



OFFICIAL RECORDS OF  
 MARICOPA COUNTY RECORDER  
 HELEN PURCELL  
 2004-0317797 03/29/04 11:20  
 1 OF 2

MARTINEZ

When Recorded Return to:  
 O'Neill Engineering, Inc.  
 2001 West Camelback Road  
 Suite 200  
 Phoenix, AZ 85015

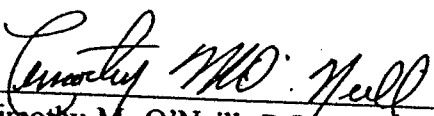
**AFFIDAVIT OF CORRECTION**

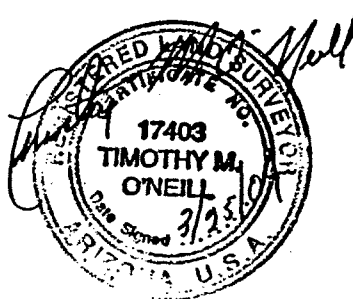
I, Timothy M. O'Neill, R.L.S., a Registered Land Surveyor in the State of Arizona who prepared the Condominium Plat for "Gateway Office Condos" as recorded in Book 671 of Maps, Page 19, Records Maricopa County, Arizona, state that the following corrections are required for said plat.

1. Suite numbers are to be renumbered in accordance with Exhibit A attached.
2. The L-30 and L-31 dimension for Building B - Suite #4 is revised to be 5.33 feet and the building area for Suite B #4 is 1,047 sq. ft.

I further certify that these are the only corrections associated with said map, to the best of my knowledge.

O'NEILL ENGINEERING, INC.

  
 Timothy M. O'Neill, R.L.S. #17403



Date: March 25, 2004

ACKNOWLEDGEMENTS


State of Arizona )  
 )ss  
County of Maricopa )

On this 25<sup>th</sup> day of MARCH, 2004, before me the undersigned personally appeared Timothy M. O'Neill, who hereby executed the foregoing instrument for the purposes therein contained by signing the name of Registered Land Surveyor, and acknowledged that he, executed the foregoing instrument for the purpose therein contained.

In witness whereof, I hereunto set my hand and official seal.

Notary Public Christie R. Uerkvitz

My Commission Expires: 8-31-06

 Notary Public State of Arizona  
Maricopa County  
Christie R. Uerkvitz  
Expires August 31 2006

GATEWAY OFFICE CONDOS  
AFFIDAVIT OF CORRECTION

EXHIBIT A

Recorded Suite #	Amended Suite #	Recorded Suite #	Amended Suite #
A-1	A-1001	H-1	H-8025
A-2	A-1002	H-2	H-8026
A-3	A-1003	H-3	H-8027
A-4	A-1004	H-4	H-8028
B-1	B-2005	I-1	I-9029
B-2	B-2006	I-2	I-9030
B-3	B-2007	I-3	I-9031
B-4	B-2008	I-4	I-9032
C-1	C-3009	J-1	J-1033
C-2	C-3010	J-2	J-1034
D-1	D-4011	K-1	K-1135
D-2	D-4012	<u>K-2</u>	<u>K-1136</u>
E-1	E-5013	L-1	L-1237
E-2	E-5014	L-2	L-1238
E-3	E-5015	L-3	L-1239
E-4	E-5016	L-4	L-1240
F-1	F-6017	M-1	M-1341
F-2	F-6018	M-2	M-1342
F-3	F-6019	M-3	M-1343
F-4	F-6020	N-1	N-1444
G-1	G-7021	N-2	N-1445
G-2	G-7022	N-3	N-1446
G-3	G-7023	N-4	N-1447
G-4	G-7024		



OFFICIAL RECORDS OF  
MARICOPA COUNTY RECORDER  
HELEN PURCELL  
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2 OF 2

MARTINEZ

**WHEN RECORDED, MAIL TO:**

**MATTHEW R. BERENS, ESQ.  
BERENS, KOZUB, LORD & KLOBERDANZ, PLC  
7047 East Greenway Parkway, Suite 140  
Scottsdale, Arizona 85254**

***DECLARATION OF OFFICE CONDOMINIUM AND OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
GATEWAY OFFICE CONDOS***

***MARICOPA COUNTY, ARIZONA***

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**DECLARATION OF OFFICE CONDOMINIUM AND OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
GATEWAY OFFICE CONDOS**

THIS DECLARATION OF OFFICE CONDOMINIUM AND OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR GATEWAY OFFICE CONDOS, is made this \_\_\_ day of March, 2004, by GREENFIELD, LLC, an Arizona limited liability company.

