal proceedings and must provide such prospective purchasers with a copy of the notice received from the Declarant in accordance with **Section 10.20** above.

10.23 Binding Arbitration. In the event of a dispute between Declarant or its Agents, and any Unit Owner(s) or the Association regarding any controversy or claim, including any claim based on contract, tort or statute, arising out of or in any way related to the rights or duties of the parties under this Declaration, the design or construction of the Condominium, or **an** Alleged Defect,

which is not otherwise governed by the terms and provisions of a contract of purchase between the Declarant and a Purchaser. the matter will be resolved by binding arbitration which shall be conducted in accordance with the following rules:

(A) The arbitration shall be initiated by either party delivering to the other a Notice of Intention to Arbitrate , as provided for in the American Arbitration Association ("AAA") Commercial Arbitration Rules, as amended from time to time (the "AAA Rules"). The arbitration shall be conducted in accordance with the AAA Rules and A.R.S. §12-1501 et seq. In the event of a conflict between the AAA Rules and this Section 10.23, the provisions of this Section 10.23 shall govern.

(B) The parties shall appoint a single arbitrator by mutual agreement: provided, however, that if the amount of the Alleged Defect exceeds \$500,000, then the matter shall be arbitrated by a panel of three arbitrators. If the parties have not agreed within ten (10) days of the date of the Notice of **Intention** to Arbitrate on the selection of an arbitrator (or arbitrators) willing to serve, the AAA shall appoint a qualified arbitrator or arbitrators to serve. Any arbitrator chosen in accordance with this Section 10.23 is referred to herein as the "Arbitrator." The Arbitrator shall be neutral and impartial. The Arbitrator shall be fully active in such Arbitrator's occupation or profession, knowledgeable as to the subject matter involved in the dispute, and experienced in arbitration proceedings. The foregoing shall not preclude otherwise qualified retired lawyers or judges. Any candidate for the role of Arbitrator shall promptly disclose to the parties all actual or perceived conflicts of interest involving the subject matter of the dispute or the parties. If an Arbitrator resigns or becomes unwilling to continue to serve as an Arbitrator, a replacement shall be selected in accordance with the procedure set forth in this Section 10.23. The Arbitrator shall be fully compensated for all time spent in connection with the arbitration proceedings in accordance with the Arbitrator's hourly rate not to exceed Three Hundred Dollars (\$300.00) per hour, unless **otherwise** agreed to by the parties, for all time spent by the Arbitrator in connection with the **arbitration** proceeding. Pending the final award, the Arbitrator's compensation and expenses shall be advanced equally by the parties.

(C) The Arbitrator shall actively manage the **proceedings** as the Arbitrator deems best so as to make the proceedings expeditious, economical and less burdensome than litigation. All papers, documents, **briefs**, written communications, testimony and transcripts, as well as any arbitration decisions, shall be confidential and not disclosed to anyone other than the Arbitrator, the parties or the parties' attorneys and expert witnesses (where applicable to their testimony), except that upon prior written consent of all parties, such information may be divulged to additional third parties. All third parties shall agree in writing to **keep** such information confidential. Hearings may be held at any place within Maricopa County, Arizona designated by the **Arbitrator** and mutually agreed to by the parties and, in the case of particular witnesses not subject to subpoena at the usual hearing site, at a place where such witnesses can be compelled to attend. All statutes of limitation applicable to claims which are subject to binding arbitration pursuant to this Section 10.23 shall apply to the **commencement** of arbitration proceedings under this Section 10.23. If arbitration proceedings are not initiated within the applicable period, the claim shall forever be barred.

(D) Within thirty (30) days after the Arbitrator has been appointed, a preliminary hearing among the Arbitrator and counsel for the parties shall be held for the purpose of developing a plan for the management of the arbitration. which shall then be memorialized in an appropriate order. The matters which may be addressed include. in addition to those set forth in the AAA Rules, the following: (i) definition of issues, (ii) scope, timing and types of discovery, if any. (iii) schedule and **place(s)** of hearings, (iv) setting of other timetables. (v) submission of motions and briefs. (vi) whether and to what extent expert testimony will be required, whether the Arbitrator should engage one or more neutral experts. and whether, if this is done, engagement of experts by the parties can be obviated or minimized, (vii) **whether** and to what extent the direct testimony of witnesses will be **received** by affidavit or written witness statement; and (viii) any other maners which may promote **the efficient, expeditious. and cost-effective** conduct of the proceedings.

(E) The Arbitrator shall promptly (within sixty (60) days of the conclusion of the proceedings or such longer period as the parties mutually agree) determine the claims of the parties and render a **final** award in writing. The Arbitrator shall not award any punitive damages nor any indirect, consequential or special damages regardless of whether the possibility of such damages or loss was disclosed to, or reasonably foreseen by the party against whom the claim' is made; provided, however, that such damages may be deemed by the Arbitrator to be direct damages in an award reimbursing payments made by a party therefor to a third party. The Arbitrator shall assess the costs of the proceedings (including. without limitation. the fees of the Arbitrator) against the **non-prevailing** party. but each party shall bear the cost of its own attorneys' fees and expert witness fees. If both parties are awarded relief by the Arbitrator, then the assessment of the costs of the proceedings shall be apportioned in the discretion of the Arbitrator.

IN WITNESS THEREOF, the Declarant has executed this Declaration on the day and year first above written.

DECLARANT :


37th STREET VILLAGE LLC, an
Arizona limited liability company

By: *Laura Bowden*

Its: *Manager*

STATE OF ARIZONA)
)ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me the undersigned notary public in and for said county and state, on this 4th day of October, 2004 by Laura Bowden a Manager of 37th Street Village LLC, an Arizona limited liability company, who acknowledged that he/she, as such Manager being authorized so to do, executed the foregoing instrument for the purposes therein contained for an on behalf of said limited liability company.

 Notary Public State of Arizona
Maricopa County
Tom Grabek
Expires April 18, 2006

Tom Grabek
NOTARY PUBLIC

My Commission Expires:

4-18-2006

EXHIBIT A

Property Subject to the Condominium

Units One (1) through Fourteen (14), inclusive, according to the Declaration of Condominium to which this Exhibit is attached and the Condominium Plat of 37th STREET VILLAGE, A CONDOMINIUM recorded in the Book 17, of Maps, Page 29 () in the Official Records of Maricopa County, Arizona.

Together with an undivided interest in the Common Elements.