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**CONDOMINIUM DECLARATION**

**FOR**

**VINTAGE POINTE CONDOMINIUMS**

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# CONDOMINIUM DECLARATION FOR VINTAGE POINTE CONDOMINIUMS

This Condominium Declaration for Vintage Pointe Condominiums, is made this 30<sup>th</sup> day of May, 2006, by Vintage Pointe Investments, LLC, a California limited liability company.

## ARTICLE 1

### DEFINITIONS

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

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

1.2 **"Articles"** means the Articles of Incorporation of the Association, as amended from time to time.

1.3 **"Assessments"** means the Common Expense Assessments, Special Assessments and Enforcement Assessments levied pursuant to Article 7.

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

1.5 **"Association"** means Vintage Pointe Condominium Association, an Arizona nonprofit corporation, its successors and assigns, formed or to be formed by the Declarant to administer, exercise, and enforce the Condominium Documents and to exercise the rights, powers and duties set forth in the Condominium Documents and the Condominium Act.

1.6 **"Balcony"** means each part of the Common Elements designated as a balcony on the Plat.

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

1.8 **"Building"** means the building located on the Parcel and which contains the Units.

1.9 **"Bylaws"** means the Bylaws of the Association, as amended from time to time.

(i) amounts payable by the Unit Owners or the Association for the maintenance, repair or replacement of streets and drives pursuant to Recorded easements burdening or benefiting the Condominium;

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

**1.13 "Common Expense Assessment"** means the assessment levied against the Units pursuant to Section 7.2.

**1.14 "Common Expense Liability"** means the liability for common expenses allocated to each Unit by Section 2.6.

**1.15 "Condominium"** means the Parcel, together with the Building and all other Improvements located thereon.

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

**1.17 "Condominium Documents"** means this Declaration and the Articles, Bylaws, and Rules.

**1.18 "Declarant"** means Vintage Pointe Investments, LLC, a California limited liability company, and its successors and any Person to whom it may transfer any Special Declarant Right by a Recorded instrument, or any Person who is granted or succeeds to any Special Declarant Right pursuant to Section 33-1202 of the Condominium Act.

**1.19 "Declaration"** means this Condominium Declaration for Vintage Pointe Condominiums, as amended from time to time.

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

- (a) Add real estate to the Condominium;
- (b) Create easements, Units, Common Elements or Limited Common Elements within the Condominium;
- (c) Subdivide Units, convert Units into Common Elements or convert Common Elements into Units;

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

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

**1.32 "Party Wall"** means a wall separating a Unit from another Unit or from common lobbies, stairwells, restrooms or elevator shafts.

**1.33 "Perimeter Building Walls"** means the perimeter walls of the Buildings (including all windows and doors) but excluding (a) any fixtures, lines, pipes, wires, ducts or conduits within the wall which serve only one Unit and (b) any lath, furring, wallboard, plasterboard, plaster, paint, wallpaper, paneling or other materials that constituting any part of the finished surfaces of the interior surface of the perimeter walls.

**1.34 "Period of Declarant Control"** means the time period commencing on the date this Declaration is Recorded and ending on the earlier of: (a) ninety (90) days after the conveyance of seventy-five percent (75%) of the Units which may be created to Unit Owners other than the Declarant; or (b) four (4) years after all Declarants have ceased to offer Units for sale in the ordinary course of business.

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

**1.36 "Plat"** means the condominium plat for Vintage Pointe Condominiums recorded in Book 841, Page 15, in the official records of the County Recorder of Maricopa County, Arizona, and any amendments, supplements or corrections thereto.

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

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

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

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

- (a) Construct Improvements provided for in this Declaration or shown on the Plat;

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

**2.2 Name of Condominium.** The name of the Condominium created by this Declaration is Vintage Pointe Condominiums.

**2.3 Name of Association.** The name of the Association is Vintage Pointe Condominium Association.

**2.4 Identifying Numbers of Units.** The Identifying Numbers of the Units are shown on the Plat.

**2.5 Unit Boundaries.**

2.5.1 The boundaries of each Unit are as follows:

(a) The vertical boundaries are the exterior surfaces of the Perimeter Building Walls (and the exterior surface of any windows or doors in the Perimeter Building Walls) of the Building and a vertical plane running through the center of any Party Wall separating the Unit from another Unit or from common lobbies, stairwells, restrooms or elevator shafts;

(b) The lower horizontal boundary is the unfinished floor of the Unit; and

(c) The upper horizontal boundary is unfinished ceiling of the Unit.