WHEREAS, Declarant owns that certain parcel of real property situated in Maricopa County, Arizona, more particularly described in Exhibit A, attached hereto (the "Parcel"); and

WHEREAS, Declarant, as the Owner of over seventy-five (75%) of the Lots, now records this Declaration, hereby revoking the Declaration of Office Condominium and of Covenants and Restrictions for Gateway Office Park, a condominium, recorded on February 23, 2004, at Document No. 2004-0174725, records of Maricopa County, Arizona, which was recorded erroneously.

NOW THEREFORE, the Declarant hereby amends and restates the Declaration as follows:

**ARTICLE I  
DEFINITIONS**

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

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

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

(B) "**Assessments**" means individually or collectively, as the context may require, the Common Expense Assessments, Special Assessments and Enforcement Assessments levied and assessed pursuant to Article 7 of this Declaration.

(C) "Assessment Lien" means the lien granted to the Association by §33-1256 of the Condominium Act to secure the payment of Assessments, monetary penalties and other charges owed to the Association by a Unit Owner.

(D) "Association/Name" means "The Gateway Office Park Owners Association," the Arizona nonprofit corporation organized or to be organized by Declarant to administer and enforce the Condominium Documents and to exercise the rights, powers and duties set forth therein, and its successors and assigns.

(E) "Board of Directors" means the Board of Directors of the Association.

(F) "Building" means one of the fourteen buildings located on the Parcel and designated as a building on the Plat, which buildings will be located at the northwest corner of McDowell Road and 103rd Avenue, Avondale, Arizona.

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

(H) "Collection Costs" means all costs, fees, charges and expenditures (including, without limitation, attorneys' fees, court costs, filing fees, lien fees, and Recording fees) incurred by the Association in collecting and/or enforcing payment of Assessments, monetary penalties, late charges, interest or other amounts payable to the Association pursuant to this Declaration, without regard to whether a law suit is filed or legal action otherwise undertaken by or on behalf of the Association.

(I) "Common Elements" means all portions of the Condominium other than the Units, including, without limitation, driveways, parking stalls, parking canopies, sidewalks, lighting and landscaping.

(J) "Common Expenses" means the actual or estimated costs or expenditures incurred or to be incurred by, or financial liabilities of, the Association, together with required allocations to reserves. Common Expenses include, without limitation, the following items: (a) the cost of maintenance, repair and replacement of the Common Elements; (b) the cost of maintenance of other areas of the Condominium which are the responsibility of the Association under this Declaration; (c) the cost of utilities, trash disposal, landscaping and other services to the Condominium except for those services separately metered or billed to the Unit Owners; (d) the cost of insurance and surety bonds maintained by the Association pursuant to this Declaration; (e) reserve amounts determined by the Board; and (f) payments for taxes, liens or encumbrances against the Common Elements, if any, except to the extent directly assessed or allocated to individual Units and their proportionate interest therein.

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

(L) **“Common Expense Liability”** means the liability for Common Expenses allocated to each Unit pursuant to Section 2.3 of this Declaration.

(M) **“Condominium”** means the real property located in Maricopa County, Arizona, which is described in **Exhibit A** attached to this Declaration and on the Plat, together with all Buildings and other Improvements located thereon and all easements, rights, and appurtenances belonging thereto. The name of the Condominium created by this Declaration is **“Gateway Office Condos.”**

(N) **“Condominium Documents”** means this Declaration, including the Plat, and the Articles, Bylaws, and any Rules.

(O) **“Declarant”** means GREENFIELD, LLC, an Arizona limited liability company, and any Person to whom it may transfer any Special Declarant Right by a Recorded instrument or who succeeds to any Special Declarant Rights pursuant to A.R.S. §33-1244 of the Condominium Act.

(P) **“Declaration”** means this Declaration of Office Condominium and of Covenants, Conditions and Restrictions for Gateway Office Condos, as it may be amended from time to time, together with the exhibits, and where appropriate by context, the Plat.

(Q) **“Development Rights”** means any right or combination of rights reserved by or granted to Declarant in this Declaration to do any of the following: (i) Create easements, Units, Common Elements or Limited Common Elements within the Condominium; (ii) subdivide Units; convert Units into Common Elements or convert Common Elements into Units; or (iii) amend the Condominium Documents during the Period of Declarant Control provided in Section 13.4(D) and Section 13.4(E) below.

(R) **“Enforcement Assessment”** means an Assessment levied pursuant to Section 7.4 of this Declaration.

(S) **“First Mortgage”** means any mortgage or deed of trust on a Unit with first priority over any other mortgage or deed of trust Recorded against title to that Unit.

