

When Recorded, Return to:
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Peoria, Arizona 85382-4754

DC16150-51-1-1--
Leonardil

DECLARATION OF CONDOMINIUM
OF
BROOKSIDE BELL PROFESSIONAL PARK CONDOMINIUMS

This Declaration of Condominium is made and executed as of the 19th day of August, 2003, by Brookside Bell Professional Park, L.L.C., an Arizona limited liability company ("Declarant"), with reference to the following facts:

Recitals:

A. Description of Land. The Declarant is the owner of that certain parcel of Land as more particularly described in Exhibit "A", attached hereto and incorporated herein by this reference, which is located in Surprise, County of Maricopa, State of Arizona.

B. Buildings and Improvements. The Declarant has constructed or will construct on the Land certain improvements as shown on the Plat referred to below.

C. Intent and Purpose. The Declarant intends by recording this Declaration and the Plat to submit the Land, and all other improvements situated in or upon the Land to the provisions of the Arizona Condominium Act, as amended, Arizona Revised Statutes, Section 33-1201, et seq., as a fee simple condominium project and to impose upon said Land mutually beneficial restrictions under a general plan of improvement for the benefit of all Condominiums and the Owners thereof.

NOW, THEREFORE, the Declarant does hereby make the following declaration:

ARTICLE 1

DEFINITIONS

Unless the context clearly indicates otherwise, certain terms as used in this Declaration shall have the meanings set forth in this Article 1.

1.1 "Act" shall mean the Arizona Condominium Act, as amended, Arizona Revised Statutes, Section 33-1201, et seq.

1.2 "Affiliate of Declarant" shall mean any person who controls, is controlled by or is under common control with Declarant.

1.3 "Allocated Interest" shall mean the undivided interest in the Common Elements, the Common Expense Liability and the votes in the Association allocated to each Unit.

1.4 "Articles of Incorporation" shall mean the instrument by which the Association is formed and organized under the Arizona Non Profit Corporation Act.

1.5 "Association" shall mean Brookside Bell Professional Park Owners Association, an Arizona nonprofit corporation, organized to be the Association referred to herein.

1.6 "Board of Directors" shall mean the governing board or management committee of the Association.

1.7 "Building" shall mean the buildings in the Project containing one or more Units that have been or will hereafter be constructed on the Land, as such building is shown on the Plat.

1.8 "Bylaws" shall mean the bylaws of the Association.

1.9 "City" shall mean the City of Surprise, Arizona.

1.10 "Common Elements" shall mean all physical portions of the Project except all Units and Limited Common Elements.

1.11 "Common Expense Fund" shall mean the fund created or to be created pursuant to the provisions of Article 9 of this Declaration and into which all monies of the Association shall be deposited.

1.12 "Common Expense Liability" shall mean the liability for Common Expenses allocated to each Unit pursuant to Article 9.

1.13 "Common Expenses" shall mean expenditures made or financial liabilities of the Association, together with any allocations to reserves.

1.14 "Common Facilities" shall mean all furniture, furnishings, equipment, facilities and other property (real, personal or mixed) and interests therein at any time leased, acquired, owned or held by the Association for the use and benefit of the Owners and all other property (real, personal or mixed) hereafter purchased in accordance with this Declaration with monies from the Common Expense Fund. Common Facilities shall be deemed to be part of the Common Elements, except to the extent otherwise expressly provided in this Declaration.

1.15 "Condominium" shall mean a Unit and the undivided interest (expressed as a fraction of the entire ownership interest) in the Common Elements appurtenant to such Unit.

1.16 "Convertible Space" shall mean a portion of the structure within the Project, which portion may be converted into one or more Units or Common Elements in accordance with the provisions of the Act.

1.17 "Declarant" shall mean Brookside Bell Professional Park, L.L.C., an Arizona limited liability company and its successors and assigns.

1.18 "Declaration" shall mean this Declaration of Condominium of Brookside Bell Professional Park Condominiums.

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

1.19.1 Add real estate to the Project;

1.19.2 Create easements, units, common elements or limited common elements in the Project;

1.19.3 Subdivide units, convert units into common elements or convert common elements into units;

1.19.4 Withdraw real estate from the Project;

1.19.5 Make the Project part of another condominium project;

1.19.6 Amend the Declaration during any period of Declarant control, pursuant to § 33-1243.D of the Act.

1.20 "First Mortgagee" shall mean a Mortgagee which has a first mortgage lien on any Condominium in the Project. "Eligible First Mortgagee" shall mean any First Mortgagee who has requested notice of those certain matters referred to in Section 14.1.

1.21 "Identifying Number" shall mean a symbol or address that identifies a Unit.

1.22 "Land" shall mean the Land upon which the Project is situated, as more particularly described in Exhibit "A" attached hereto.

1.23 "Limited Common Elements" shall mean any portion of the Common Elements designated as reserved for use of a certain Unit or Units to the exclusion of the other Units in the Project.

1.24 "Manager" shall mean the person, firm or company, if any, designated from time to time by the Association to manage, in whole or in part, the affairs of the Association and the Project.

1.25 "Mortgage" shall mean any mortgage, deed of trust or other security instrument by which a Condominium or any part hereof is encumbered. "First Mortgage" shall mean any first mortgage, deed of trust or other security instrument by which a Condominium or any part thereof is encumbered.

1.26 "Mortgagee" shall mean (i) any persons or entities named as the mortgagee or beneficiary under any Mortgage or Deed of Trust by which the interest of any Owner is encumbered, (ii) any successor to the interest of such person or entity under such Mortgage or Deed of Trust or (iii) any insurer or guarantor of such person or entity under such Mortgage or Deed of Trust.

1.27 "Owner or Unit Owner" shall mean the person or persons, including the Declarant, owning in fee simple a Condominium in the Project, as such ownership is shown by the records of the County Recorder of Maricopa County, State of Arizona. The term "Unit Owner" shall not refer to any Mortgagee (unless such Mortgagee has obtained title in fee simple to a Condominium pursuant to a judicial or nonjudicial action, including, without limitation, a foreclosure proceeding or any deed or other arrangement in lieu of foreclosure). In the case of a contract for conveyance of real property, as defined in A.R.S. § 33-741, Unit Owner shall mean the purchaser of a Unit.

1.28 "Parking Space" shall mean each of the separate parking spaces on the Land as shown on the Plat.

1.29 "Person" shall mean a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity. In case of a subdivision trust as defined in A.R.S. § 6-801, person means the beneficiary of the trust who holds the right to subdivide, develop or sell the real estate rather than the trust or trustee.

1.30 "Plat" shall mean the plat map for Brookside Bell Professional Park Condominiums, recorded in Book ___ on Page ___, records of Maricopa County, Arizona, a copy of which is attached hereto as Exhibit "B" and incorporated herein by this reference, and any supplemental plats pertaining to the Project and recorded or to be recorded in the office of the County Recorder of Maricopa County, State of Arizona.

1.31 "Project" shall mean the Brookside Bell Professional Park Condominiums and shall include Land, the Units and all improvements submitted by this Declaration and the Plat to the provisions of the Act.

1.32 "Rules and Regulations" shall mean the rules and regulations, if any, adopted by the Association pursuant to Section 8.6 and the Articles of Incorporation and Bylaws.

1.33 "Special Declarant Rights" shall mean any right or combination of rights reserved by or granted to the Declarant in this Declaration to do any of the following:

1.33.1 Construct improvements provided for in the Declaration;

1.33.2 Exercise any Developmental Right;

1.33.3 Maintain sales offices, management offices, models and signs advertising the Project;

1.33.4 Use easements through the Common Elements for the purpose of making improvements within the Project or within any real estate which may be added to the Project;

1.33.5 Appoint or remove any officer of the Association or any board member during any period of Declarant control.

1.34 "Total Votes of the Association" shall mean the total number of votes appertaining to all Units in the Project, as shown in Exhibit "C" attached hereto.

1.35 "Unit" shall mean an individual air space unit, consisting of enclosed rooms occupying part of a building and bounded by the unfinished interior surfaces of the walls, floors, ceilings, windows and doors along the perimeter boundaries of the air space, as said boundaries are shown on the Plat, together with all the fixtures and improvements therein contained. All lath, furring, wallboard, plasterboard, plaster, paneling tiles, wallpaper, paint, finished flooring and other wall, ceiling or floor coverings on interior surfaces shall be deemed to be part of the Unit. All other portions of the walls, floors or ceilings are a part of the Common Elements. Notwithstanding the fact that they may be within the boundaries of such air space, the following are not part of a Unit insofar as they are necessary for the support or for the use and enjoyment of another Unit: Bearing walls, floors, ceilings and roofs (except the interior surfaces thereof), foundations, ceiling equipment, tanks, pumps, pipes, vents, ducts, shafts, flues, chutes, conduits, wires and other utility installations, except the outlets thereof when located within the Unit. The interior surfaces of a window or door mean the points at which such surfaces are located when the window or door is closed.

1.36 "Withdrawable Land" shall mean one or more portions of the Land within the Project which may be withdrawn in accordance with the provisions of this Declaration and the Act.

ARTICLE 2

SUBMISSION AND DIVISION OF PROJECT

2.1 Submission to Condominium Act. The Declarant hereby submits the Land, the Units and all other improvements now or hereafter made in or upon the Land to the provisions of the Act. All of said property is and shall be held, conveyed, hypothecated, encumbered, leased, rented, used and improved as a fee simple condominium project to be known as Brookside Bell Professional Park Condominiums. All of said property is and shall be subject to the covenants, conditions, restrictions, uses, limitations and obligations set forth herein, each and all of which are declared and agreed to be for the benefit of said Project and in furtherance of a plan for improvement of said property and division thereof into Condominiums; further, each and all of the provisions hereof shall be deemed to run with the Land and shall be a burden and a benefit on the Land and shall be binding upon the Declarant, its successors and assigns, and to any person acquiring, leasing or owning an interest in a Condominium and to their respective personal representatives, heirs, successors and assigns.

2.2 Division into Condominiums. The Project is hereby divided into Condominiums, each such Condominium consisting of a Unit and an appurtenant undivided interest in the Common Elements, as set forth in Exhibit "C" attached hereto and incorporated herein by reference.

2.3 Exercise of Development Rights. The Declarant hereby reserves the right and is hereby granted the right to exercise any and all Special Declarant Rights and Development Rights.

ARTICLE 3

UNITS AND COMMON AREAS

3.1 Building and Improvements. The Building and other improvements constructed or to be constructed on the Land are described on the Plat. The following information regarding the Buildings is also contained on the Plat: (i) the number of floors in the Building and (ii) the number of Units on each floor of the Building.

3.2 Description of Units. The Plat contains the unit number, location and dimensions of each Unit in the Project and all other information necessary to identify each such Unit. Each Unit shall have at least one or more Parking Spaces which are allocated by Declarant to the Unit and reserved for its exclusive use as a Limited Common Element which shall not be severed from such Unit. The number of Parking Spaces allocated to a Unit shall be at the sole discretion of Declarant and such allocation shall be made by an amendment to this Declaration.

3.3 Description of Common Elements. The Plat contains a description of the Common Elements of the Project, which Common Elements include all portions of the Project other than the Units and Limited Common Elements.

3.4 Description of Limited Common Elements. The Plat contains a description of the Limited Common Elements of the Project and designates the Unit to which each of the Limited Common Elements is reserved. Any shutters, awnings, window boxes, doorsteps, stoops, balconies, or patios, and all exterior doors and windows or other fixtures designed to serve a single Unit, but located outside the Unit's boundaries, are Limited Common Elements allocated exclusively to that Unit.

ARTICLE 4

NATURE AND INCIDENTS OF CONDOMINIUM OWNERSHIP

4.1 Interior of Units. Each Owner shall have the exclusive right to paint, repaint, tile, wax, paper, carpet or otherwise decorate the interior surfaces of the walls, ceilings, floors and doors forming the boundaries of his Unit and the surfaces of all walls, ceilings, floors and doors within such boundaries. Each Owner shall also have the right to construct partition walls, fixtures and improvements within the boundaries of his Unit; provided, however, that such partition walls, fixtures and improvements (i) shall comply with all applicable laws, ordinances and building codes, (ii) shall not interfere with facilities necessary for the support, use or enjoyment of any other part of the Project, (iii) shall not impair the structural soundness or integrity of the Building in which it is located and (iv) shall not encroach upon the Common Elements or any part thereof.

4.2 Maintenance of Units. Each Owner shall keep the interior of his Unit, including, without limitation, interior walls, windows, ceilings, floors and permanent fixtures and appurtenances thereto, in a clean and sanitary condition and in a state of good repair. In the event that any such Unit shall develop an unsanitary or unclean or unsafe condition or fall into a state of disrepair, and in the event that the Owner of such Unit shall fail to correct such condition or state of disrepair promptly following written notice from the Board of Directors, the Board of Directors in behalf of the Association shall have the right, at the expense of the Owner and without liability to the Owner for trespass or otherwise, to enter said Unit and correct or eliminate said unsanitary or unclean condition or state of disrepair; provided, however, that the Association shall in no event have the obligation to correct or eliminate any such condition or state of disrepair.