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

2.5.3 The location and dimensions of the Perimeter Building Walls and Party Walls as shown on the Plat are based on architectural drawings and are approximate. The actual location and dimensions of the Perimeter Building Walls and Party Walls may vary from the location and

and electric pipes, lines or meters), located outside of the boundaries of a Unit, which serves only one Unit is a Limited Common Element allocated solely to the Unit served;

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

(c) Balconies 1, 2, 3, 5, 6 and 7 as shown on the Plat are allocated as follows: Balcony 1 is allocated to Unit 230; Balcony 2 is allocated to Unit 240; Balcony 3 is allocated to Unit 350; Balcony 5 is allocated to Unit 360; Balcony 6 is allocated to Unit 450; and Balcony 7 is allocated to Unit 460.

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

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

2.8.4 The Declarant shall have the right to allocate as a Limited Common Element any part of the Common Elements (including, but not limited to, Parking Spaces, Balcony 4 as shown on the Plat and the lobby area adjoining Balcony 4) which has not previously been allocated as a Limited Common Element. Any such allocation shall be made by an amendment to this Declaration executed by the Declarant. After the Declarant no longer owns any Unit, the Board of Directors shall have the right, with the approval of Members holding at least sixty-seven percent (67%) of the total number of votes entitled to be cast by Members and the Declarant if the Declarant still owns any Unit, to allocate as a Limited Common Element any portion of the Common Elements not previously allocated as a Limited Common Element. Any such allocation by the Board of Directors shall be made by an amendment to this Declaration and an amendment to the Plat if required by the Condominium Act.

2.9 **Relocation of Boundaries Between Adjoining Units**. The boundaries between or among adjoining Units may be relocated by an amendment to this Declaration. The Owners of the

## ARTICLE 3

### EASEMENTS AND DEVELOPMENT RIGHTS

#### 3.1 Utility Easements.

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

3.1.2 The Owners of adjoining Units shall both have the right and a non-exclusive easement to use the portion of the Party Wall within the boundaries of the adjoining Unit for the installation, maintenance, repair and replacement of chutes, conduit, wires, pipes, cables, lines and other fixtures which provide utility services to such Owner's Unit; provided however, that an Owner shall not penetrate the wallboard or drywall on the interior surface of the Party Wall of the adjoining Unit. In addition, the Owners of all Units within the same Building shall each have the right and a non-exclusive easement to use the inside of the Perimeter Building Walls of the Building in which the Unit is located for the installation, maintenance, repair and replacement of chutes, conduit, wires, pipes, cables, lines and other fixtures which provide utility services to such Owner's Unit; provided however, that an Owner shall not penetrate the wallboard or drywall on the interior surface of the Perimeter Building Wall located within the boundaries of any other Unit.

3.1.3 Notwithstanding anything to the contrary contained in this Section, no sewers, electrical lines, water lines, telephone, data, or fiber optic lines and cables, or other utility or service lines may be installed or located on the Common Elements except as originally installed by the Declarant or as approved by the Board or allowed by the Rules. The easements in this Section shall in no way affect any other Recorded easements on the Common Elements.

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

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

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

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

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

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

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

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

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

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

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

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

(b) For the installation, repair, maintenance, use, removal or replacement of lighting fixtures, electrical receptacles, panel boards and other electrical installations which are a part of or serve any Unit but which encroach into a part of a Common Element adjacent to such Unit; provided that the installation, repair, maintenance, use, removal or replacement of any such item does not unreasonably interfere with the common use of any part of the Common Elements, adversely affect either the thermal or acoustical character of the Building or impair or structurally weaken the Building.

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

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

## ARTICLE 4

### USE AND OCCUPANCY RESTRICTIONS

4.1 **Use of Units.** All Units shall be used and occupied exclusively as commercial offices which are permitted under the City of Phoenix zoning classification applicable to the Condominium without the issuance of a special use permit or variance.

improvement is aesthetically pleasing and in harmony with the surrounding Improvements. No Owner shall make any addition, alteration or improvement to the Common Elements without the prior written approval of the Board of Directors. Except as expressly permitted by this Section 4.3, no wall, partition, fixture or other Improvement situated within a Unit shall be constructed, installed or modified without the prior written approval of the Board of Directors.