(T) **“First Mortgagee”** means the holder of any First Mortgage.

(U) **“Improvement”** means any and all physical structures, fixtures or facilities existing or constructed, placed, erected or installed on the land included in the Condominium, including, but not limited to, Buildings, driveways, parking areas, paving, fences, walls, sculptures and signs, and all landscaping, including, but not limited to, hedges, plantings, trees and shrubs of every type and kind.

(V) **“Invitee”** means any person whose temporary or periodic presence within the Condominium, including any Unit, has been solicited, approved by or arranged for by a

particular Unit Owner or Lessee, including without limitation, his guests, employees, business invitees, contractors and agents.

(W) "Lessee" means any Person who is the tenant or lessee under a written lease (including subleases) of a Unit.

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

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

(Z) "Period of Declarant Control" means the time period commencing on the date this Declaration is Recorded in the Official Records of the Maricopa County, Arizona Recorder, and ending on the earlier of: (i) Ninety (90) days after the conveyance of seventy-five percent (75%) of the Units to Unit Owners other than Declarant; (ii) Four (4) years after Declarant has ceased to offer Units for sale in the ordinary course of business; or (iii) Ten (10) years after the date of Recording of this Declaration.

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

(BB) "Plat" means the office condominium plat for GATEWAY OFFICE CONDOS, Recorded in the Official Records of the County Recorder of Maricopa County, Arizona, on February 20, 2004, in Book 671 of Maps, page 19, and any amendments, supplements or corrections thereto.

(CC) "Purchaser" means any Person, other than Declarant, who by means of a voluntary transfer becomes a Unit Owner, excepting (i) a Person who purchases a Unit and then leases it to Declarant for use in connection with the sale of other Units, or (ii) a Person who, in addition to Purchasing a Unit, is assigned any Special Declarant Rights.

(DD) "Recording" means the act of placing an instrument of public record in the Office of the Maricopa County, Arizona Recorder and "Recorded" means having been so placed of public record.

(EE) "Rules" means any rules and regulations adopted by the Board of Directors, as they may be amended from time to time.

(FF) "Special Declarant Rights" means any right or combination of rights reserved by or granted to Declarant in this Declaration or by the Condominium Act to do any of the following: (i) Construct Improvements provided for in this Declaration or shown on the Plat;

(ii) exercise any Development Right; (iii) maintain sales or management offices and signs advertising the Condominium; (iv) use easements through the Common Elements for the purpose of making Improvements within the Condominium; (v) appoint or remove any officer of the Association or any member of the Board of Directors during the Period of Declarant Control; and (vi) exercise the rights reserved to Declarant pursuant to Section 3.3 of this Declaration.

(GG) "Unit" means that Building designated for separate ownership or occupancy, the boundaries of which are described in Section 2.1 and shown on the Plat.

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

## ARTICLE 2 SUBMISSION OF PROPERTY; BOUNDARIES AND ALLOCATIONS

**2.0 Submission of Property.** Declarant hereby submits the real property described on Exhibit A attached to this Declaration and on the Plat, together with all Improvements, easements, rights and appurtenances thereto, to a non-residential office Condominium in accordance with the provisions of the Condominium Act.

### **2.1 Unit Boundaries.**

(A) The physical boundaries of each Unit are the surfaces of the interior perimeter walls, demising walls (if applicable), floors, roof, doors and windows of the Unit. All other areas within the Condominium shall be Common Elements, or Limited Common Elements as set forth below.

(B) If any chute, flue, duct, wire, conduit, bearing wall, bearing column, heating or air conditioning unit or apparatus or other fixture lies partially within and partially outside the boundaries of a Unit, any portion serving only that Unit is a Limited Common Element allocated solely to that Unit and any portion serving more than one Unit or any portion

of the Common Elements is a part of the Common Elements. Each Unit is hereby allocated the following as a Limited Common Element allocated solely to that Unit or allocated (as indicated below) to fewer than all of the Units and for the exclusive of the Unit or Units so allocated. Any gas, electric or water meter which serves only one Unit is allocated as a Limited Common Element to the Unit it serves. Areas between the surface of interior only demising walls shall be Limited Common Elements of each adjacent Unit Owner and each shall have an easement to use such space for wiring and typical construction therein.

(C) Subject to the provisions of subsection (B) of this section, all spaces, interior partitions and other fixtures and improvements within the boundaries of a Unit are part of the Unit; provided, further that if a Unit Owner acquires part of an adjoining Unit he may remove partitions or create apertures pursuant to the provisions of A.R.S. §33-1221(3), even if the partition in whole or in part is a common element.