4.3 Title. Title to a Condominium within the Project may be held or owned by any person or entity, or any combination thereof, and in any manner in which title to any other real property may be held or owned in the State of Arizona, including, without limitation, joint tenancy, tenancy in common, community property or community property joint-tenancy.

4.4 Ownership of Common Elements. The undivided interest in the Common Elements appurtenant to each Unit in the Project shall be as set forth in Exhibit "C" attached hereto. The undivided interest appurtenant to each Unit as shown in said Exhibit "C" shall have a permanent character and shall not be altered except with the unanimous written consent of all Owners expressed in an amendment to this Declaration duly recorded, or except as provided in Article 16 herein. Except as otherwise provided in this Declaration, any Owner shall be entitled

to nonexclusive use of the Common Elements (other than Limited Common Elements) in any manner that does not hinder or encroach upon the rights of other Owners and is not contrary to any rules and regulations promulgated by the Association. Except as otherwise provided in this Declaration, any Owner shall have the exclusive right to use and enjoy any Limited Common Element that may be designated for exclusive use by such Owner.

4.5 Inseparability. Title to no part of a Condominium within the Project may be separated from any other part thereof, and each Unit and the undivided interest in the Common Elements appurtenant to each Unit shall always be conveyed, devised, encumbered and otherwise affected only as a complete Condominium. Any purported devise, encumbrance, conveyance, judicial sale or other voluntary or involuntary disposition of an undivided interest in the Common Elements made without the Unit to which that interest is allocated is void. Every devise, encumbrance, conveyance or other disposition of a Condominium, or any part thereof, shall be construed to be a devise, encumbrance, conveyance or other disposition, respectively, of the entire Condominium, together with all appurtenant rights created by law or by this Declaration, including appurtenant membership in the Association as hereinafter set forth.

4.6 No Partition. The Common Elements shall be owned in common by all of the Owners, and no Owner may bring any action for partition thereof.

4.7 Separate Mortgages by Owners. Each Owner shall have the right separately to mortgage or otherwise encumber his Condominium. No Owner shall attempt to or shall have the right to mortgage or otherwise encumber the Common Elements or any part thereof, except the undivided interest therein appurtenant to his Unit. Any mortgage or other encumbrance of any Condominium within the Project shall be subordinate to all of the provisions of this Declaration, and in the event of foreclosure the provisions of this Declaration shall be binding upon any Owner whose title is derived through foreclosure by private power of sale, judicial foreclosure or otherwise.

4.8 Separate Taxation. Each Condominium within the Project, including each Unit and appurtenant undivided interest in the Common Elements, shall be deemed to be a parcel of real property and shall be assessed separately for all taxes, assessments and other charges of the State of Arizona or of any political subdivision or of any special improvement district or of any other taxing or assessing authority. For purposes of such assessment, the valuation of the Common Elements shall be apportioned among the Units in proportion to the undivided interests in Common Elements appurtenant to such Units. All such taxes, assessments and other charges on each respective Condominium shall be separately levied against the Owner thereof. No forfeiture or sale of any Condominium for delinquent taxes, assessments or other governmental charges shall divest or in any way affect the title to any other Condominium. Notwithstanding the foregoing, any portion of the Common Elements which the Declarant has reserved the right to withdraw from the Project shall be separately taxed and assessed against the Declarant and the Declarant alone is liable for payment of those taxes, as long as the Declarant retains this right to withdraw.

4.9 Mechanics Liens. No labor performed or material furnished for use in connection with any Unit with the consent or at the request of an Owner or his agent or

subcontractor shall create any right to file a statement of mechanic's lien against the Unit of any other Owner not expressly consenting to or requesting the same or against any interest in the Common Elements, except the undivided interest therein appurtenant to the Unit of the Owner for whom such labor shall have been performed and such materials shall have been furnished.

4.10 Description of Condominium. Every contract for the sale of a Condominium and every other instrument affecting title to a Condominium within the Project may describe a Unit by its identifying number or symbol as indicated in this Declaration or as shown on the Plat together with the name of the Project, and the recording information for the Declaration. Such description will be construed to describe the Unit, together with its appurtenant undivided interest in the Common Elements, and to incorporate all of the rights incident to ownership of a Condominium within the Project and all of the limitations on such ownership.

ARTICLE 5

EASEMENTS

5.1 Easements for Encroachments. If any part of the Common Elements encroaches or shall hereafter encroach upon any Unit, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a Unit encroaches or shall hereafter encroach upon the Common Elements, or upon an adjoining Unit, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of the Common Elements or any part of a Unit shall hereafter encroach on real property now owned by the Declarant outside the boundaries of the Land, an easement for such encroachment shall and does exist. Such encroachments shall not be considered to be encumbrances either on the Common Elements or the Units. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of the Building or any improvements constructed or to be constructed within the Project, by error in the Plat, by settling, rising or shifting of the earth, or by changes in position caused by repair or reconstruction of the Project, or any part thereof, in accordance with the provisions of this Declaration.

5.2 Easements for Maintenance, Cleaning and Repair. Some of the Common Elements are or may be located within the Units or may be conveniently accessible only through the Units. The Association shall have the irrevocable right to have access to each Unit and to all Common Elements from time to time during such reasonable hours as may be necessary for the maintenance, cleaning, repair or replacement of any Common Elements or for making emergency repairs at any time therein necessary to prevent damage to the Common Elements or to any Unit. In addition, agents of the Association may enter any Unit when necessary in connection with any cleaning, maintenance, repair, replacement, landscaping, construction or reconstruction for which the Association is responsible. Such entry shall be made with as little inconvenience to the Owners as practicable, and any damage caused thereby shall be repaired by the Association with funds from the Common Expense Fund.

5.3 Right to Ingress, Egress and Support. Each Owner shall have the right to ingress and egress over, upon and across the Common Elements including an easement for pedestrian and vehicular traffic, and shall have the right to horizontal, vertical and lateral support of such Unit, and such rights shall be perpetual and shall be appurtenant to and pass with title to each Condominium. Such easements shall be for the benefit of the Owners, their employees, tenants and invitees.

5.4 Association's Right to Use Common Elements. The Association shall have an easement to make such use of the Common Elements as may be necessary or convenient to perform the duties and functions that it is obligated or permitted to perform pursuant to this Declaration, including, without limitation, the right to construct and maintain in the Common Elements (other than Limited Common Elements) facilities for use by Owners generally or by the Association and its agents exclusively.

5.5 Easement for Completion of Project. The Declarant shall have a transferable easement over and on the Project for the purpose of completing construction of the Project and making improvements therein as shown on the Plat and for the purpose of doing all things reasonably necessary or appropriate in connection therewith including the exercising of Special Declarant Rights. To the extent that damage is inflicted on any part of the Project by any person utilizing said easement, the Declarant and the person causing the damage shall be liable to the Association for the prompt repair of such damage.

5.6 Easements Deemed Created. All conveyances of Condominiums within the Project thereafter made, whether by the Declarant or otherwise, shall be construed to grant and reserve such reciprocal easements as are provided herein, even though no specific reference to such easements appears in any such conveyance.

5.7 Unit Owners' Easements of Enjoyment.

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

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

(ii) 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;

(iii) All rights and easements set forth in this Declaration including, but not limited to, the rights and easements granted to the Declarant by Sections 5.5 and 5.8 of this Declaration;

(iv) The right of the Association to suspend the right of an Owner and any occupant of such Owner's Unit to use the Common Elements for any period

during which the Owner is in violation of any provision of the Declaration Rules and Regulations.

5.7.2 If a Unit is leased or rented, the lessee and the occupants of the lessee's Unit shall have the right to use the Common Elements during the term of the lease, and the Owner shall have no right to use the Common Elements (other than the right of ingress and egress to the Unit Owner's Unit) until the termination or expiration of the lease.

5.7.3 The invitees of any Owner or other person entitled to use the Common Elements pursuant to Subsection 5.7.1 of this Declaration or of any lessee who is entitled to use the Common Elements pursuant to Subsection 5.7.2 of this Declaration may use the Common Elements provided they are accompanied by an Owner, lessee or other person entitled to use the Common Elements pursuant to Subsection 5.7.1 or Subsection 5.7.2 of this Declaration. The Board of Directors shall have the right to limit the number of invitees who may use the Common Elements at any one time and may restrict the use of the Common Elements by invitees to certain specified times.

5.7.4 The provisions of this Section 5.7 shall not apply to any of the Limited Common Elements, if any, that are allocated to one or more but less than all of the Units.

5.8 Declarant's Rights and Easements for Sales And Leasing Purposes.

[THIS SECTION INTENTIONALLY DELETED.]

ARTICLE 6

RESTRICTIONS ON USE

6.1 Use. No Unit shall be used or caused to be used or allowed or authorized to be used in any way, directly or indirectly, for any purposes other than the operation of general business offices in accordance with applicable zoning and other governmental laws, regulations and rules, as may be amended from time to time.

6.2 Business Restrictions. Notwithstanding any zoning ordinance which would otherwise permit the following uses, no Unit shall be used for:

(i) Restaurant purposes, the sale of food or beverages to the general public, or the preparation of food or beverages for sale to the general public;

(ii) Any use which emits a noxious odor, noise or sound which can be smelled or heard outside of any building on any Unit or any other activity which may constitute a public or private nuisance;

(iii) any business utilizing an outdoor loudspeaker system unless approved in writing by the Board of Directors;

- (iv) The storage, display or sale of explosives or fireworks;
- (v) Any warehouse operation (including, but not limited to, any operation engaged in the retail sale of merchandise to the general public or to its members utilizing a rack-style or wholesale concept of merchandising);
- (vi) Any assembling, manufacturing, distilling, refining, smelting, industrial, agricultural, drilling or mining operation;
- (vii) Any trailer court or mobile home park;
- (viii) Any lot for the sale, leasing or display of new or used automobiles, trucks, trailers, recreational vehicles or other motor vehicles;
- (ix) Any labor camp, junk yard, stockyard or animal raising operation;
- (x) Any dumping, disposal, incineration or reduction of garbage or refuse, other than handling or reducing such waste if produced on the premises from authorized uses and if handled in a lawful and reasonably clean and sanitary manner, excluding, however, governmentally required recycling centers;
- (xi) Any massage parlor, adult bookstore or video store or other business primarily catering to pornographic interest, or selling or exhibiting drug-related paraphernalia, provided, however, the prohibition contained in this Section against a massage parlor shall not apply to therapeutic massage offered by a doctor or a chiropractor;
- (xii) Any live rock concert;
- (xiii) Any residential use, including, but not limited to, single-family dwellings, townhouses, condominiums, other multi-family units and other forms of living quarters, sleeping apartments, lodging rooms, hotels or motels;
- (xiv) Any off-track betting parlor;
- (xv) Any fire sale, bankruptcy sale (unless pursuant to a court order) or auction house operations;
- (xvi) Any church, temple or other house of religious worship;
- (xvii) Any establishment conducting games of chance, including bingo;
- (xviii) Any check cashing services (except ancillary to an otherwise permitted use);
- (xix) The operation of a movie theater;
- (xx) Any mortuary or funeral home;

- (xxi) Any pool or billiard hall, or dance hall;
- (xxii) Any flea market, thrift store, swap shop, liquidation outlet, consignment store or store that primarily sells used, damaged or discontinued merchandise;
- (xxiii) Any commercial laundry or dry cleaning plant (excluding nominal supportive facilities for on-site service oriented to pickup and delivery by the ultimate consumer) or laundromat;
- (xxiv) Any automobile body work or other automotive repair work or car-washing establishment;
- (xxv) Any veterinary hospital, pet shop or pet supply store;
- (xxvi) Any penny arcade or amusement center (including pinball, electronic or other game machines);
- (xxvii) Any beauty schools, barber colleges, automotive training schools, technical or mechanical schools, other trade schools and other operations catering primarily to students or trainees rather than to business or commercial customers; provided, however, this prohibition shall not be applicable to professional management and financial management training or seminars related thereto;
- (xxviii) Any cocktail lounge, gift shop, newsstand, smoke shop, barber shop or beauty parlor;
- (xxix) Any day care center;
- (xxx) No physical therapy office or clinic without the prior written consent of the declarant.
- (xxxi) Any bowling alley or skating rink.
- (xxxii) Any call center or "boiler room".

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

6.4 Improvements and Alterations.

6.4.1 Any Owner may make additions, alterations and improvements within such Owner's Unit without the prior written approval of the Board of Directors, but such Owner shall, to the extent permitted under Arizona law, be responsible for any damage to other Units and Buildings, the Limited Common Elements and the Common Elements which results from any such alterations, additions or improvements. Notwithstanding the foregoing, no addition, roof penetration, alteration or improvement within a Unit or within any Limited Common Element allocated to the exclusive use of a Unit which would be visible from the exterior of the Unit, including a change to the exterior color scheme, shall be made without the prior written approval of the Board of Directors, which approval shall only be granted if the Board of Directors affirmatively finds that the proposed addition, alteration or improvement is aesthetically pleasing and in harmony with the surrounding Buildings. No Owner shall make any addition, alteration or improvement to the Common Elements without the prior written approval of the Board of Directors.