4.3.4 No Owner, Lessee or Occupant shall overload the electric wiring in the Building, or operate machines, appliances, accessories or equipment in such manner as to cause, in the judgment of the Board of Directors, an unreasonable disturbance to others or connect any machines, appliances, accessories or equipment to the heating or plumbing system, without the prior consent of the Board of Directors, acting in accord with the direction of the Board of Directors. No Owner, Lessee or Occupant shall overload the floors of any Unit.

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

4.3.6 Proposed additions, alterations and improvements to a Unit or the Common Elements shall be made in compliance with all laws, rules, ordinances and regulations of all governmental authorities having jurisdiction, may only be made once all required permits have been obtained and must be in compliance with any conditions imposed by the Association with respect to design, structural integrity, sound attenuation, water-proofing, construction details, lien protection or otherwise. The Owner of a Unit to which additions, alterations or improvements are made shall defend, indemnify and hold harmless the Association, Declarant and all other Owners, Lessees or Occupants for, from and against any and all liability, loss or damage resulting from such additions, alterations or improvements and shall be solely responsible for the maintenance, repair and insurance of such additions, alterations and improvements from and after their date of installation or construction as may be required by the Association.

4.3.7 The Association shall have the right to stop any work that is not in compliance with the terms contained in this Section 4.3 or any rules of the Association governing additions, alterations or improvements to the Units or the Common Elements. The Association's rights of

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

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

**4.10 Towing of Vehicles.** The Board of Directors shall have the right to have any automobile, sport utility vehicle, van, truck, recreational vehicle, motorcycle, motorbike, or other motor vehicle parked, kept, maintained, constructed, reconstructed or repaired in violation of the Condominium Documents towed away at the sole cost and expense of the owner of the vehicle. Any expense incurred by the Association in connection with the towing of any vehicle shall be paid to the Association upon demand by the owner of the vehicle.

**4.11 Signs.**

4.11.1 No signs (including, but not limited to, "For Sale" or "For Rent" signs) shall be permitted on the exterior of any Building or in the interior of a Unit if the signs would be visible from the exterior of the Building in which the Unit is located, or on any other portion of the Condominium without the prior written approval of the Board of Directors. The Board of Directors may permit signs identifying the Unit Owner, Lessee or Occupant of a Unit to be installed on the outside of the Building in which a Unit is located provided that the location size, color, style and appearance of the sign is acceptable to the Board of Directors, and the Board of Directors may permit such sign to be placed at any location on the outside of the Building that is acceptable to the Board of Directors. The Board of Directors may adopt criteria regarding the location, size, color, style and appearance of signs, and the methods of affixation to the Units, that may be placed or installed in the Condominium. In addition to the approval of the Board of Directors required by this Section, any sign must also comply with the ordinances of the City of Phoenix. Notwithstanding the foregoing provisions of this Section, signs installed by the Declarant or installed pursuant to an easement or license granted by the Declarant pursuant to Section 4.11.2 shall not require the approval of the Board of Directors.

4.11.2 The Declarant, so long as the Declarant owns any Unit, and thereafter, the Board of Directors, shall have the power and authority to grant exclusive or non-exclusive licenses or easements to Unit Owners, Lessees or Occupants for the installation, maintenance, repair or replacement of panels on the monument sign or signs located on the exterior surface of the perimeter walls of the Buildings or other parts of the Common Elements for such consideration and upon such terms and conditions as the Board of Directors or the Declarant, as the case may be, may determine to be reasonable and prudent.

or Balcony shall be kept and maintained on any Patio or Balcony unless expressly permitted by the Rules or approved in writing by the Board of Directors. No astro turf, carpet or other floor covering shall be installed in any Patio or Balcony. No Patio or Balcony shall be used as a storage area for items or materials that are not customarily intended for use on a Patio or Balcony, such as the use of a Patio or Balcony to store bicycles or exercise equipment. No items may be hung from any Patio or Balcony or the ceiling, wall or railing enclosing the Patio or Balcony, and no items shall be affixed to any wall or railing enclosing the Patio or Balcony. The Rules may govern and regulate the nature and extent of plants, shrubs, flowers and other landscaping that may be installed in Patios. No Owner, Lessee or Occupant shall remove or alter any existing flooring in a Patio or Balcony. No spas or hot tubs shall be installed or kept on any Patio or Balcony.