(D) Any shutters, awnings, window boxes, doorsteps, stoops, porches, entryways, and all other fixtures designed to serve a single Unit, but located outside of the Unit's physical boundaries, are Limited Common Elements allocated exclusively to that Unit. Entry walks designated for use by a Unit or Units in a Building, but less than all of the Units in the Condominium, and located outside of the physical boundaries of a Unit shall be Limited Common Elements allocated to the Unit or Units in the Buildings served by such entry walks.

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

(F) The physical boundaries of a Unit shall be considered to be the proper boundaries regardless of the settling, rising or lateral movement of the Buildings and regardless of any variances between the boundaries shown on the Plat and the actual physical boundaries.

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

**2.2 Allocation of Common Elements Interest.** The Common Elements shall be owned by the Association. In the event the Association shall cease to exist, the Common Elements shall, without further documentation, be owned by the Unit Owners as tenants in common in accordance with their respective Common Element Interest as set forth in the following sentence. In such event the undivided interests in the Common Elements of the Association shall be allocated in the following manner: Each Unit shall be entitled to a percentage of the Common Interest based on a fraction the numerator of which is the amount of square footage of that Unit as shown on the Plat and the denominator is the total square footage of all Units in the Condominium. In such event, the undivided Common Element Interest allocated to any Unit shall always be deemed conveyed or encumbered with any conveyance or encumbrance of that Unit, even though the legal description of the instrument conveying or encumbering the Unit may refer only to the fee title to the Unit.

**2.3 Allocation of Common Expense Liabilities.** The undivided interest in the Common Expense Liability of the Association shall be allocated in the following manner: Each Unit shall be liable for the percentage of the Common Expense Liability based on a fraction the numerator of which is the amount of square footage of that Unit as shown on the Plat and the denominator is the total square footage of all Units in the Condominium. The undivided allocation of the Common Expense Liability are further described on Exhibit B.

**2.4 Allocation of Votes in the Association.** The votes in the Association shall be one hundred (100). The votes shall be allocated equally among the Units in accordance with each Unit's percentage of undivided interests in the Common Elements. The votes allocated to each Unit are set forth on Exhibit B attached to this Declaration.

**2.5 Allocation of Limited Common Element Parking.** During the Period of Declarant Control, Declarant, and thereafter the Board of Directors, shall have the right, without a vote of the Members, to allocate as a Limited Common Element any portion of the Common Elements not previously allocated as a Limited Common Element by Declarant. Any such allocation shall be made by an amendment to this Declaration and an amendment to the Plat if required by the Condominium Act. Without limiting the foregoing, Declarant, while it owns any Unit, and thereafter, the Board, may allocate previously unallocated parking spaces comprising part of the Common Elements as a Limited Common Element of individual Units with or without charge of a one-time fee therefor as Declarant or the Board, as applicable, may elect in their respective sole discretion. Declarant may retain any such charges as part of the Unit purchase price in the sale of the Unit to a Purchaser, but in the event the Board is entitled to make any such allocations and is willing to do so at the request of a Unit Owner, the Board shall deposit any fee so charged to a Unit Owner to its general accounts for the benefit of its Members. Any allocation of parking spaces as a Limited Common Element may not be made so as to cause the Project to be without a sufficient number of unassigned/unallocated general Common Element handicapped parking spaces required by City of Avondale, Arizona Code or other applicable regulations.

### **ARTICLE 3 EASEMENTS AND DEVELOPMENT RIGHTS**

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

3.1 Easements for Ingress and Egress. Subject to Limited Common Element parking areas, there are hereby created easements for ingress and egress for pedestrian traffic over, through and across entries, passages, paths, walks, and lanes that from time to time may exist upon the Common Elements and for pedestrian and vehicular traffic over the driveways and parking areas on the Common Elements as from time to time may be paved and intended for such purposes. Such easements shall run in favor of and be for the benefit of the Unit Owners and their business invitees and any conveyance, encumbrance or mortgaging of the Common Elements shall be subject to such easements of ingress and egress.

3.2 Unit Owners' Easements of Enjoyment.

(A) Every Unit Owner, Lessee and their respective Invitees, shall have a right and easement of enjoyment in and to the Common Elements, except for the Limited Common Elements, which right and easement shall be appurtenant to and shall pass with the title to every Unit, subject to: (i) the right of the Association to adopt reasonable Rules governing the use of the Common Elements; (ii) the right of the Association to grant non-exclusive easements over all or a portion of the Common Elements if the Board of Directors determines that the granting of the easement is necessary for the development or maintenance of the Common Elements or beneficial to the Unit Owners, Lessees, or their respective Invitees; (iii) the right of the Association to convey the Common Elements or subject the Common Elements to a mortgage, deed of trust, or other security interest, in the manner and subject to the limitations set forth in the Condominium Act, with the vote or written assent of at least two-thirds (2/3) of the Unit Owners, and with the consent of Declarant during the Period of Declarant Control, and subject to the further provisions of Section 3.1 above; and (iv) all rights and easements set forth in this Declaration, including, but not limited to, the rights and easements granted to Declarant by Section 3.3 of this Declaration.