6.4.2 Any Owner who is required to obtain approval of the Board of Directors for the construction, installation, addition, alteration or repair of any Unit shall submit to the Board of Directors (i) a written request for approval specifying in detail the nature and extent of the addition, alteration, repair or other work which the Owner desires to perform; (ii) plans and specifications, if applicable; (iii) any other information which the Board of Directors may request; and (iv) any fee payable pursuant to Subsection 6.4.6 of this Declaration. If the Board of Directors fails to approve or disapprove an application for approval within sixty (60) days after the submittal of the completed application and all supporting information, plans and specifications requested by the Board of Directors have been submitted to the Board of Directors, approval will not be required and this section will be deemed to have been complied with by the Unit Owner who had requested approval of such plans. The approval by the Board of Directors of any construction, installation, addition, alteration, repair or other work pursuant to this section shall not be deemed a waiver of the Board of Director's right to withhold approval of any similar construction, installation, addition, alteration, repair, change or other work subsequently submitted for approval.

6.4.3 Upon receipt of approval from the Board of Directors for any construction, installation, addition, alteration, repair or other work, the Owner who had requested such approval shall proceed to perform, construct or make the addition, alteration, repair or other work approved by the Board of Directors as soon as practicable and shall diligently pursue such work so that it is completed as soon as reasonably practicable and within such time as may be prescribed by the Board of Directors.

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

6.4.5 The Board of Directors shall have the right to charge a fee for reviewing requests for approval of any construction, installation, alteration, addition, repair or other work pursuant to this Section 6.4, which fee shall be payable at the time the application for approval is submitted to the Board of Directors.

6.4.6 All construction on Units shall be of new construction.

6.4.7 The approval by the Board of Directors of any construction, installation, addition, alteration, repair or other work pursuant to this Section 6.4 shall not be deemed a warranty or representation by the Board of Directors as to the quality of such construction, installation, addition, alteration, repair, change or other work or that such construction, installation, addition, alteration, repair, change or other work conforms to any applicable building codes or other federal, state or local law, statute, ordinance, rule or regulation.

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

6.4.9 The approval required of the Board of Directors pursuant to this Section 6.4 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.

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

6.6 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.

6.7 Diseases and Insects. No Owner shall permit any thing or condition to exist upon the Condominium which could induce, breed or harbor infectious diseases (plant or otherwise) or noxious insects. Each Owner shall perform such pest control activities as may be necessary to prevent insects, rodents and other pests from being present in the Unit.

6.8 Motor Vehicles. Except for emergency repairs, no automobile, motorcycle, motorbike or other motor vehicle shall be constructed, reconstructed, serviced or repaired on any portion of the Condominium, and no inoperable vehicle may be stored or parked on any portion of the Condominium. No Owner or other occupant of a Unit may park any automobile, motorcycle, motorbike or other motor vehicle upon any part of the Condominium except in designated parking spaces. Occupants not assigned reserved spaces and invitees of an Owner or other occupant may park an automobile, motorcycle, motor bike or other motor vehicle owned or leased by such invitee in Parking Spaces not reserved or in guest parking spaces that may exist from time to time on the Common Elements.

6.9 Towing of Vehicles. The Board of Directors shall have the right to have any automobile, 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 or equipment. Any expense incurred by the Association in connection with the towing of any vehicle or equipment shall be paid to the Association upon demand by the owner of the vehicle or equipment.

6.10 Signs. No signs (including, but not limited to, "For Sale" or "For Rent" signs) shall be permitted on any Unit or in the interior of a Building if the signs would be visible from the exterior of the Building, or on any other portion of the Condominium without the prior written approval of the Board of Directors.

6.11 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.

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

6.13 Window Coverings. Unless installed by Declarant, each Owner shall install interior window coverings on each window of a Building within sixty (60) days after a certificate of occupancy has been issued for the Building or as otherwise approved by the Board of Directors. The window coverings throughout the project shall be uniform. The color and specifications of the window coverings shall be established by the Board of Directors.

6.14 Leases. Any agreement for the leasing or rental of a Unit executed on or after the date this Declaration is recorded (hereinafter in this Section referred to as a "Lease") shall provide that the terms of such Lease shall be subject in all respects to the provisions of the Declaration. Said Lease shall further provide that any failure by the lessee thereunder to comply with the terms of the Declaration shall be a default under the Lease. All Leases shall be in writing. The Owner of said leased Unit has the duty and obligation to furnish the Board of Directors with the name or names of the Person currently leasing said Unit and to maintain with the Association a record of the current mailing address of said Owner. Any Owner who shall lease his Unit shall be responsible for assuring compliance by such Owner's lessee with the Declaration.

6.15 Variances. The Board of Directors may, at its option and in extenuating circumstances, grant variances from the restrictions set forth in this Article 6 if the Board of

Directors determines in its discretion that: (a) a restriction would create an unreasonable hardship or burden on an Owner or occupant or a change of circumstances since the recordation of this Declaration had rendered such restriction obsolete; and (b) the activity permitted under the variance will not have any substantial adverse effect on other Owners and occupants and is consistent with the high standards intended for occupants of the Condominium.

6.16 Declarant Approval Required. After 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 Declarant.

ARTICLE 7

THE ASSOCIATION

7.1 Membership. Each Owner shall be entitled and required to be a member of the Association. Membership shall begin immediately and automatically upon becoming an Owner and shall terminate immediately and automatically upon ceasing to be an Owner. If title to a Unit is held by more than one person, the membership appurtenant to that Unit shall be shared by all such persons in the same proportionate interest and by the same type of tenancy in which title to the Unit is held. An Owner shall be entitled to one membership for each Unit owned by him. Each membership shall be appurtenant to the Unit to which it relates and shall be transferred automatically by conveyance of that Unit. Ownership of a Unit within the Project cannot be separated from membership in the Association appurtenant thereto, and any devise, encumbrance, conveyance or other disposition, respectively, of the Owner's membership in the Association and rights appurtenant thereto. No person or entity other than an Owner may be a member of the Association, and membership in the Association may not be transferred except in connection with the transfer of a Unit. The Association shall make available to the Owners, Mortgagees and the holders, insurers and guarantors of the first mortgage on any Unit current copies of the Declaration, Articles, Bylaws and other rules governing the Project and other books, records and financial statements of the Association. The Association also shall be required to make available to prospective purchasers of Units current copies of the Declaration, Articles, Bylaws, other rules governing the Project and the most recent annual audited financial statement of the Association, if such is prepared. "Available" shall mean available for inspection, upon request, during normal business hours or under other reasonable circumstances. Copies, of such documents, may be obtained at the expense of the prospective purchaser requesting copies.

7.2 Board of Directors. Until such time as the responsibility for electing the Directors of the Association is turned over to the Owners in accordance with this Declaration, the Articles and Bylaws, the Declarant shall have the exclusive right to appoint and to remove all such Directors. This exclusive right shall terminate after the first to occur of the following:

7.2.1 Four (4) years from the date after Declarant has ceased to offer Units for sale in the ordinary course of business; or

7.2.2 Ninety days after seventy-five percent (75%) of the Units which may be created in the Project have been conveyed by Declarant to the purchasers thereof.

7.3 Votes. The number of votes appurtenant to each Condominium shall be as set forth in Exhibit "C." The number of votes appurtenant to each Condominium as set forth in said Exhibit "C" shall have a permanent character and shall not be altered without the unanimous written consent of all Owners expressed in a duly recorded amendment to this Declaration.

ARTICLE 8

CERTAIN RIGHTS AND OBLIGATIONS OF THE ASSOCIATION AND BOARD OF DIRECTORS

8.1 The Common Elements. The Board of Directors, acting on behalf of the Association and, subject to the rights and duties of the Owners as set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Elements, including the Limited Common Elements, and all improvements thereon and shall keep the same in a good, clean, attractive, safe and sanitary condition, order and repair; provided, however, that unless otherwise stated herein, each Owner shall keep the Limited Common Elements designated for use in connection with his Unit, if any, in a clean, sanitary and attractive condition. The Association shall be responsible for the maintenance and repair of the exterior of the Buildings, other improvements and grounds, including, without limitation, painting thereof, repair and replacement of exterior trim, roofs and fences and maintenance of landscaping, walkways, driveways and parking areas. The Board of Directors shall also be responsible for maintenance, repair and replacement of Common Elements within the Buildings, including, without limitation, landings, stairways, utility lines, and all improvements and other items located within or used in connection with the Common Elements. The specification of duties of the Board of Directors with respect to particular Common Elements shall not be construed to limit its duties with respect to other Common Elements. All goods and services procured by the Board of Directors in performing its responsibilities under this section shall be paid for with funds from the Common Expense Fund.

8.2 Manager. The Board of Directors may retain the services of an experienced, professional Manager to manage the Project. Appropriate fidelity bond coverage shall be required for any employee of the Manager who handles funds of the Association. The Board of Directors may by written contract delegate in whole or in part to a Manager such of the duties, responsibilities, functions and powers hereunder of the Board of Directors as are delegable. The services of any Manager retained by the Board of Directors shall be paid for with funds from the Common Expense Fund. Any management contract, employment contract or lease of recreational or parking areas or facilities, or any contract or lease, including franchises or licenses, to which the Declarant or an affiliate of the Declarant is a party which binds the Association either directly or indirectly shall provide that without cause such agreement may be terminated by the Board of Directors or the Association, without penalty at any time after transfer of control by the Declarant, upon not more than thirty (30) days' written notice to the other party thereto.

8.3 Miscellaneous Goods and Services. The Board of Directors may, on behalf of the Association, obtain and pay for such goods or services of such personnel as the Board of Directors shall determine to be necessary or desirable for the proper operation of the Project, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom or which it contracts. The Board of Directors may, in behalf of the Association, obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Project or the enforcement of this Declaration. In addition to the foregoing, the Board of Directors may, in behalf of the Association, acquire and pay for out of the Common Expense Fund water, sewer, garbage collection, electrical, gas and other necessary or desirable utility services for the Common Elements, insurance, bonds and other goods and services common to the Units.

8.4 Right of Board of Directors to Bind Association. A contract for any of the following, if entered into before the responsibility for electing the Board of Directors of the Association is turned over to the Owners in accordance with Section 7.2, shall contain a provision in the contract that the contract may be terminated without penalty by the Association at any time after the Board of Directors elected by the Unit Owners takes office:

8.4.1 Any management contract or employment contract.

8.4.2 Any other contract or lease between the Association and Declarant or affiliate of a Declarant.

8.4.3 Any contract or lease that is not bona fide or was unconscionable to the Owners at the time thereto and under the circumstances then prevailing.

The Board of Directors shall notify the appropriate contractual party of the termination in not fewer than thirty (30) days before termination. If a contract covered by this Section 8.4 fails to contain the provisions required by this Section, the contract shall be voidable at the option of the Association.

8.5 Real and Personal Property. The Board of Directors may acquire and hold on behalf of the Association real, personal and mixed property of all types for the use or benefit of all of the Owners and may dispose of such property by sale or otherwise, provided that any acquisition or disposition of value of any real, personal or mixed property by the Board of Directors wherein such property exceeds Five Thousand Dollars (\$5,000) must be approved by a vote of at least fifty-one percent (51%) of the Total Votes of the Association at a meeting duly called for that purpose. All such property shall be paid for out of the Common Expense Fund and all proceeds from the disposition thereof shall be part of such fund.

8.6 Rules and Regulations. The Board of Directors shall make reasonable Rules and Regulations governing the use of the Units, the Garage Units, the Common Elements, the Limited Common Elements and all parts of the Project, which Rules and Regulations shall be consistent with the rights and duties established by this Declaration. The Board of Directors in behalf of the Association may take judicial action against any Owner to enforce compliance with such Rules and Regulations or other obligations of such Owner arising hereunder, or to obtain damages for noncompliance therewith, as permitted by law. In the event of such judicial

action, the Association shall be entitled to recover its costs, including reasonable attorneys' fees, from the offending Owner.

8.7 Granting Easements. The Board of Directors may, without the vote or consent of the Owners or of any other person, grant or create, on such terms as it deems advisable, easements, licenses and rights-of-way over, under, across and through the Common Elements for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance or operation of the Project.

8.8 Other Rights and Duties. The Association may exercise any right, power or privilege given to it expressly by this Declaration or by law, and every other right or privilege reasonably implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege, including, but not limited to the following:

8.8.1 Adopt and amend bylaws and rules.

8.8.2 Adopt and amend budgets for revenues, expenditures and reserves and collect assessments for Common Expenses from Owners.