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

## ARTICLE 5

### MAINTENANCE AND REPAIR OF COMMON ELEMENTS AND UNITS

**5.1 Duties of the Association.** The Association shall maintain, repair and replace all Common Elements (including, but not limited to, the structural components of the Balconies and the Parking Spaces), except for the Limited Common Elements which the Unit Owners are obligated to maintain, repair and replace pursuant to Section 5.2. The Association's obligations with respect to the maintenance, repair and replacement of the Common Elements shall include the maintenance, repair and replacement of all heating and air conditioning units and all pipes, ducts, wires, conduits and other fixtures which are part of the systems furnishing air conditioning and heating to the Units (the "HVAC Equipment") whether or not the HVAC Equipment serve one or more than one Unit. The maintenance of the HVAC Equipment shall include the periodic replacement of all filters which are part of the HVAC Equipment. The costs incurred by the Association in connection with the maintenance, repair and replacement of the HVAC Equipment shall be assessed to the Unit or Units served by the particular component of the HVAC Equipment with respect to which the cost is incurred in accordance with Subsection 7.2.3. In addition, the Association shall maintain, repair and replace the Perimeter Building Walls, except for the doors and windows of the Perimeter Building Walls. The cost of all such maintenance, repairs and replacements made by the Association shall be a Common Expense and shall be paid for by the Association. The Board of Directors shall be the sole judge as to the appropriate maintenance, repair and replacement of all Common Elements, but all Common Elements shall be maintained in good condition and repair at all times. No Owner, Lessee, Occupant or other Person shall construct or install any Improvements on the Common Elements or alter, modify or remove any Common Elements without the prior written approval of the Board of Directors. No Owner, Lessee, Occupant or other Person shall obstruct or interfere with the Association in the performance of the Association's maintenance, repair and replacement of the Common Elements.

## ARTICLE 6

### THE ASSOCIATION

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

**6.2 Directors and Officers.**

6.2.1 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 who do not have to be Unit Owners. The initial directors and officers of the Association shall be designated in the Articles, and such designation shall constitute the appointment of such persons by the Declarant. The initial directors and officers shall serve until their death, resignation or removal from office. 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 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.

6.2.2 The Declarant may voluntarily surrender the right to appoint and remove the members of the Board of Directors and the officers of the Association before 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.

**6.3 Rules.** The Board of Directors, from time to time and subject to the provisions of this Declaration and the Condominium Act, may adopt, amend, and repeal rules and regulations. The Rules may, among other things, restrict and govern the use of the Units and the Common Elements.

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

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

7.1.3 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.

## **7.2 Common Expense Assessment.**

7.2.1 For each fiscal year of the Association commencing with the fiscal year in which the first Unit is conveyed to a Purchaser, the total amount of the estimated Common Expenses set forth in the budget adopted by the Board of Directors (except for the Common Expenses which are to be assessed against less than all of the Units pursuant to Subsection 7.2.4, Subsection 7.2.5 or Section 7.4) shall be assessed against each Unit in proportion to the Unit's Common Expense Liability as set forth in Section 2.6. The amount of the Common Expense Assessment assessed pursuant to this Subsection 7.2.1 shall be in the sole discretion of the Board of Directors. If the Board of Directors determines during any fiscal year that its funds budgeted or available for that fiscal year are, or will, become inadequate to meet all Common Expenses for any reason, including, without limitation, nonpayment of Assessments by Members, the Board of Directors may increase the Common Expense Assessment for that fiscal year and the revised Common Expense Assessment shall commence on the date designated by the Board of Directors.

7.2.2 The Common Expense Assessments shall commence as to all Units on the first day of the month following the conveyance of the first Unit to a Purchaser. The first Common Expense Assessment shall be adjusted according to the number of months or pro rated days for a month 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 installments.

7.2.3 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 7.2.1. The Common Expenses associated with the maintenance, repair and replacement of the HVAC Equipment (as defined in Section 5.1) shall be assessed solely against the Unit or Units served by the particular component of the HVAC Equipment with respect to which the Common Expense was incurred. The percentage of such Common Expenses assessed to each such Unit shall be the percentage obtained by dividing the square footage of the Unit being assessed by the square footage of all of the Units served by the particular component of the HVAC Equipment. For the purpose of making such calculations, the square footage of each Unit shall be as shown on the Plat.