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

(C) The provisions of this section shall not apply to any of the Limited Common Elements that are allocated to one or more, but less than all, of the Units.

3.3 Declarant's Easements and Reserved Rights.

(A) While Declarant is selling or leasing Units in the Condominium, Declarant shall have the right and an easement to maintain one or more advertising signs and to place management, offices and sales, and leasing offices in any Units owned by Declarant or on the Common Elements as Declarant deems appropriate.

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

(C) Declarant shall have an easement through the Units for any access necessary to complete any renovations, warranty work or modifications to be performed by Declarant.

(D) Declarant shall have the right and an easement on, over, and through the Common Elements as may be reasonably necessary for the purpose of discharging its obligations and exercising Special Declarant Rights whether arising under the Condominium Act or reserved in this Declaration.

(E) Declarant shall have the right and an easement on, over and under those portions of the Common Elements not located within the Buildings for the purpose of maintaining and collecting drainage of surface, roof or storm water. The easement created by this subsection expressly includes the right to cut any trees, bushes, or shrubbery, to grade the soil or to take any other action reasonably necessary.

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

(G) In the event of any conflict or inconsistency between this Section 3.3 and any other provision of the Condominium Documents, this Section 3.3 shall control and prevail over such other provisions. The rights of Declarant set forth in this Section 3.3 shall be enforceable by injunction, by any other remedy available at law or in equity and/or by any other means provided in this Declaration.

**3.4 Easement for Support.** To the extent necessary, each Unit shall have an easement for structural support over every other Unit in the Buildings, the Common Elements and the Limited Common Elements, and each Unit and the Common Elements shall be subject to an easement for structural support in favor of every other Unit in the Buildings, the Common Elements and the Limited Common Elements.

**3.5 Easements in Favor of Association.** The Units (including interiors of Units unless otherwise indicated herein) and the Limited Common Elements are hereby made subject to the following easements in favor of the Association and its directors, officers, agents, employees and independent contractors:

(A) For inspection of the exterior of the Units and Limited Common Elements in order to verify the performance by Unit Owners of all items of maintenance and repair for which they are responsible.

(B) For inspection, maintenance, repair and replacement of the Common Elements or the Limited Common Elements situated in or accessible from the exterior of Units or Limited Common Elements.

(C) For the purpose of performing such pest control activities as the Association may deem necessary to control or prevent the infestation of the Condominium by insects, rodents or other pests or to eradicate insects, rodents or other pests from the Condominium.

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

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

(F) For inspection, at reasonable times and upon reasonable notice to the Unit Owner, of the Units and the Limited Common Elements to verify that the provisions of the Condominium Documents are being complied with by the Unit Owners, Lessees, and their respective Invitees.

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

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

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

(C) For driving and removing nails, screws, bolts and other attachment devices into the Unit side surface of the stone, block, brick or other masonry walls bounding the Unit and the Unit side surface of the studs which support the dry wall or plaster perimeter walls bounding

the Unit, to the extent such nails, screws, bolts and other attachment devices may encroach into a part of a Common Element adjacent to such Unit; provided that any such action will not unreasonably interfere with the common use of any part of the Common Elements or another Unit or adversely affect either the thermal or acoustical character of the Buildings or impair or structurally weaken the Buildings.

(D) For the maintenance of any lighting devices, outlets, exhaust fans, ventilation ducts, registers, grilles and similar fixtures which serve only one Unit but which encroach into any part of the Common Elements.

(E) For the performance of the Unit Owner's obligation to maintain, repair, replace and restore those portions of the Limited Common Elements that the Unit Owner is obligated to maintain under Section 5.1(B) of this Declaration.

(F) Nothing contained in this Section 3.6(F) shall be construed as limiting or waiving Unit Owner's obligation to obtain Board prior written consent to the Modifications described in Section 4.3 below.

3.7 Easement for Unintended Encroachments. To the extent that any Unit or Common Element encroaches on any other Unit or Common Element as a result of original construction, alteration or restoration authorized by this Declaration, settling or shifting, or any reason other than the encroachment onto the Common Elements or any Unit caused by the intentional misconduct or gross negligence of a Unit Owner, a valid easement for the encroachment, and for the maintenance thereof, is hereby granted.