8.8.3 Hire and discharge managing agents and other employees, agents and independent contractors.

8.8.4 Institute, defend or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more Owners on matters affecting the Project.

8.8.5 Make contracts and incur liabilities.

8.8.6 Regulate the use, maintenance, repair, replacement and modification of Common Elements.

8.8.7 Cause additional improvements to be made as a part of the Common Elements.

8.8.8 Acquire, hold, encumber and convey in its own name any right, title or interest to real or personal property, except that Common Elements may be conveyed or subjected to a security interest only pursuant to A.R.S. § 33-1252.

8.8.9 Grant easements, leases, licenses and concessions through or over the Common Elements.

8.8.10 Impose and receive any payments, fees or charges for the use, rental or operation of the Common Elements other than Limited Common Elements described in A.R.S. § 33-1212, Paragraph 2 and 4, and for services provided to Unit Owners.

8.8.11 Impose charges for late payment of assessments and impose reasonable monetary penalties upon Owners for violations of the Declaration, Bylaws and Rules and Regulations of the Association.

8.8.12 Impose reasonable charges for the preparation and recordation of amendments to the Declaration or statements of unpaid assessments.

8.8.13 Provide for the indemnification of its officers and Board of Directors and maintain directors' and officers' liability insurance.

8.8.14 Assign its right to future income, including the right to receive common expense assessments, but only to the extent the Declaration expressly provides.

8.8.15 Exercise any other powers conferred by the Declaration or Bylaws.

8.8.16 Exercise all other powers necessary and proper for the governance and operation of the Association.

8.9 Power of Attorney and Amendments. Each Owner makes, constitutes and appoints the Association his true and lawful attorney in his name, place and stead to make, execute, sign, acknowledge and file with respect to the Project such amendments to this Declaration and the Plat as may be required by law or by vote taken pursuant to the provisions of the Declaration.

8.10 Request for Approval. Any action by an Owner requiring written or other approval of the Board of Directors shall be submitted to the Board of Directors in the form of a written request. The Board of Directors shall have thirty (30) days from receipt of the written request to respond to such Owner. In the event the response reasonably takes longer than said thirty-day period the Board of Directors shall have such additional time as is necessary to respond. No Owner shall proceed to act upon such request without a written response from the Board of Directors. In the event the Board of Directors fails to respond within thirty (30) days the request shall be deemed denied by the Board of Directors.

8.11 From and after the first fiscal year of the Association, the Association shall make available to a First Mortgagee an audited financial statement for the preceding fiscal year upon written request for such audited financial statement from the First Mortgagee. The audited financial statement shall be available within 120 days of receipt of the First Mortgagee's written request for the audited financial statement.

ARTICLE 9

ASSESSMENTS

9.1 Agreement to Pay Assessments. The Declarant, for each Condominium owned by it within the Project, and for and as the owner of the Project and every part thereof, hereby covenants and each Owner of any Condominium by the acceptance of a deed for the Condominium, whether or not it be so expressed in said instruments, shall be deemed to covenant and agree with each other and with the Association to pay to the Association all assessments made by the Association for the purposes provided in this Declaration. Such assessments shall be fixed, established and collected from time to time as provided in this Article 9.

9.2 Annual Assessments. Annual Assessments shall be computed and assessed against all Condominiums in the Project as follows:

9.2.1 Common Expense. Annual Assessments shall be based upon advance estimates of the Association's cash requirements to provide for payment of all estimated expenses arising out of or connected with the maintenance and operation of the Common Elements and/or furnishing utility services and other common items to the Units. Such estimated expenses shall include, without limitation, the following: Expenses of management; real property taxes and special assessments (unless and until the Condominiums are separately assessed); premiums for all insurance that the Association is required or permitted to maintain hereunder; repairs and maintenance; wages for Association employees, including fees for a Manager (if any); utility charges, including charges for utility services to the Units to the extent not separately metered or billed; legal and accounting fees; any deficit remaining from a previous period; creation of an adequate reserve fund for maintenance, repairs, and replacement of those Common Elements that must be replaced on a periodic basis, and such reserve shall be funded by monthly payments rather than extraordinary special assessments; and any other expenses and liabilities which may be incurred by the Association for the benefit of the Owners under or by reason of this Declaration. Such shall constitute the Common Expense, and all funds received from assessments under this Section 9.2 shall be part of the Common Expense Fund.

9.2.2 Apportionment. Expenses attributable to the Common Elements, Limited Common Elements and the Project as a whole shall be apportioned among and assessed to all Units in proportion to their respective undivided interests in the Common Elements. The Declarant shall be liable for the amount of any assessments against Condominiums owned by it. If any Common Expense is caused by the misconduct of any Owner, the Association may assess that expense exclusively to such Owner.

9.2.3 Uncompleted Units. At the Declarant's option, the Annual Assessment for any Unit on which construction has not been substantially completed may be an amount which is not less than twenty-five percent of the Annual Assessment for Units which have been substantially completed; provided, the Declarant shall pay to the Association any

deficiency in funds due to the Declarant having paid a reduced Annual Assessment and necessary for the Association to be able to timely pay all Common Expenses.

9.2.4 Annual Budget. Annual Assessments shall be determined on the basis of a fiscal year beginning January 1 and ending December 31 next following, provided the first fiscal year shall begin on the date of this Declaration, and, on or before December 15 of each year thereafter, the Board of Directors shall prepare and furnish to each Owner, or cause to be prepared and furnished to each Owner, an operating budget for the upcoming fiscal year. The budget shall itemize the estimated expenses of Common Expense for such fiscal year, anticipated receipts (if any) and any deficit or surplus from the prior operating period. The budget shall serve as the supporting document for the Annual Assessment for the upcoming fiscal year and as the major guideline under which the Project shall be operated during such annual Period.

9.2.5 Notice and Payment. Except with respect to the first fiscal year, the Board of Directors shall notify each Owner as to the amount of the Annual Assessment against his or her Condominium on or before December 15 each year for the fiscal year beginning on January 1 next following. Each Annual Assessment shall be payable in twelve equal monthly installments, one such installment due on the first day of each calendar month during the fiscal year to which the assessment relates; provided, however, the Annual Assessment for the first fiscal year shall be based upon such portion of the first fiscal year. The Owners shall commence payment of the full monthly assessments against their respective Condominiums no later than sixty (60) days after the conveyance of the first Condominium in the Project or phase. All unpaid installments of any Annual Assessment shall bear interest at the rate of eighteen percent (18%) per annum from the date each such installment became due until paid. In addition, in the event that any installment of any Annual Assessment is not paid within fifteen (15) days of the date such installment becomes due, the Association may, at its option, and upon fifteen (15) days prior written notice to the Owner, accelerate the due date for all remaining unpaid installments of the Annual Assessment for the remainder of the fiscal year and all accrued but unpaid interest thereon. Payment of the Annual Assessment installments so accelerated shall be due at the expiration of said fifteen(15) day notice period and interest shall accrue on the entire sum at the rate of eighteen percent (18%) per annum from such date until paid in full. The failure of the Board of Directors to give timely notice of any Annual Assessment as provided herein shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligation to pay such assessment or any other assessment; but the date when the payment shall become due in such case shall be deferred to a date fifteen (15) days after notice of such assessment shall have been given to the Owner in the manner provided in this Declaration.

9.2.6 Inadequate Funds. In the event that the Common Expense Fund proves inadequate at any time for whatever reason, including nonpayment of any Owner's assessment, the Board of Directors may, on behalf of the Association, levy additional assessments in accordance with the procedure set forth in Section 9.3 below, except that the vote therein specified shall be unnecessary.

9.3 Special Assessments. In addition to the Annual Assessments authorized by this article, the Board of Directors may, on behalf of the Association, levy, at any time and

from time to time, upon the affirmative vote of at least fifty-one percent (51%) of the Total Votes of the Association, Special Assessments, payable over such periods as the Board of Directors may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of the Project or any part thereof, or for any other expenses incurred or to be incurred as provided in this Declaration (including, without limitation, Common Expenses). This section shall not be construed as an independent source of authority for the Association to incur expenses but shall be construed to prescribe the manner of assessing for expenses authorized by other sections or articles hereof. Any amounts assessed pursuant hereto shall be assessed to Owners in proportion to their respective undivided interests in the Common Elements. Notice in writing of the amount of each such Special Assessment and the time for payment thereof shall be given promptly to the Owners; no payment shall be due less than fifteen (15) days after such notice shall have been given. All unpaid portions of any Special Assessment shall bear interest at the rate of eighteen percent (18%) per annum from the date such portions become due until paid. All funds received from assessments under this section shall be part of the Common Expense Fund.

9.4 Lien for Assessments. All sums assessed to Owners of any Condominium within the Project pursuant to the provisions of this Article 9, together with penalties and interest thereon as provided herein, shall be secured by a lien on such Condominium in favor of the Association. Recording of the Declaration constitutes record notice and perfection of the lien. Such lien may be enforced by sale or foreclosure conducted in accordance with the provisions of law applicable to the foreclosure of mortgages or in any other manner permitted by law. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceeding (including reasonable attorneys' fees), and such costs and expenses shall be secured by the lien being foreclosed. The Owner shall also be required to pay to the Association any assessments against the Condominium which shall become due during the period of foreclosure, and all such assessments shall be secured by the lien being foreclosed. The Board of Directors shall have the right and power in behalf of the Association to bid in at any foreclosure sale and to hold, lease, mortgage or convey the subject Condominium in the name of the Association.

9.5 Personal Obligation of Owner. The amount of any Annual or Special Assessment against any Condominium shall be the personal obligation of the Owner of such Condominium to the Association. Suit to recover a money judgment for such personal obligation shall be maintainable by the Association without foreclosing or waiving the lien securing the same. No Owner may avoid or diminish any such personal obligation by waiver of the use and enjoyment of any of the Common Elements or by abandonment of his Condominium or by waiving any services or amenities provided for in this Declaration. In the event of any suit to recover a money judgment for unpaid assessments hereunder, the involved Owner shall pay the costs and expenses incurred by the Association in connection therewith, including reasonable attorneys' fees.

9.6 Statement of Account. Upon written request of any Owner, Mortgagee or prospective purchaser of a Condominium, the Board of Directors shall within twenty (20) days issue a recordable written statement setting forth the following: The amount of the unpaid assessments, if any, with respect to such Condominium; the amount of the current Annual Assessment and the date or dates upon which installments thereof become due; and credit for

advanced payments or prepaid items, including, without limitation, the Owner's share of prepaid insurance premiums. Such statements shall be conclusive upon the Association in favor of persons who rely thereon in good faith.

9.7 Personal Liability of Purchaser. Subject to the provisions of Section 14.9, a purchaser of a Condominium shall be jointly and severally liable with the seller thereof for all unpaid assessments against such Condominium up to the time of the grant or conveyance; provided, however, that the provisions of this section shall not prejudice the purchaser's right to recover from the seller the amount paid by the purchaser for such assessments.

9.8 Reserves and Working Capital. The Association shall establish the following funds:

9.8.1 Reserve Fund. The Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements to the Common Elements and to the Limited Common Elements the Association may be obligated to maintain. The reserve fund shall be maintained out of regular assessments for common expenses.

9.8.2 Working Capital Fund. The Association shall also establish and maintain an initial working capital fund equal to at least two monthly installments of the Annual Assessment for each Condominium. Each Condominium's share of the working capital fund must be collected and transferred to the Association at the time of the closing of sale of that Condominium. The working capital fund must be maintained in a segregated account for the use and benefit of the Association. The purpose of the working capital fund is to ensure that the Association will have cash available to meet unforeseen expenditures or to acquire additional equipment or services deemed necessary or desirable by the Association. Amounts paid into the working capital fund are not to be considered advance payments of any regular assessment.

9.8.3 Amendment of Article. This Article 9 shall not be amended unless the Owners of seventy-five percent (75%) of the Condominiums in the Project consent and agree to such amendment in a duly executed and recorded instrument.

ARTICLE 10

INSURANCE

10.1 Types of Insurance. Commencing not later than the time of the first conveyance of a Condominium to a person other than Declarant, the Association shall obtain and keep in full force and effect at all times the following types of insurance coverage, provided by companies licensed to do business in the State of Arizona:

10.1.1 Hazard Insurance. The Association shall obtain, maintain and pay for as a Common Expense a "master" or "blanket" multi-peril policy of property insurance covering the entire Project, including, without limitation, the Common and Limited Common

Elements, fixtures and Building service equipment to the extent that they are part of the Common Elements or Limited Common Elements, common personal property and supplies belonging to the Association. Such master policy of hazard insurance shall provide, as a minimum, protection against the following:

(a) Loss or damage by fire and other perils normally covered by the standard extended coverage endorsement; and

(b) All other perils customarily covered with respect to projects similar to the Project in construction, location and use, and any other perils for which coverage is commonly required by private institutional mortgage investors for such projects, including all perils normally covered by the standard "all risk" endorsement, where such is available. The total amount of insurance after application of any deductibles shall be not less than one hundred (100%) of the actual cash value of the insured property (based upon the current replacement cost of the Project and all property covered by the policy). In addition, such master policy of hazard insurance shall include the following endorsements, if available: An Agreed Amount and Inflation Guard Endorsement; and, if the Project should hereafter become subject to a construction code provision which would require the Association to incur a significant expense in order to effect code required changes in the undamaged portions of the Project in the event of the partial destruction of the Project by an insured peril, Construction Code Endorsements (e.g., a Demolition Cost Endorsement, a Contingent Liability from Operation of Building Laws Endorsement and an Increased Cost of Construction Endorsement).