7.2.4 If any Common Expense is caused by the misconduct of any Unit Owner, the Association shall assess that Common Expense exclusively against his Unit.

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

days after the Assessment first became due, the Association may assess against the delinquent Unit Owner a late fee in the amount established from time to time by the Board of Directors.

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

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

7.5.4 The Association shall have the right, at its option, to enforce collection of any

7.10.2 No Reserve Contribution shall be payable with respect to: (a) the transfer or conveyance of a Unit by devise or intestate succession; (b) a transfer or conveyance of a Unit to a family trust, family limited partnership or other Person for bona fide estate planning purposes; (c) a transfer or conveyance of a Unit to a corporation, partnership or other entity in which the grantor owns a majority interest unless the Board determines, in its sole discretion, that a material purpose of the transfer or conveyance was to avoid payment of the Reserve Contribution in which even a Reserve Contribution shall be payable with respect to such transfer or conveyance; (d) the conveyance of a Unit by a trustee's deed following a trustee's sale under a deed of trust; or (e) a conveyance of a Unit as a result of the foreclosure of a realty mortgage or the forfeiture or foreclosure of a purchaser's interest under a Recorded contract for the conveyance of real property subject to A.R.S. § 33-741, et seq.

7.10.3 All Reserve Contributions shall be deposited in the Reserve Account established pursuant to Section 7.13. Reserve Contributions shall be non-refundable and shall not be considered as an advance payment of Assessments.

7.11 **Surplus Funds.** Surplus funds of the Association remaining after payment of the Common Expenses and any prepayment of reserves shall be credited on a pro rata basis to the Unit Owners to reduce each Unit Owner's future Common Expense Assessments.

7.12 **Transfer Fee.** Each Purchaser of a Unit (other than the Purchaser of a Unit from the Declarant) shall pay to the Association immediately upon becoming the Owner of the Unit a transfer fee in the amount set from time to time by the Board of Directors to compensate the Association for the administrative cost resulting from the transfer of a Unit.

7.13 **Reserves.** The budget adopted by the Board of Directors shall include reasonable amounts as determined by the Board of Directors collected as reserves for the future periodic maintenance, repair or replacement of all or a portion of the Common Elements, or any other purpose as determined by the Board of Directors. The reserves may be funded from the Reserve Contributions paid pursuant to Section 7.10, the Initial Working Fund payments made pursuant to Section 7.9, from the Common Expense Assessments or from any other revenues of the Association. All amounts collected as reserves, whether pursuant to this Section or otherwise, shall be deposited by the Board of Directors in a separate bank account (the "Reserve Account") to be held for the purposes for which they are collected and are to be segregated from and not commingled with any other funds of the Association. Such reserves shall be deemed a contribution to the capital account of the Association by the Members. The Board of Directors shall not expend funds designated as reserve funds for any purpose other than those purposes for which they were collected. After the termination of the Period of Declarant Control, the Board of Directors shall obtain a reserve study at least once every three years, which study shall at a minimum include (a) identification of the major components of the Common Elements which the Association is obligated to repair, replace, restore or maintain which, as of the date of the study; (b) identification of the probable remaining useful life of the identified major components as of the date of the study; (c) an estimate of the cost of repair, replacement, restoration, or maintenance of the identified major components during and at the end of their useful life; (d) an estimate of the total annual contribution necessary to defray the cost to repair, replace, restore, or maintain the identified major components during and at the end of their useful life, after subtracting total reserve funds as of the date of the study.

(d) Directors' and officers' liability insurance in an amount not less than \$1,000,000 covering all the directors and officers of the Association in such limits as the Board of Directors may determine from time to time.

(e) Umbrella Liability Insurance at a limit determined by the Board of Directors, providing "follow form" coverage in excess of primary liability insurance required herein.

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

(g) 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. Each Unit Owner shall provide to the Association evidence of such insurance as requested from time to time by the Association.

(ii) 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.

(iii) 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.

(iv) 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.

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

(vi) For policies of property insurance, a standard mortgagee clause providing that the insurance carrier shall notify the

and lienholder its their interests may appear, and the proceeds shall be disbursed and applied as provided for in A.R.S. § 33-1253.