#### **ARTICLE 4 USE AND OCCUPANCY RESTRICTIONS**

4.0 Office Use. All Units and Limited Common Elements shall be used, improved and devoted principally to commercial and professional office uses permitted within applicable zoning. No recreational, residential, manufacturing or industrial use is permitted within the Condominium. A Unit and Limited Common Elements may also be used for ancillary purposes that are directly related to the principal purposes, including the use of appropriate parts of a Unit for executive lunchroom and library uses associated with the principal use. There shall be no cooking or food preparation within the Condominium other than microwave use and catered food prepared off-site. In no event may any business activity within the Condominium constitute a nuisance or a hazardous or offensive use or threaten security or safety of Unit Owners, Lessees, or their respective Invitees, as may be determined from time to time in the sole discretion of the Board of Directors and no Unit Owner may store, transport or maintain "hazardous substances" as that term is commonly defined under applicable federal and state laws governing hazardous materials. Each Unit Owner shall be solely responsible for obtaining any permits or licenses required to conduct its business at the Condominium.

4.1 Antennas. No antenna, satellite television dish or other device for the transmission or reception of television or radio signals or any other form of electro-magnetic

radiation shall be erected, used or maintained outdoors on any portion of the Condominium whether attached to a Building or structure or otherwise, unless approved by the Board.

**4.2 Utility Service.** Except for lines, wires and devices existing on the Condominium on the date the first Unit is conveyed to a Purchaser and maintenance and replacement of the same, no lines, wires or other devices for the communication or transmission of electric current or power, including telephone, television, and radio signals, shall be erected, placed or maintained anywhere in or upon the Condominium unless they are contained in conduits or cables installed and maintained underground or concealed in, under or on Buildings or other structures approved by the Board. No provision hereof shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of Buildings or structures approved by the Board. All utilities not separately metered to the Units shall be paid by the Association as a Common Expense.

**4.3 Modifications.**

(A) No Person shall make any structural additions, alterations or improvements (collectively, "**Modifications**") within a Unit, unless prior to the commencement of each Modification the Unit Owner of the Unit to be modified: (i) retains an architect or engineer licensed in Arizona who certifies directly to the Board of Directors in accordance with sealed plans and specifications provided to the Board that such Modification will not impair the structural integrity of the Buildings or the mechanical systems serving the same within which such Modification is to be made; (ii) provides the Association with a written indemnity against liability in accordance with Section 6.4 below in a form provided by the Board of Directors upon request and consistent with said Section 6.4; (iii) executes a written acknowledgment that any such Modification may negate or amend any contractual, statutory or common law warranty expressly or implicitly provided by Declarant; (iv) complies with any additional conditions, if any, imposed by the Board pursuant to Section 4.3(B) below; and (v) receives a formal written approval of the Modification from the Board. The Unit Owner shall, to the extent, permitted by Arizona law, be responsible for any damage to other Units and to the Common Elements which results from any such Modification.

(B) The Board of Directors may condition the approval of any proposed Modification to a Unit in any reasonable manner, including, without limitation: (i) restricting the time during which such work may be performed; (ii) requiring the placement of a security deposit in an amount determined by the Board of Directors in an account controlled by the Board of Directors; (iii) requiring the Unit Owner causing the Modification to obtain and maintain, prior to commencement and during completion of the Modification, comprehensive general liability insurance in such amounts as may be required by the Board of Directors. The Unit Owner shall designate Declarant, the Association, the Board of Directors and any other Person designated by the Board as additional insureds under the policy.

(C) Any Unit Owner may make nonstructural Modifications within his Unit that do not affect mechanical systems within the Buildings without the prior written approval of the Board, but such Unit Owner shall, to the extent permitted under Arizona law, be responsible

for any damage to other Units and to the Common Elements which results from any such Modifications.

*(D)* Notwithstanding the foregoing, no Modification within a Unit, whether structural or not, which would be visible from the exterior of the Buildings shall be made without the prior written consent of the Board, which approval shall only be granted if the Board affirmatively finds that the proposed Modification is aesthetically pleasing and in harmony with the surrounding Improvements.

*(E)* Any Unit Owner acquiring an adjoining Unit, and, upon receiving the approval of the Board set forth in this Section 4.3, may remove or alter any non-structural common wall or partition between adjoining Units or create apertures therein even if certain elements therein are part of the Common Elements or Limited Common Elements, if such acts do not impair the structural integrity of the Buildings or its mechanical systems or lessen the support of any part of the Condominium and as further provided in A.R.S. §33-1221(3) of the Condominium Act. Further, no Unit Owner may remove any such common wall or partition between adjoining Units without first obtaining the consent, and satisfying any "fire wall" requirements of, the City of Avondale, Arizona.