10.1.2 Public Liability Insurance. The Association shall obtain and maintain a comprehensive policy of commercial general liability insurance covering all of the Common Elements, in the Project. Such insurance policy shall contain a Severability of Interest Endorsement or equivalent coverage which shall preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or other Owners. The scope of coverage shall include, without limitation:

(a) Legal liability of the insureds for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance or use of the Common Elements and legal liability arising out of lawsuits related to employment contracts of the Association; and

(b) Additional coverages as may be required to include protection against such other risks as are customarily covered with respect to projects similar to the Project in construction, location and use, any other coverage in the kinds and amounts required by private institutional mortgage investors for such projects, including, but not limited to, host liquor liability, contractual and all-written contract insurance and comprehensive automobile liability insurance.

Coverage limits shall be in amounts generally required by private institutional mortgage investors for projects similar to the Project in construction, location and use; provided, however, that such coverage shall be for at least Two Million Dollars (\$2,000,000) for bodily injury, including deaths of persons, and property damage arising out of a single occurrence.

10.1.3 Workmen's Compensation Insurance. The Association shall obtain and maintain workmen's compensation and employer's liability insurance and all other similar insurance with respect to employees of the Association in the amount and in the forms now or hereafter required by law.

10.1.4 Fidelity Insurance or Bond. The Association shall obtain and maintain blanket fidelity bonds against dishonest acts on the part of all officers, directors, trustees, managers and employees of the Association and all other persons, including without limitation, volunteers handling or responsible for funds of or administered by the Association. Furthermore, where the Association has designated some or all of the responsibility for the handling of funds to a management agent, such bonds shall be required for such management agent's officers, employees and agents handling or responsible for funds of, or administered by the Association. Furthermore, where the Association has designated some or all of the responsibility for the handling of funds to a management agent, such bonds shall be required for such management agent's officers, employees and agents handling or responsible for funds of, or administered on behalf of, the Association. Such fidelity bonds shall meet the following requirements:

- (a) All shall name the Association as an obligee and the named insured;
- (b) All shall be based on the best business judgment of the Association and shall not be written in an amount less than one and one-half times the amount of the Association's estimated annual operating expenses and reserves, or the estimated maximum of funds, including reserve funds in the custody of the Association or the Manager at any time during the term of each fidelity bond, whichever is greater. However, in no event may the aggregate amount of such bonds be less than a sum equal to three months' aggregate assessments on all Condominiums plus reserve funds;
- (c) All shall contain waivers by the issuers of the bonds or policies of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar terms or expressions or shall contain an appropriate endorsement to the policy to cover any persons who serve without compensation if the policy would not otherwise cover volunteers;
- (d) All shall provide that they may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least ten (10) days' prior written notice to the Association or any Insurance Trustee ; and
- (e) The premiums shall all be paid by the Association as a common expense, except for premiums on fidelity bonds or insurance maintained by a management agent for its officers, employees and agents.

10.2 Insurance Policy Requirements. The Hazard and Public Liability policies obtained by the Association pursuant to Sections 10.1.1 and 10.1.2 shall be subject to the following:

10.2.1 The named insured under any such policies shall be set forth therein substantially as follows: "Brookside Bell Professional Park Owners Association for the use and benefit of the individual Owners" (designated by name if required by Law). The policies may also be issued in the name of an authorized representative of the Association, including any Insurance Trustee with whom the Association has entered into an Insurance Trust Agreement or any successor to such trustee (each of which shall be referred to as "Insurance Trustee") for the use and benefit of the individual Owners. Loss payable shall be paid in favor of the Association (or Insurance Trustee) as a trustee for each Owner and each such Owner's Mortgagee. Each Owner and each such Owner's Mortgagee, if any, shall be beneficiaries of the policies according to the undivided interest in the Common Elements appurtenant to each Owner's respective Condominium in the percentage of common ownership. Evidence of insurance shall be issued to each Owner and Mortgagee upon request;

10.2.2 Insurance coverage obtained and maintained pursuant to the requirement of Sections 10.1.1 and 10.1.2 shall be primary in the event any Owner has insurance covering the same loss;

10.2.3 Insurance coverage must not be prejudiced by an act or omission of individual Owners when such act or omission is not within the control of either such Owners collectively or the Association;

10.2.4 Coverage may not be canceled, changed in a way which is adverse to an Owner or substantially reduced or modified (including cancellation for nonpayment of premium) without at least ten (10) days' prior written notice in advance of the effective date of any reduction in or cancellation of the policy to the Association;

10.2.5 All policies must contain a waiver of subrogation by the insurer as to any and all claims against the Association, any Owner and/or their respective agents, employees or tenants;

10.2.6 Each hazard insurance policy shall be written by a hazard insurance carrier which has a current financial rating by Best's Insurance Reports of Class B+/VI or better;

10.2.7 Policies shall be deemed unacceptable where (i) under the terms of the carrier's charter, bylaws or policy, contributions or assessments may be made against the Association or an Owner; or (ii) by the terms of the carrier's charter, bylaws or policy, loss payments are contingent upon action by the carrier's board of directors, policyholders, or members; or (iii) the policy includes any limiting clauses (other than insurance conditions) which could prevent an Owner from collecting insurance proceeds;

10.2.8 All policies shall contain or have attached the standard mortgagee clause, or equivalent endorsement (without contribution), which is commonly accepted by private institutional mortgage investors in the area in which the Project is located and which appropriately names all First Mortgagees in the policy. The standard mortgagee clause in each policy must be endorsed to provide that any proceeds shall be paid to the Association, or any

Insurance Trustee named to represent the Association as provided in Section 10.7, for the use and benefit of the Owners and their first mortgage holders as their interests may appear;

10.2.9 Policy contracts shall provide that no assessment may become a lien on the Mortgaged Premises superior to the first mortgage; and

10.2.10 Policies shall be in compliance with and consistent with applicable local and state insurance law. Each insurer and any reinsurer must be specifically licensed or authorized by law to transact business within the State of Arizona.

10.3 Evidence of Insurance. Upon request, the Board of Directors shall provide the First Mortgagee with a copy of the "master" or "blanket" policy of multi-peril property insurance, a copy of the commercial general policy of public liability insurance, and any other insurance drafts, policies, notices, invoices and other similar documents.

10.4 Additional Coverage. The provisions of this Declaration shall not be construed to limit the power or authority of the Association to obtain and maintain insurance coverage in addition to any insurance coverage required by this Declaration, in such amounts and in such forms as the Association may deem appropriate from time to time.

10.5 Owner's Own Insurance. Each Owner, at his own expense, may procure and maintain at all times fire and extended coverage insurance covering personal property of such Owner and additional fixtures and improvements added by such Owner against loss by fire and other casualties, including, without limitation, vandalism and malicious mischief. All policies providing such casualty insurance shall provide that they do not diminish the insurance carrier's coverage for liability arising under insurance policies obtained by the Association pursuant to this article. Notwithstanding the provisions hereof, each Owner may obtain insurance at his own expense providing such other coverage upon his Condominium, his personal property, for his personal liability and covering such other risks as he may deem appropriate, provided that each such policy shall provide that it does not diminish the insurance carrier's coverage for liability arising under insurance policies obtained by the Association pursuant to this article. If obtainable under industry practice without an unreasonable additional charge for such waiver, all such insurance shall contain a waiver of the insurance company's right of subrogation against the Association, the Declarant, the Manager, other Owners and their respective employees, agents, tenants and invitees.

10.6 Review of Insurance. The Association shall review annually the coverage and policy limits of all insurance on the Project to be maintained by the Association and adjust the same at its discretion. Such annual review may include an appraisal of the improvements in the Project by a representative of the insurance carrier or carriers providing the policy or policies on the Project or by such other qualified appraisers as the Association may select.

10.7 Insurance Trustee, Power of Attorney. Notwithstanding anything to the contrary in this Declaration, the Hazard and Public Liability policies obtained by the Association pursuant to Sections 10.1.1 and 10.1.2 may name as an insured, on behalf of the Association, the Association's authorized representative, including any trustee with whom the Association may

enter into any Insurance Trust Agreement or any successor to such trustee (each of whom shall be referred to herein as the "Insurance Trustee"). All such policies obtained by the Association must provide for recognition of any insurance Trust Agreement, and the Insurance Trustee, or such other authorized representative, shall have exclusive authority to negotiate losses under any such policy. Each Owner appoints the Association, or the Insurance Trustee (in the event a trustee is designated hereafter to represent the Association), as attorney-in-fact for the purpose of purchasing and maintaining such insurance, including: The collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose. The Association or any Insurance Trustee must hold or otherwise properly dispose of any proceeds of insurance in trust for the Owners and their first mortgage holders, as their interests may appear.

ARTICLE 11

DAMAGE OR DESTRUCTION

11.1 Association as Attorney in Fact. All of the Owners irrevocably constitute and appoint the Association their true and lawful attorney in fact in their name, place and stead for the purpose of dealing with the Project upon its damage or destruction as hereinafter provided. Acceptance by any grantee of a deed from the Declarant or from any Owner shall constitute an appointment by said grantee of the Association as his attorney in fact as herein provided. As attorney in fact, the Association shall have full and complete authorization, right and power to make, execute and deliver any contract, deed or other instrument with respect to the interest of an Owner which may be necessary or appropriate to exercise the powers herein granted.

11.2 Definition of Repair and Reconstruction. Repair and reconstruction of the improvements as used herein means restoring the Project to substantially the same condition in which it existed prior to the damage or destruction, with each Unit and the Common Elements having substantially the same vertical and horizontal boundaries as before.

11.3 Procedures. In the event all or any part of the Project is damaged or destroyed and subject to the provisions of Article 14 below, the Association shall proceed as follows:

11.3.1 Notice to First Mortgagees. The Association shall give timely written notice to any institutional holder of any first mortgage on a Unit in the event of substantial damage to or destruction of any Unit or any part of the Common Elements.

11.3.2 Estimate of Costs. As soon as practicable after an event causing damage to or destruction of any part of the Project, the Association shall obtain complete and reliable estimates of the costs to repair and reconstruct the part of the Project damaged or destroyed.

11.3.3 Sufficient Insurance. If the proceeds of the insurance maintained by the Association exceed the estimated costs to repair and reconstruct the damaged or destroyed part of the Project, such repair and reconstruction shall be carried out, unless eighty percent (80%) of the Owners, and every Owner of a Unit which will not be reconstructed vote not to rebuild.

11.3.4 Insufficient Insurance--Less Than Seventy-Five Percent (75%) Destruction. If the proceeds of the insurance maintained by the Association are less than the estimated costs to repair and reconstruct the damaged or destroyed part of the Project and if less than seventy-five percent (75%) of the Project is damaged or destroyed, such repair and reconstruction shall nevertheless be carried out unless eighty percent (80%) of the Owners, and every Owner of a Unit which will not be reconstructed vote not to rebuild. The Association shall levy a Special Assessment sufficient to provide funds to pay the actual costs of such repair and reconstruction to the extent that such insurance proceeds are insufficient to pay such costs. Such Special Assessment shall be allocated and collected as provided in Section 9.3 hereof, except that the vote therein specified shall be unnecessary. Further levies may be made in like manner if the amounts collected (together with the proceeds of insurance) are insufficient to pay all actual costs of such repair and reconstruction.

11.3.5 Insufficient Insurance--Seventy-Five Percent (75%) or More Destruction. If the proceeds of the insurance maintained by the Association are less than the estimated costs to repair and reconstruct the damaged or destroyed part of the Project and if seventy-five percent (75%) or more of the Project is damaged or destroyed, such damage or destruction shall be repaired and reconstructed, unless enough Eligible First Mortgagees approve the termination of the Project pursuant to Section 14.2.1 or, within one hundred (100) days following the damage or destruction, and unless at least eighty percent (80%) of the Owners and every Owner of a Unit which will not be reconstructed vote not to rebuild. If, however, the termination of the Project is approved by a sufficient number of Eligible First Mortgagees and Owners, the Association shall record in the office of the County Recorder of Maricopa County, State of Arizona, a notice setting forth such facts. Upon the recording of such notice, the following shall occur:

- (a) The Project shall be deemed to be owned in common by the Owners;
- (b) The undivided interest in the Project owned in common which shall appertain to each Owner shall be the percentage of the undivided interest previously owned by such Owner in the Common Elements;
- (c) Any liens affecting any of the Condominiums shall be deemed to be transferred, in accordance with the existing priorities, to the undivided interest of the respective Owner in the Project; and
- (d) The Project shall be subject to an action for partition at the suit of any Owner, in which event the net proceeds of any sale resulting from such suit for partition, together with the net proceeds of the insurance of the Project, if any, shall be considered as one fund and shall be divided among all Owners in a percentage equal to the percentage of undivided interest

owned by each respective Owner in the Common Elements, as set forth in Exhibit "C" hereto, after first paying out of the respective share of each Owner, to the extent sufficient for the purposes, all liens on the undivided interest in the Project owned by such Owner.