**8.6 Certificate of Insurance.** An insurer that has issued an insurance policy pursuant to this Article 8 shall issue certificates or memoranda of insurance to the Association and, on written request, to any Unit Owner, mortgagee, or beneficiary under at 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 addresses.

**8.7 Annual Insurance Review.** The Board of Directors shall determine annually whether the amounts and types of insurance it has obtained provide adequate coverage in light of increased construction costs, inflation, practice in the area in which the Condominium is located, or any other factor which tends to indicate that either additional insurance policies or increased coverage under existing policies are necessary or desirable to protect the interests of the Owners and of the Association.

## ARTICLE 9

### DESTRUCTION OF IMPROVEMENTS

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

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

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

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

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

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

## ARTICLE 11

### DISPUTE RESOLUTION

**11.1 Defined Terms.** As used in this Article 11, the following terms shall the meaning set forth below:

(a) "**Alleged Defect**" means any alleged defect or deficiency in the planning, design, engineering, grading, construction or development of the of the Common Elements or any Unit by a Declarant Party including, without limitation, any failure to comply with applicable building codes or federal, state or local laws, ordinances or regulations or any failure to comply with any express or implied warranty or standard of workmanship.

testing to determine the existence, nature and extent of the Alleged Defect and, if deemed necessary by the Declarant Party, to correct, repair and/or replace the Alleged Defect. In conducting such inspection, testing, repairs and/or replacement, the Declarant Party shall be entitled to take any actions it deems reasonable and necessary under the circumstances. Nothing set forth in this Section 11.3 shall be construed to impose any obligation on any Declarant Party to inspect, test, repair or replace any item or Alleged Defect for which the Declarant Party is not otherwise obligated under applicable law or any warranty provided by the Declarant or any other Declarant Party. The right of a Declarant Party and its employees, agents, contractors and consultants to enter, inspect, test, repair and/or replace under this Section shall be irrevocable and may not be waived or otherwise terminated, except by written document, in recordable form, executed and recorded by the Declarant Party. In no event shall any statute of limitations be tolled during the period in which a Declarant Party conducts any inspection, testing, repair or replacement of the Alleged Defect. If the Alleged Defect is not repaired or replaced to the satisfaction of the Association or Unit Owner giving the Notice of Alleged Defect within sixty (60) days after the Notice of Alleged Defect is given to the Declarant Party, then the Association or Unit Owner may proceed with the preparation of the delivery of a Notice of Claim as provided in Section 11.4.

**11.4 Notice of Claim.** The Association or any Unit Owner who contends or alleges to have a Claim (a "Claimant") against any Declarant Party (a "Respondent") shall notify each Respondent in writing of the Claim (the "Claim Notice"), stating plainly and concisely: (a) the nature of Claim, including, date, time, location, Persons involved, and Respondent's role in the Claim; (b) the factual and legal basis of the Claim; and (c) what Claimant wants Respondent to do or not do to resolve the Claim. In the event the Claimant is the Association and the Claim involves an Alleged Defect, the Association must provide written notice to all Members prior to delivering a Claim Notice to a Declarant Party or initiating any legal action, cause of action, proceeding, or arbitration against any Declarant Party which notice shall (at a minimum) include: (a) a description of the Claim; (b) a description of the attempts of Declarant or any other Declarant Party to correct such Alleged Defect and the opportunities provided to Declarant or any other Declarant Party 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 and a description of the relationship between such attorney and member(s) of the Board of Directors (if any); (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 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; and (i) an affirmative statement from the Board of Directors that the action is in the best interests of the Association and its Members. If the Alleged Defect is alleged to be the result of an act or omission of a person licensed by the State of Arizona under Title 20 or Title 32 of the Arizona Revised Statutes (a "Licensed Professional"), then the Claim Notice from the Association must be accompanied by an affidavit from a Licensed Professional in the same discipline as the Licensed Professional alleged to be responsible for the Alleged Defect. The affidavit must contain the information required to be contained in a preliminary expert opinion affidavit submitted pursuant to Section 12-2602B of the Arizona Revised Statutes.

arbitrator chosen in accordance with this Subsection (c) is referred to in this Section 11.6 as the "Arbitrator".

(d) **Qualifications of 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 from acting as the Arbitrator.

(e) **Disclosure.** Any candidate for the role of Arbitrator shall promptly disclose to the parties all actual or perceived conflicts of interest involving the dispute or the parties. No Arbitrator may serve if such person has a conflict 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 Subsection 11.6(c).