*(F)* No Unit Owner, Lessee or any of their respective Invitees may overload the electric wiring in the Buildings or operate machines, appliances, accessories or equipment in such manner as to cause, in the judgment of the Board of Directors, an unreasonable disturbance to others. Without limitation, the Board may require the Unit Owner to install soundproofing materials designed to reduce any noise emanated by machines, appliances or other equipment operated within a Unit at the Unit Owner's sole expense.

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

*(H)* The Board shall have the right to charge a reasonable fee for reviewing requests for approval of any Modification, which fee shall be payable at the time the application for approval is submitted to the Board. The Board may establish a schedule of architectural review fees as part of any Rules as may be adopted by the Association.

*(I)* The Association shall have the right to stop any work or Modification that is not in compliance with this Section 4.3 or any Rules of the Association governing Modifications, and, where appropriate, to seek an equitable injunction ordering the removal of a Modification or any portion thereof that does not comply with this Section 4.3. Neither Declarant, the Association, nor any of their respective officers, directors, employees, agents contractors, consultants or attorneys shall be liable to any Unit Owner or other Person by reason of: mistake in judgment; failure to point out or correct deficiencies in any plans or other submissions relating to, without limitation, structural safety, soundness, workmanship, materials, usefulness, conformity with building or other codes or industry standards; negligence; or any

other misfeasance, malfeasance or nonfeasance arising out of or in any way connected with or relating to a Modification.

(J) Declarant is exempt from the provisions of this Section 4.3 and need not seek nor obtain the Board's approval of any Improvements or Modifications constructed on the Condominium by Declarant.

**4.4 Trash Containers and Collection.** Subject to the further provisions regarding medical waste and environmentally hazardous materials in Section 4.7 below, each Unit Owner or Lessee of a Unit shall regularly remove all garbage, trash and recyclable materials from his Unit and shall deposit the same in covered collection containers provided by the Board or the City of Avondale, Arizona at one or more designated collection points on the Common Elements. No garbage or trash shall be placed or kept on the Condominium outside of the Units except in covered containers of a type, size and style which are approved by the Board or as are provided by the City of Avondale, Arizona. The Board of Directors shall have the right to subscribe to a private trash service for the use and benefit of the Association and all Unit Owners, and to adopt and promulgate Rules regarding garbage, trash, trash containers and collection. No incinerators shall be kept or maintained in any Unit or the Common Elements.

**4.5 Machinery and Equipment.** No Unit Owner, Lessee or other Invitee may place, operate or maintain machinery or equipment of any kind upon the Condominium other than usual and customary machinery and equipment used in connection with the permitted uses of the Unit and Limited Common Elements. This Section 4.5 shall not apply to any such machinery or equipment which Declarant or the Association may require for the construction, improvement, operation and maintenance of the Common Elements.

**4.6 Animals.** No animals, birds, fowl, poultry, or livestock of any type or nature shall be maintained in or on any Unit or the Common Elements except for (i) an assistance animal under the direct control of a disabled person, or (ii) in any Unit and adjacent Common Elements which is being used as a veterinary facility, animal hospital or indoor kennel facility.

**4.7 Mineral Exploration/Environmental Restrictions.** No portion of the Condominium shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth, or any earth substance of any kind. All Persons occupying or visiting the Condominium shall be responsible for complying with all federal and state environmental and health laws. Without limiting the foregoing, no Unit Owner, Lessee or Invitee may dispose of, transport, or store "hazardous materials" in his Unit or elsewhere in the Condominium other than small amounts of ordinary non-combustible cleaning agents and "medical waste products" disposed of in compliance with all governmental requirements and regulations. In no event may any Unit Owner, Lessee of a Unit or other Invitee to the Condominium dispose of any hazardous materials, including without limitation, motor oil, hydrocarbons, other petroleum products, or "medical waste products" in or down a dry well or anywhere on or adjacent to the Condominium.

**4.8 Diseases and Insects.** Other than ordinary use of a Unit for a medical office in compliance with all safety regulations and employing sound sanitary medical practices, no Unit Owner shall permit any thing or condition to exist upon the Condominium which could induce, breed or harbor infectious diseases or noxious insects. Each Unit Owner shall perform such pest control activities in his Unit as may be necessary or appropriate to prevent insects, rodents and other pests from being present in the Unit.