11.3.6 In no event shall an owner of a Unit or any other party have priority over the institutional holder of any first mortgage on such Unit with respect to the distribution to such Unit of any insurance proceeds.

11.4 Repair or Reconstruction. If the damage or destruction is to be repaired and reconstructed as provided above, the Association shall, as soon as practicable after receiving the said estimate of costs, commence and diligently pursue to completion the repair and reconstruction of that part of the Project damaged or destroyed. The Association may take all necessary or appropriate action to effect repair and reconstruction, as attorney in fact for the Owners, and no consent or other action by any Owner shall be necessary in connection therewith, except as otherwise expressly provided herein. The Project shall be restored or repaired to substantially the same condition in which it existed prior to the damage or destruction, with each Unit and the Common Elements having the same vertical and horizontal boundaries as before. Any restoration or repair of the Project, after a partial condemnation or damage due to an insurable hazard, shall be performed substantially in accordance with the Declaration and the original architectural plans and specifications, unless other action is first approved in writing by a sufficient number of Eligible First Mortgagees pursuant to Section 14.2.

11.5 Disbursement of Funds for Repair and Reconstruction. If repair or reconstruction is to occur, the insurance proceeds held by the Association and any amounts received from assessments made pursuant to Sections 11.3.4 hereof shall constitute a fund for the payment of costs of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for costs of repair and reconstruction shall be made from insurance proceeds; if there is a balance after payment of all costs of such repair and reconstruction, such balance attributable to Units and allocated Limited Common Elements which are not rebuilt shall be first distributed to the Owners of such Units in proportion to their respective percentages of ownership in the Common Elements (to the extent of the fair value of such Units and Common Elements which are not rebuilt), and the remainder, if any, shall be distributed to the Owners in proportion to their respective percentages of ownership of the common Elements.

11.6 Amendment of Article. This Article 11 shall not be amended unless the Owners of eighty percent (80%) of the Condominiums in the Project consent and agree to such amendment in a duly executed and recorded instrument.

ARTICLE 12

CONDEMNATION

12.1 Condemnation. If at any time or times all or any part of the Project shall be taken or condemned by any public authority under power of eminent domain, the provisions

of this article shall apply. A voluntary sale or conveyance of all or any part of the Project in lieu of condemnation, but under threat of condemnation, shall be deemed to be a taking by power of eminent domain. If any Unit or portion thereof, or the Common Elements or any portion thereof, is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, the Board of Directors shall give prompt written notice of any such proceeding or proposed acquisition to each Owner in the Project and to any First Mortgagee. The Association shall represent the Owners in any condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of the Common Elements, or any part thereof, and each Owner hereby appoints the Association as such Owner's attorney in fact for the purposes of such representation.

12.2 Proceeds. All compensation, damages and other proceeds from any such taking by power of eminent domain (hereinafter the "condemnation award") shall be made payable to the Association and shall be distributed by the Board of Directors, on behalf of the Association as herein provided.

12.3 Complete Taking. In the event the entire Project is taken by power of eminent domain, condominium ownership pursuant thereto shall terminate and the condemnation award shall be allocated among and distributed to the Owners in proportion to their respective undivided interests in the Common Elements. Such distribution shall be made by check payable jointly to the respective Owners and their respective Mortgagees, as appropriate.

12.4 Partial Taking. In the event less than the entire Project is taken by power of eminent domain, the following shall occur:

12.4.1 Allocation of Award. As soon as practicable, the Board of Directors shall, on behalf of the Association, reasonably and in good faith, apportion the condemnation award between compensation, severance damages or other proceeds and shall allocate such apportioned amounts and pay the same to the Owners as follows:

(a) The total amount apportioned to taking of or injury to the Common Elements shall be allocated among and distributed to all Owners (including Owners whose entire Units have been taken) in proportion to their respective undivided interests in the Common Elements;

(b) The total amount apportioned to taking of or injury to the Limited Common Elements shall be allocated equally among and distributed to the Owners of the Units to which that Limited Common Element was allocated at the time of acquisition;

(c) The total amount apportioned to severance damages shall be allocated among and distributed to the Owners of those Condominiums that have not been taken in proportion to their respective undivided interests in the Common Elements;

(d) The respective amounts apportioned to the taking of or injury to a particular Unit and its appurtenant undivided interest in the Common Elements shall be allocated and distributed to the Owner of such Unit;

(e) The total amount apportioned to consequential damages and any other takings or injuries shall be allocated and distributed as the Association determines to be equitable under the circumstances;

(f) If apportionment or allocation is already established by negotiation, judicial decree, statute or otherwise, the Association shall employ such apportionment and allocation to the extent it is relevant and applicable;

(g) Distribution of allocated proceeds shall be made by check payable jointly to individual Owners and their respective Mortgagees, as their interests may appear; and

(h) No provision of this Article 12 or any other provisions in this Declaration, the Articles or the Bylaws shall entitle the owner of a Unit or other party to priority over any First Mortgagee holding such Unit with respect to the distribution to such Unit of the proceeds of any award, settlement or proceeds from any eminent domain or condemnation proceeding.

12.4.2 Continuation and Reorganization. If less than the entire Project is taken by power of eminent domain, condominium ownership pursuant hereto shall not terminate but shall continue. In such event the Project shall be reorganized as follows:

(a) If any partial taking results in the taking of an entire Unit, then the Owner thereof shall cease to be a member of the Association and all voting rights and the undivided interest in the Common Elements appertaining to such Unit shall be reallocated to, and shall appertain to, the remaining Units in proportion to their respective undivided interests in the Common Elements;

(b) If any partial taking results in the taking of a portion of a Unit and if no determination is made by the Board of Directors, after duly considering any recommendations, proposals or other input from the Owners, that such taking does not make it impractical to use the remaining portion of such Unit for any lawful purpose permitted by this Declaration, then all voting rights and the undivided interest in the Common Elements appertaining to such Unit shall be reduced in proportion to the reduction in square footage of floor area of such Unit resulting from the taking. The voting rights and undivided interest in the Common Elements so divested from such Unit shall be reallocated to, and shall appertain to, such Unit and the other Units in the Project in proportion to their respective undivided interests in the Common Elements; provided, however, that such Unit shall participate in such reallocation on the basis of the undivided interest reduced in accordance with the preceding sentence;

(c) If any partial taking results in the taking of a portion of a Unit and if there is a determination made by the Board of Directors, after duly considering any recommendations, proposals, or other input from the Owners, that such taking makes it impractical to use the remaining portion of such Unit for any lawful purpose permitted by this Declaration, then all voting rights and the entire undivided interest in the Common Elements appertaining to such Unit shall be reallocated to, and shall appertain to, the remaining Units in

proportion to their respective undivided interests in the Common Elements, and the remaining portion of such Unit shall thenceforth be part of the Common Elements;

(d) The Board of Directors, after duly considering any recommendations, proposals or other input from the Owners, shall have the duty and authority to make all determinations and to take all actions necessary or appropriate to effectuate reorganization of the Project under the provisions of this Section 12.4.2; provided, however, that if any such determination shall have been or such action taken by judicial decree, the Board of Directors shall defer thereto and proceed in accordance therewith.

12.4.3 Repair and Reconstruction. Any repair and reconstruction necessitated by condemnation shall be governed by its provisions specified in Article 11 hereof for cases of Damage or Destruction; provided, however, that the provisions of said article dealing with sufficiency or insufficiency of insurance proceeds shall not be applicable.

ARTICLE 13

OBSOLESCENCE

13.1 Adoption of Plan. Subject to the provisions of Section 14 hereof, Owners holding eighty percent (80%) or more of the Total Votes of the Association may agree that the Project is obsolete and adopt a written plan for the renewal and reconstruction of the Project. Written notice of adoption of such a plan shall be given to all Owners and First Mortgagees.

13.2 Payment for Renewal and Reconstruction. The Association shall levy a Special Assessment sufficient to provide funds to pay the estimated expenses of renewal or reconstruction. Such Special Assessment shall be allocated and collected as provided in Section 9.3 hereof, except that the vote therein specified shall be unnecessary. Further levies may be made in like manner if the amounts collected prove insufficient to pay the actual expenses of such renewal or reconstruction. In the event amounts collected pursuant hereto are in excess of the amounts required for renewal or reconstruction, such excess shall be distributed to the Owners in proportion to their respective percentages of ownership of the Common Elements.

13.3 Sale of Project. Subject to the provisions of Section 14 hereof, the Owners may at any time, by an affirmative vote of at least ninety-five percent (95%) of the Total Votes of the Association, at a special meeting of the members of the Association duly called for such purpose, elect to sell or otherwise dispose of the Project. In such event, the Board of Directors shall forthwith record in the office of the County Recorder of Maricopa County, State of Arizona, a notice setting forth such facts, and upon the recording of such notice by the Board of Directors, the Project shall be sold or otherwise disposed of by the Board of Directors, as attorney in fact for all of the Owners. Such action shall be binding upon all Owners and each Owner shall have the duty to execute and deliver such instruments and to perform all acts in such manner and form as may be necessary or appropriate to effect such sale or other disposition of the Project. The proceeds of such sale or disposition shall be apportioned among the Owners in proportion to their respective undivided interests in the Common Elements, and such apportioned proceeds shall be

paid into separate accounts, each such account representing one Condominium. Each such account shall remain in the name of the Association and shall be further identified by the Condominium designation and the name of the Owner. The Board of Directors, as attorney in fact, shall use and disburse the total amount of each such account, without contribution from one account to another, first to the payment of valid tax and special assessment liens on the Condominium in favor of any governmental assessing authority, second to the payment of any First Mortgagee holding a first mortgage lien on the Condominium, third to the payment of assessments made pursuant to this Declaration, fourth to the payment of other holders of liens or encumbrances on the Condominium in the order of priority of their liens and the balance remaining, if any, to the respective Owners.

13.4 Amendment of Article. This Article 13 shall not be amended unless the Owners of ninety-five percent (95%) of the Condominiums in the Project and at least sixty-seven percent (67%) of First Mortgagees, based on one vote for each First Mortgage, consent and agree to such amendment by duly executed and recorded instruments.

ARTICLE 14

MORTGAGE PROTECTION

14.1 Notice of Action. Upon written request made to the Association by a First Mortgagee, which written request shall identify the name and address of such First Mortgagee and the Unit number or address of the Unit, any such First Mortgagee shall be entitled to timely written notice of:

14.1.1 Any condemnation loss or any casualty loss which affects a material portion of the Project or any Condominium on which there is a first mortgage held, by such First Mortgagee;

14.1.2 Any default in the performance by the Owner of a Condominium which is held or is subject to a First Mortgage held by such First Mortgagee, of any obligation under this Declaration, including, without limitation, any delinquency in the payment of assessments or charges owed by such Owner, which default remains uncured for a period of sixty (60) days;

14.1.3 Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and

14.1.4 Any proposed action which would require the consent of a specified percentage of Eligible First Mortgagees as specified in Section 14.2 below.

14.2 Matters Requiring Prior Eligible First Mortgagee Approval. Except as provided under the Act in case of condemnation or substantial loss to the Units and/or Common Elements, the prior written consent of Owners entitled to vote at least sixty-seven percent (67%) of the Total Votes in the Association (unless pursuant to a specific provision of this Declaration

the consent of Owners entitled to vote a greater percentage of the Total Votes in the Association is required, in which case such specific provisions shall control), Eligible First Mortgagees holding First Mortgages on Condominiums having at least fifty-one percent (51%) of the votes of the Condominiums subject to First Mortgages held by Eligible First Mortgagees shall be required to:

14.2.1 Abandon or terminate the legal status of the Project (whether by act or omission);

14.2.2 Sell or otherwise dispose of the Project pursuant to Section 13.3 of this Declaration;

14.2.3 Establish self-management of the Project by the Association when professional management has been previously required by any First Mortgagee;

14.2.4 Add or amend any material provision of the Declaration, Articles, Bylaws or Plat, which establishes, provides for, governs or regulates any of the following (an addition or amendment to such documents shall not be considered material if it is for the purpose of correcting technical errors or for clarification only):

- (a) Voting;
- (b) Assessments, assessment liens or subordination of such liens;
- (c) Reserves for maintenance, repair and replacement of the Common Elements;
- (d) Fidelity Bonds or Insurance;
- (e) Rights to use of Common Elements;
- (f) Responsibility for maintenance and repair of the several portions of the Project;
- (g) Boundaries of any Unit;
- (h) The undivided ownership interests in the Common or Limited Common Elements;
- (i) Imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer or otherwise convey his or her Condominium; and
- (j) Any provisions which are for the express benefit of First Mortgagees.