(f) **Compensation.** The Arbitrator shall be fully compensated for all time spent in connection with the arbitration proceedings in accordance with the Arbitrator's usual hourly rate 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.

(g) **Preliminary Hearing.** 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 matters which may promote the efficient, expeditious, and cost-effective conduct of the proceeding.

(h) **Management of the Arbitration.** 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.

(i) **Confidentiality.** All papers, documents, briefs, written communication, testimony and transcripts as well as any and all 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

**11.9 Approval of Arbitration or Litigation.** The Association shall not deliver a Claim Notice to any Declarant Party or commence any legal action or arbitration proceeding or incur legal expenses (including without limitation, attorneys' fees) in connection with any Claim without the written approval of Unit Owners entitled to cast more than eighty percent (80%) of the total votes in the Association, excluding the votes of any Unit Owner who would be a defendant in such proceedings. The Association must pay for any such legal action or mediation or arbitration proceeding with monies that are specifically collected for such purposes and may not borrow money or use reserve funds or other monies collected for specific Association obligations other than legal fees. In the event that the Association commences any legal action or arbitration proceeding involving a Claim, all Unit Owners must notify prospective purchasers of their Unit of such legal action or arbitration proceeding and must provide such prospective purchasers with a copy of the notice received from the Association in accordance with Section 11.4.

**11.10 Statute of Limitations.** All statutes of limitations applicable to Claims shall apply to the commencement of arbitration proceedings under Section 11.6. If the arbitration proceedings are not initiated within the time period provided by Arizona law for the filing of a legal action with respect to the Claim, the Claim shall forever be barred.

**11.11 Federal Arbitration Act.** Because many of the materials and products incorporated into the Condominium are manufactured in other states, the development and conveyance of the Units evidences a transaction involving interstate commerce and the Federal Arbitration Act (9 U.S.C. §1, et. seq.) now in effect or as it may be hereafter amended, will govern the interpretation and enforcement of the arbitration provisions of this Declaration.

**11.12 Conflicts.** In the event of any conflict between this Article 11 and any other provision of the Condominium Documents, this Article 11 shall control.

**BY ACCEPTANCE OF A DEED OR BY ACQUIRING A UNIT, EACH PERSON, FOR HIMSELF, HIS HEIRS, PERSONAL REPRESENTATIVES, SUCCESSORS, TRANSFEREES AND ASSIGNS, AGREES TO HAVE ANY CLAIM RESOLVED ACCORDING TO THE FEDERAL ARBITRATION ACT, THE ARIZONA REVISED STATUTES PERTAINING TO THE ARBITRATION OF DISPUTES TO THE EXTENT NOT INCONSISTENT WITH THE FEDERAL ARBITRATION ACT AND THE PROVISIONS OF THIS ARTICLE 11 AND WAIVES THE RIGHT TO PURSUE ANY DECLARANT PARTY IN ANY MANNER OTHER THAN AS PROVIDED IN ARTICLE 11. THE ASSOCIATION, EACH UNIT OWNER AND DECLARANT ACKNOWLEDGE THAT BY AGREEING TO RESOLVE ALL CLAIMS AS PROVIDED IN THIS ARTICLE 11, THEY ARE GIVING UP THEIR RESPECTIVE RIGHTS TO HAVE SUCH CLAIM TRIED BEFORE A JURY. THE ASSOCIATION, EACH UNIT OWNER AND DECLARANT FURTHER WAIVE THEIR RESPECTIVE RIGHTS TO AN AWARD OF PUNITIVE AND CONSEQUENTIAL DAMAGES RELATING TO A CLAIM. BY ACCEPTANCE OF A DEED OR BY ACQUIRING A UNIT, EACH UNIT OWNER VOLUNTARILY ACKNOWLEDGES THAT HE IS GIVING UP ANY RIGHTS HE MAY POSSESS TO PUNITIVE AND CONSEQUENTIAL DAMAGES OR THE RIGHT TO A TRIAL BEFORE A JURY RELATING TO A CLAIM.**

(c) suspending any Person's right to use any facilities within the Common Elements; provided, however, nothing herein shall authorize the Board to limit ingress or egress to or from a Unit;

(d) suspending any services provided by the Association to a Unit Owner or the Unit Owner's Unit if the Unit Owner is more than fifteen (15) days delinquent in paying any assessment or other charge owed to the Association;

(e) exercising self-help of taking action to abate any violation of the Condominium Documents in a non-emergency situation;

(f) requiring a Unit Owner, at the Unit Owner's expense, to remove any structure or Improvement on such Owner's Unit in violation of this Declaration and to restore the Unit to its previous condition and, upon failure of the Unit Owner to do so, the Board of Directors or its designee shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as previously existed and any such action shall not be deemed a trespass;

(g) without liability to any person, prohibiting any contractor, subcontractor, agent, employee or other invitee of a Unit Owner who fails to comply with the terms and provisions of the Condominium Documents from continuing or performing any further activities of the Condominium;

(h) towing vehicles which are parked in violation of this Declaration or the Rules; and

(i) filing a suit at law or in equity to enjoin a violation of the Condominium Documents, to compel compliance with the Condominium Documents, to recover monetary penalties or money damages or to obtain such other relief as to which the Association may be entitled;

(j) Recording 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 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

Condominium Act, 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.

12.5.2 Except to the extent expressly permitted or required by the Condominium Act, an amendment to the Declaration shall not create or increase Special Declarant Rights, increase the number of Units or change the boundaries of any Unit, the allocated Interest of a Unit, or the use as to which any Unit is restricted, in the absence of unanimous consent of the Unit Owners. Any amendment adopted during the Period of Declarant Control must be approved in writing by the Declarant. After the expiration of the Period of Declarant Control, no amendment to any provision of Article 11 or this Subsection 12.5.2 shall be effective in the absence of the unanimous consent of the Unit Owners. In addition, no amendment to any provision of Article 11 or this Subsection 12.5.2 shall be effective unless the amendment is approved in writing by the Declarant even if the Declarant no longer owns any Unit at the time of the amendment.

12.5.3 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.

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

12.5.5 Any amendment adopted by the Unit Owners pursuant to Subsection 12.5.1 shall be signed by the President or Vice President of the Association and shall be Recorded. Any amendment made by the Declarant pursuant to Subsection 12.5.4 or the Condominium Act shall be executed by the Declarant and shall be Recorded.

**12.6 Notices.** All notices, demands, statements or other communications required to be given to or served on a Unit Owner under this Declaration shall be in writing and shall be deemed to have been duly given and served if delivered personally or sent by facsimile transmission or by United States mail, postage prepaid, return receipt requested, addressed to the Unit Owner, at the address 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. 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

VINTAGE POINTE INVESTMENTS, LLC, a  
California limited liability company

By: JWB  
Name: James Brennan  
Its: Mgr

State of California  
County of San Diego ) ss.

The foregoing instrument was acknowledged before me this 31<sup>st</sup> day of May,  
2006, by Vintage Pointe Investments, LLC, a California limited liability company, on behalf of the  
company.

Heather Marie Chonack  
Notary Public

My Commission Expires:  
Dec 15, 2009

**EXHIBIT A**

**LEGAL DESCRIPTION OF  
PROPERTY SUBMITTED TO CONDOMINIUM**

THE NORTH 399.00 FEET OF THE EAST 272.77 FEET OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 26, TOWNSHIP 2 NORTH, RANGE 3 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, AS MEASURED ALONG THE NORTH AND EAST LINE THEREOF;

EXCEPT THE NORTH 40.0 FEET AND THE EAST 30.0 FEET THEREOF FOR ROADWAY;  
AND

EXCEPT THAT PART OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 26, TOWNSHIP 2 NORTH, RANGE 3 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, BOUNDED ON THE EAST BY THE WEST LINE OF THE EAST 30 FEET OF SAID NORTHWEST QUARTER, ON THE NORTH BY THE SOUTH LINE OF THE NORTH 40 FEET OF SAID NORTHWEST QUARTER AND ON THE SOUTHWEST BY THE ARC OF A CIRCULAR CURVE WHICH IS CONCAVE TO THE SOUTHWEST AND HAS A TANGENT LENGTH OF 12 FEET AND IS TANGENT TO SAID WEST LINE AND TO SAID SOUTH LINE, AS QUIT-CLAIMED TO THE CITY OF PHOENIX, IN INSTRUMENT RECORDED IN DOCKET 16050, PAGES 367 THROUGH 374, RECORDS OF MARICOPA COUNTY, ARIZONA.