14.2.5 Change the pro rata interest or obligations of any individual Condominium for the purpose of:

14.2.6 Levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards; or

14.2.7 Determining the pro rata ownership interest of each Condominium in the Common Elements.

14.2.8 Partition or subdivide any Condominium;

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

14.2.10 Use hazard insurance proceeds for losses to any portion of the Project (whether to Units or Common Elements) for other than the repair, replacement or reconstruction of the Project.

In addition, the prior written approval of Eligible First Mortgagees holding First Mortgages on Condominiums having at least fifty-one percent (51%) of the votes of Condominiums subject to First Mortgages held by Eligible First Mortgagees, shall be required to (i) effect any restoration or repair of the Project, after a partial condemnation or damage due to an insurable hazard, which will not be substantially in accordance with the Declaration and the original architectural plans and specifications of the Project, (ii) expand or contract the Project or add to or withdraw any property from the Project or (iii) convert any of the Units in the Project into Common Elements or Common Elements into Units. Any Eligible First Mortgagee who receives a written request from the Association to approve additions or amendments to the constituent documents and who fails to deliver or post to the Association a negative response within thirty (30) days shall be deemed to have approved such request.

14.3 Prior Liens Relate Only to Individual Condominiums. All taxes, assessments and charges which may become liens prior to the first mortgage under local law shall relate only to the individual Condominiums and not to the Project as a whole.

14.4 Subordination of Common Expense Lien. To the extent permitted by the Act, any lien which the Association may have on any Condominium in the Project for the payment of common expense assessments attributable to such Condominium and any fees, late charges, taxes or interest levied by the Association in connection therewith shall be subordinate to the lien or equivalent security interest of any First Mortgage on the Condominium recorded prior to the date on which any such common expense assessments became due.

14.5 Information Made Available to Owners and First Mortgagees. Any Owner or First Mortgagee shall, upon two (2) business days notice and request, be entitled to inspect current copies of the Declaration, Bylaws, other rules and regulations concerning the Project and the books, records and financial statements of the Association during normal business hours or under other reasonable circumstances.

14.6 Additional Information Made Available to First Mortgagees. In addition to the rights granted in Section 14.5, any First Mortgagee shall, upon request, be entitled to written notice of all meetings of the Association and be permitted to designate a representative to attend all such meetings.

14.7 Priority of First Mortgagee in Event of Damage. In the event of substantial damage to or destruction of any Unit or any part of the Common Elements, no provision of the Declaration, Articles or Bylaws or any amendment thereto shall entitle the owner of a Unit or other party to priority over any First Mortgagee with respect to the distribution to such Owner of any insurance proceeds.

14.8 Priority of First Mortgagee in Event of Condemnation. If any Unit or portion thereof or the Common Elements or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, no provision of the Declaration, Articles or Bylaws or any amendment thereto shall entitle the Owner of a Unit, or any other party, to priority over any First Mortgagee with respect to the distribution to such Unit of the proceeds of any award or settlement.

14.9 First Mortgagee Rights in Event of Foreclosure. To the extent permitted by the Act, each First Mortgagee who obtains title to a Unit pursuant to the remedies provided in the Mortgage, or by deed or assignment in lieu of foreclosure, or any purchaser at a foreclosure sale, shall take the Unit free of any claims for unpaid assessments and charges against the Unit which accrue prior to the acquisition of title to such Unit by the First Mortgagee or purchaser at foreclosure sale.

14.10 No Right of First Refusal. No "right of first refusal" shall be included or added by amendment to the Declaration, Articles or Bylaws.

14.11 Audited Financial Statement. A First Mortgagee may have an audited financial statement of the Association prepared at its own expense. A copy of the audited financial statement shall be delivered to the Association upon receipt by the First Mortgagee.

ARTICLE 15

COMPLIANCE WITH DECLARATION AND BYLAWS

15.1 Compliance. Each Owner shall comply strictly with the provisions of this Declaration, the Articles of Incorporation and Bylaws of the Association, rules and regulations promulgated by the Association and the decisions and resolutions of the Association adopted pursuant thereto, as the same may lawfully be modified and amended from time to time. Failure to comply with any of the same shall be grounds for an action to recover sums due for damages or for injunctive relief or for both, maintainable by the Association or, in a proper case, by an aggrieved Owner.

15.2 Enforcement and Remedies. The obligations, provisions, covenants, restrictions and conditions contained in this Declaration, or in any Supplemental or Amended Declaration, with respect to the Association or Condominiums within the Project shall be enforceable by the Declarant or by any Owner of a Condominium within the Project, subject to this Declaration, by a proceeding for a prohibitive or mandatory injunction or by a suit or action to recover damages or to recover any amount due or unpaid. The obligations, provisions, covenants, restrictions and conditions contained in this Declaration, or in any Supplemental or Amended Declaration, with respect to a person or entity or property of a person or entity other than the Association shall be enforceable by the Declarant or by the Association or, in a proper case, by an aggrieved Owner by a proceeding for a prohibitive or mandatory injunction or by a suit or action to recover damages or to recover any amount due or unpaid. No summary abatement or similar procedure may be utilized through nonjudicial means to alter or demolish items of construction.

ARTICLE 16

AMENDMENTS

16.1 Approval of Owners. Except in cases of amendments that may be executed by a Declarant in the exercise of its Development Rights under this Declaration or under Section 33-1220 of the Act, by the Association under Section 33-1206 or 33-1216(D) of the Act, or by certain Owners under Section 33-1218(B), Section 33-1222, Section 33-1223(B) of the Act, and except to the extent permitted or required by other provisions of the Act, the Declaration, including the Plat, may be amended only by a vote of the Owners to which at least sixty-seven percent (67%) of the votes in the Association are allocated.

16.2 Amendments Requiring Unanimous Consent. Except to the extent expressly permitted or required by the Act, the 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.

16.3 Amendments Requiring Declarant Approval. 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.

16.4 Amendment by Declarant. During the period of Declarant control, the Declarant shall have the right to amend the Declaration, including the Plat, to (i) comply with the Act or any other applicable law if the amendment does not adversely affect the rights of the Unit Owners or (ii) correct any error or inconsistency in the Declaration if the amendment does not adversely affect the rights of any Unit Owner.

16.5 Recordation of Amendment. Any amendment adopted by the Owners pursuant to Subsection 16.1 or 16.2 above shall be signed by the President or Vice President of the Association and shall be recorded with the County Recorder of Maricopa County. Any such

amendment shall certify that the amendment has been approved as required by this Article 16. Any amendment by the Declarant pursuant to Subsection 16.4 of this Section or the Condominium Act shall be executed by the Declarant and shall be recorded with the County Recorder of Maricopa County.

ARTICLE 17

GENERAL PROVISIONS

17.1 Intent and Purpose. The provisions of this Declaration, and any Supplemental or Amended Declaration, shall be liberally construed to effectuate the purpose of creating a uniform plan for the development and operation of a Condominium Project. Failure to enforce any provision, restriction, covenant or condition contained in this Declaration, or in any Supplemental or Amended Declaration, shall not operate as a waiver of any such provision, restriction, covenant or condition or of any other provisions, restrictions, covenants or conditions.

17.2 Construction. The provisions of this Declaration shall be in addition and supplemental to the provisions of the Act and all other provisions of law. Whenever used herein, unless the context shall otherwise require, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof and any gender shall include both genders. The article and section headings set forth herein are for convenience and reference only and are not intended to expand, limit or otherwise affect the meaning or interpretation of this Declaration or any provision hereof. The provisions hereof shall be deemed independent and several, and the invalidity or partial invalidity or unenforceability of any one provision or portion thereof shall not affect the validity or enforceability of any other provision hereof.

17.3 Notices and Registration of Mailing Address. Each Owner shall register from time to time with the Association his current mailing address. All notices, demands and other communications to any Owner as provided for in this Declaration shall be in writing and shall be sufficient for all purposes if personally served or if sent by first-class U.S. mail, postage prepaid, addressed to the Owner at his registered mailing address or, if no address has been registered, to the Unit of such Owner. All notices, demands and other communications to the Association as provided for in this Declaration shall be in writing and shall be sufficient for all purposes if personally served or if sent by first-class U.S. mail, postage prepaid, addressed to the Association. Any notice, demand or communication referred to in this Declaration shall be deemed to have been given and received when personally served or when deposited in the U.S. mail, postage prepaid, and in the form provided for in this section, as the case may be.

17.4 Audit. Any Owner may at any reasonable time, upon appointment and at his own expense, cause an audit or inspection to be made of the books and records maintained by the Association. The Association, at the expense of the Common Expense Fund, shall obtain an audit, by certified public accountants, of all books and records, pertaining to the Project at no greater than annual intervals, and copies thereof shall be furnished to the Owners.

17.5 Duration. 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.

17.6 Effective Date. This Declaration shall take effect upon recording.

17.7 Agent for Service. The name and address of the person to receive service of process in all cases provided by the Act shall be the registered agent and address of the Association as shown on the official corporate records maintained in the office of the Secretary of State of the State of Arizona. On the date of this Declaration, the registered agent of the Association is John M. Wanca, 7200 West Bell Road, Bldg. F, Suite 101, Glendale, Arizona 85308.

17.8 Limitation on Association's Liability. The Association shall not be liable for any failure of water service or other utility service (if any) to be obtained and paid for by the Association hereunder, or for injury or damage to any person in or upon the Project, or resulting from electricity, water, rain, snow or ice which may leak or flow from outside or from any parts of the Building or its drains, pipes, conduits, appliances or equipment, or from any other place, unless caused by the grossly negligent or willful misconduct of the Association. No diminution or abatement of any assessments under this Declaration shall be claimed or allowed for inconvenience or discomfort arising from the making of any repairs or improvements to or maintaining the Project or any part thereof, or from any action taken to comply with the provisions of this Declaration or with the laws, ordinances, regulations, rules or order of any governmental authority.

17.9 Owner's Obligations. All obligations of an Owner, under and by virtue of the provisions contained in this Declaration shall continue, notwithstanding that he may be leasing, renting or selling under contract his Condominium. The Owner of a Condominium within the Project shall have no obligation for expenses or other obligations accruing after he conveys such Condominium.

17.10 Model Units, Sales Offices and Advertising Signs. Declarant and Declarant's duly authorized agents, representatives and employees shall have the right to establish and maintain model units and sales offices in Units and within the Project and the right to use such model units and sales offices during the period that Condominiums in the Project remain unsold. Declarant reserves the right to relocate the same from time to time within the Project. Declarant further reserves the right to maintain advertising signs on the Project and to place the same in any location and to relocate, replace and remove the same at the sole discretion of Declarant during the period that Units in the Project remain unsold. A Unit remains unsold until such time as the sale of such Unit has closed by recording the deed to such Unit in the Recorder's office of Maricopa County.

17.11 Construction Defect Dispute Notification and Resolution Procedure. All actions or claims (i) by the Association against the Declarant, (ii) by any Owner(s) against the

Declarant, or (iii) by both the Association and any Owner(s) against the Declarant, relating to or arising out of the Condominium, including but not limited to, the Declaration, the use or condition of the Condominium or the design or construction of or any condition on or affecting the Condominium, including, but not limited to, construction defects, surveys, soils conditions, grading, specifications, installation of Improvements (including, but not limited to, Units) or disputes which allege negligence or other tortious conduct, fraud, misrepresentation, breach of contract or breach of implied or express warranties as to the condition of the Condominium or any Improvements (collectively, "Dispute(s)") shall be subject to the provisions of this Section 17.11. Declarant and each Unit Owner acknowledge that the provisions set forth in this Section 17.11 shall be binding upon current and future Owners of the Condominium and upon the Association, whether acting for itself or on behalf of any Owner(s). Nothing in this Declaration is intended to limit, expand or otherwise modify the terms of any limited warranty provided by Declarant to Owners pursuant to a purchase agreement.

17.11.1 Notice. Any Person (including the Association) with a Dispute claim shall notify the Declarant in writing of the claim, which writing shall describe the nature of the claim and any proposed remedy (the "Claim Notice").

17.11.2 Right to Inspect and Right to Corrective Action. Within a reasonable period after receipt of the Claim Notice, which period shall not exceed sixty (60) days, Declarant and the claimant shall meet at a mutually acceptable place within the Condominium to discuss the claim. At such meeting or at such other mutually agreeable time, Declarant and the Declarant's representatives shall have full access to the property that is the subject of the claim and shall have the right to conduct inspections, testing and/or destructive or invasive testing in a manner deemed appropriate by Declarant (provided Declarant shall repair or replace any property damaged or destroyed during such inspection or testing), which rights shall continue until such time as the Dispute is resolved as provided in this Subsection 17.11.2. The parties shall negotiate in good faith in an attempt to resolve the claim. If the Declarant elects to take any corrective action, Declarant and Declarant's representatives and agents shall be provided full access to the Condominium and the property which is the subject of the claim to take and complete corrective action.

17.11.3 No Additional Obligations; Irrevocability and Waiver of Right. Nothing set forth in Subsection 17.11.2 shall be construed to impose any obligation on Declarant to inspect, test, repair or replace any item of the Condominium for which Declarant is not otherwise obligated under applicable law or any limited warranty provided by Declarant to a Unit Owner in connection with the sale of the Condominium and/or the Improvements constructed thereon. 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 the Official Records of Maricopa County, Arizona.

17.11.4 Mediation. If the parties to the Dispute cannot resolve the claim pursuant to the procedures described in Subsection 17.11.2 above, the matter shall be submitted to mediation pursuant to the mediation procedures adopted by the American Arbitration Association (except as such procedures are modified by the provisions of this

Subsection 17.11.4) or any successor thereto or to any other entity offering mediation services that is acceptable to the parties. No person shall serve as a mediator in any dispute in which the person has any financial or personal interest in the result of the mediation, except by the written consent of all parties. Prior to accepting any appointment, the prospective mediator shall disclose any circumstances likely to create a presumption of bias or to prevent a prompt commencement of the mediation process. No litigation or other action shall be commenced against Declarant or any Declarant Party without complying with the procedures described in this Subsection 17.11.4.

(i) Position Memoranda; Pre-Mediation Conference. Within ten (10) days of the selection of the mediator, each party shall submit a brief memorandum setting forth its position with regard to the issues that need to be resolved. The mediator shall have the right to schedule a pre-mediation conference and all parties shall attend unless otherwise agreed. The mediation shall be commenced within ten (10) days following the submittal of the memoranda and shall be concluded within fifteen (15) days from the commencement of the mediation unless the parties mutually agree to extend the mediation period. The mediation shall be held in the county in which the Condominium is located or such other place as is mutually acceptable by the parties.

(ii) Conduct of Mediation. The mediator has discretion to conduct the mediation in the manner in which the mediator believes is most appropriate for reaching a settlement of the Dispute. The mediator is authorized to conduct joint and separate meetings with the parties and to make oral and written recommendations for settlement. Whenever necessary, the mediator may also obtain expert advice concerning technical aspects of the Dispute, provided the parties agree and assume the expenses of obtaining such advice. The mediator does not have the authority to impose a settlement on the parties.

(iii) Exclusion Agreement. Any admissions, offers of compromise or settlement negotiations or communications at the mediation shall be excluded in any subsequent dispute resolution forum.

(iv) Parties Permitted at Sessions. Persons other than the parties, the representatives and the mediator may attend mediation sessions only with the permission of both parties and the consent of the mediator. Notwithstanding the foregoing, applicable subcontractors and material suppliers designated by Declarant may attend mediation sessions and may be made parties to the mediation. Confidential information disclosed to a mediator by the parties or by witnesses in the course of the mediation shall be confidential. There shall be no stenographic record of the mediation process.

(v) Expenses. The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the mediation, including, but not limited to, the fees and costs charged by the mediator and the expenses of any witnesses or the cost of any proof or expert advice produced at the direct request of the mediator, shall be borne equally by the parties unless they agree otherwise. Each party to the mediation shall bear its own attorneys' fees and costs in connection with such mediation.

17.11.5 Arbitration. Should mediation pursuant to Subsection 17.11.4 above not be successful in resolving any Dispute, such claim or dispute shall be resolved by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association as modified or as otherwise provided in this Subsection 17.11.5. The parties shall cooperate in good faith to attempt to cause all necessary and appropriate parties to be included in the arbitration proceeding. Subcontractors, material suppliers and other parties whose participation is reasonably necessary to afford complete relief in arbitration or who are involved in common questions of law or fact shall be included as parties in the arbitration. Subject to the limitations imposed in this Subsection 17.11.5, the arbitrator shall have the authority to try all issues, whether of fact or law.

(i) Place. The proceedings shall be heard in the county in which the Condominium is located.

(ii) Arbitration. A single arbitrator shall be selected in accordance with the rules of the American Arbitration Association from panels maintained by the Association with experience in relevant real estate matters or construction. The arbitrator shall not have any relationship to the parties or interest in the Condominium. The parties to the Dispute shall meet to select the arbitrator within ten (10) days after service of the demand for arbitration on all respondents named therein.

(iii) Commencement and Timing of Proceeding. The arbitrator shall promptly commence the proceeding at the earliest convenient date in light of all of the facts and circumstances and shall conduct the proceeding without undue delay.

(iv) Pre-hearing Conferences. The arbitrator may require one or more pre-hearing conferences.

(v) Discovery. The parties shall be entitled only to limited discovery, consisting of the exchange between the parties of only the following matters: (i) witness lists; (ii) expert witness designations; (iii) expert witness reports; (iv) exhibits; (v) reports of testing or inspections of the property subject to the Dispute, including but not limited to, destructive or invasive testing; and (vi) hearing briefs. The parties shall also be entitled to conduct further tests and inspections as provided in Subsection 17.11.2 above. Any other discovery shall be permitted by the arbitrator upon a showing of good cause or based on the mutual agreement of the parties. The arbitrator shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge.

(vi) Motions. The arbitrator shall have the power to hear and dispose of motions, including motions to dismiss, motions for judgment on the pleadings and summary judgment motions, in the same manner as a trial court judge, except the arbitrator shall also have the power to adjudicate summarily issues of fact or law including the availability of remedies, whether or not the issue adjudicated could dispose of an entire cause of action or defense.

(vii) Arbitration Award. The arbitrator's award may be enforced as provided for in the Uniform Arbitration Act, A.R.S. §12-1501, *et seq.*, or such similar law

governing enforcement of awards in a trial court as is applicable in the jurisdiction in which the arbitration is held.

17.11.6 WAIVERS.

NOTICE: 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, AGREES TO HAVE ANY DISPUTE RESOLVED ACCORDING TO THE PROVISIONS OF THIS SECTION 17.11 AND WAIVES THE RIGHT TO PURSUE ANY DISPUTE IN ANY MANNER OTHER THAN AS PROVIDED IN THIS SECTION 17.11. THE ASSOCIATION, EACH UNIT OWNER AND DECLARANT ACKNOWLEDGE THAT BY AGREEING TO RESOLVE ALL DISPUTES AS PROVIDED IN THIS SECTION 17.11, THEY ARE GIVING UP THEIR RESPECTIVE RIGHTS TO HAVE SUCH DISPUTES 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 DISPUTE. BY ACCEPTANCE OF A DEED OR BY ACQUIRING ANY OWNERSHIP INTEREST IN ANY PORTION OF THE CONDOMINIUM, EACH UNIT OWNER HAS VOLUNTARILY ACKNOWLEDGED 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 DISPUTE.

17.11.7 Statutes of Limitation. Nothing in this Section 17.11 shall be considered to toll, stay, reduce or extend any applicable statute of limitations.

17.11.8 Required Consent of Declarant to Modify. Neither this Section 17.11 nor Section 12.20 below may be amended except in accordance with Article 16 of this Declaration and with the express written consent of the Declarant.

17.12 Required Consent of Unit Owners for Legal Action. Any action or claim instituted by the Association (which action or claim shall be subject to the terms of Section 17.11) against the Declarant, relating to or arising out of the Condominium, including the Declaration, the use or condition of the Condominium or the design or construction of or any condition on or affecting the Condominium, including, but not limited to, construction defects,

surveys, soils conditions, grading, specifications, installation of Improvements (including, but not limited to, Units) or disputes which allege negligence or other tortious conduct, fraud, misrepresentation, breach of contract or breach of implied or express warranties as to the condition of the Condominium or any Improvements, shall have first been approved by Owners representing seventy-five percent (75%) of the votes in the Association who are voting in person or by proxy at a meeting duly called for such purpose.

17.12.1 Notice of Owners.

(i) Prior to obtaining the consent of the Owners in accordance with Section 17.12, the Association must provide written notice to all Owners which notice shall (at a minimum) include (1) a description of the nature of any action or claim (the "Claim"), (2) a description of the attempts of Declarant to correct such Claim and the opportunities provided to Declarant to correct such Claim, (3) a certification from an engineer licensed in the State of Arizona that such Claim is valid along with a description of the scope of work necessary to cure such Claim and a resume of such engineer, (4) the estimated cost to repair such Claim, (5) the name and professional background of the attorney proposed to be retained by the Association to pursue the Claim against Declarant and a description of the relationship between such attorney and member(s) of the Board of Directors (if any), (6) a description of the fee arrangement between such attorney and the Association, (7) 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, (8) the estimated time necessary to conclude the action against Declarant, and (9) an affirmative statement from the Board of Directors that the action is in the best interest of the Association and its Members.

(ii) In the event the Association recovers any funds from Declarant (or any other person or entity) to repair a Claim, any excess funds remaining after repair of such Claim shall be paid into the Association's reserve fund.

17.12.2 Notification to Prospective Purchasers. In the event that the Association commences any action or claim, all Owners must notify prospective purchasers of such action or claim and must provide such prospective purchasers with a copy of the notice received from the Association in accordance with Subsection 17.12.1.

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

DECLARANT:

BROOKSIDE BELL PROFESSIONAL PARK, L.L.C., an Arizona limited liability company

By: [Signature]

Its: Member

STATE OF ARIZONA)
) ss.
County of Maricopa)

On this, the 19th day of August, 2003, before me, the undersigned Notary Public, personally appeared John Wilke, who acknowledged himself to be the _____ of Brookside Bell Prof. Park LLC, an Arizona limited liability company, and that he, as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained.

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

[Signature]
Notary Public

My Commission Expires:

Feb. 26, 2007

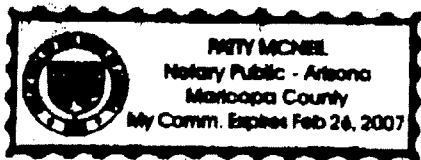


EXHIBIT "A"

LEGAL DESCRIPTION

A portion of the Southwest quarter of Section 32, Township 4 North, Range 1 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, being more particularly described as follows:

COMMENCING at the brass cap in handhole at the intersection of Reems Road and Bell Road marking the Southwest corner of said Section 32, from which the brass cap in handhole marking the South quarter corner of said Section 32 bears South 89 degrees 01 minute 12 seconds East 2636.90 feet, said line being the South line of the Southwest quarter of said Section 32, and the basis of bearing for this description;

THENCE South 89 degrees 01 minute 12 seconds East along said South line 1359.56 feet;

THENCE North 01 degree 05 minutes 19 seconds East 217.66 feet to the beginning of a non-tangent curve concave westerly, the center of which bears North 89 degrees 00 minutes 37 seconds West 985.00 feet;

THENCE Northwesterly along the arc of said curve through a central angle of 7 degrees 18 minutes 38 seconds an arc distance of 125.68 feet to the North line of the South 343.00 feet of said Southwest quarter and the POINT OF BEGINNING;

THENCE continuing Northwesterly along the arc of said curve through a central angle of 16 degrees 46 minutes 35 seconds an arc distance of 288.41 feet;

THENCE North 19 degrees 50 minutes 06 seconds East 30.25 feet;

THENCE North 63 degrees 45 minutes 14 seconds east 130.41 feet to the beginning of a non-tangent curve concave Southeasterly the center of which bears South 26 degrees 14 minutes 48 seconds East 1117.00 feet;

THENCE Northeasterly along the arc of said curve through a central angle of 15 degrees 55 minutes 20 seconds an arc distance of 310.41 feet;

THENCE South 00 degrees 00 minutes 03 seconds West 146.26 feet;

THENCE South 89 degrees 59 minutes 23 seconds East 60.00 feet;

THENCE South 00 degrees 58 minutes 48 seconds West 321.82 feet to the North line of the South 343.00 feet of said Southwest quarter;

THENCE North 89 degrees 01 minute 12 seconds West along said North line 402.59 feet to the POINT OF BEGINNING.

Comprising 172,924 square feet or 3.9698 acres more or less, subject to all easements of record.

EXHIBIT "B"

Attached to and forming a part of the Declaration of Condominium of the Brookside Bell Professional Park Condominiums

EXHIBIT "C"

Attached to and forming a part of the Declaration of Condominium of the Brookside Bell Professional Park Condominiums

UNITS, UNDIVIDED OWNERSHIP INTERESTS AND VOTES

<u>UNIT</u>	<u>UNDIVIDED OWNERSHIP INTERESTS (FRACTION)*</u>	<u>VOTES</u>
		1 each

* All Units in the Project have been allocated equal Undivided Ownership Interests as shown above.