**4.9 Parking.** No parking shall be permitted on the Condominium other than on the on-site paved parking spaces provided. All vehicles must fit within the painted lines of the parking stall when parked, regardless of whether such parking space is allocated as a Limited Common Element. Only a Unit Owner, his Lessee, or their respective Invitees, may park in the Limited Common Elements parking spaces allocated to that Unit. The Board may adopt additional parking Rules governing the use of the Common Elements.

**4.10 Motor Vehicle Repair/Inoperable Vehicles.** Except for emergency repairs, no motorized vehicle of any type or nature shall be maintained, constructed, reconstructed, serviced, repaired or restored, on any portion of the Condominium. In no event may: (i) any inoperable vehicle or (ii) equipment of any kind or nature that is not a motorized vehicle regularly used for transportation, be parked or "stored" within the Condominium. Without limiting the foregoing, a Vehicle or equipment shall be deemed to be stored and/or inoperable if it is covered by a car cover, tarp or other material and/or is not moved on at least a weekly basis.

**4.11 Towing of Vehicles.** The Board of Directors shall have the right to have any motor vehicle or equipment of any kind parked, kept, maintained, constructed, reconstructed or repaired on the Common Elements 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. If the vehicle or equipment is owned by a Unit Owner, any amounts payable to the Association shall be secured by the Assessment Lien, and the Association may enforce collection of such amounts in the same manner as provided for in this Declaration for the collection of Enforcement Assessments.

**4.12 Signs.** No signs shall be permitted on the exterior of any Unit or Building or any other portion of the Condominium without the prior written approval of the Board and shall at all times be in compliance with any sign ordinances of the City of Avondale, Arizona. Each Unit Owner shall have the right to such signage as is (i) in compliance with the Sign Criteria, attached hereto as Exhibit C, as such Sign Criteria may be modified by Declarant from time to time and (ii) approved by the Board in writing. The Board shall not prohibit any signs required by a licensing or regulatory Board or required to identify the nature of the business as long as such signs are aesthetically pleasing, in harmony with the balance of the Condominium and are designed to be as minimally intrusive as possible. Notwithstanding the foregoing, each Unit Owner shall have the right to maintain a non-illuminated identification sign at the entrance to the Buildings and to his Unit in accordance with any Building or Condominium standards adopted or promulgated by the Board.

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

**4.14 Nuisances and Offensive Activity.** No nuisance shall be permitted to exist or operate upon the Condominium, and no activity shall be conducted upon the Condominium which is offensive or detrimental to any portion of the Condominium or any Unit Owner, Lessee or Invitee to the Condominium. 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.

**4.15 Window Coverings.** No reflective materials, including, without limitation, aluminum foil, reflective screens or glass, mirrors or similar items, shall be installed or placed upon the outside or inside of any windows of a Unit. All enclosures, drapes, blinds, shades, screens or other items affecting the exterior appearance of a Unit or Building shall require the prior written approval of the Board unless the items so installed are substantially identical in color, texture and size as previously installed and approved coverings being so replaced.

**4.16 Leasing of Units.** All leases shall: (i) be in writing; (ii) provide that the terms of the lease shall be subject in all respects to the provisions of the Condominium Documents, and any failure by the Lessee and Lessee's Invitees to comply with the terms of the Condominium Documents shall be a default under the lease. At least ten (10) days prior to the commencement date of the lease of his Unit, a Unit Owner shall provide the Association with a signed copy of the Lease. The Unit Owner must also provide the following information if such information is not readily ascertainable from the Lease: (i) the commencement date and termination date of the lease and the names of each Lessee or other Person who will be occupying the Unit during the term of the lease; (ii) the contact address and telephone number of the Unit Owner while the Lease is in effect. Any Unit Owner who leases his Unit must provide the Lessee with copies of this Declaration and any Rules. The Unit Owner shall be liable for any violation of this Declaration or the Rules caused by the Lessee, any his Invitees and, upon demand of the Association, shall immediately take all necessary actions to correct any such violations. Among other remedies, the Association may fine any Unit Owner who leases his Unit without complying with the provisions of this Section 4.16. Nothing contained in this Section 4.16 shall be construed as limiting or in any way affecting any leasing program operated by Declarant in the Condominium with regard to its Units.

**4.17 Variances.** The Board may authorize a variance from compliance with any of the provisions of this Declaration, including this Article 4, from time to time, when circumstances such as hardship, aesthetic or environmental considerations may require. Such variances must be evidenced in writing and must be signed by a majority of the Board. If such variance is granted, no violation of the covenants, conditions and restrictions contained in this Declaration shall be deemed to have occurred with respect to the specific matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration for any purpose except as to the particular provision

hereof covered by the variance, and only for so long as the special circumstances warranting the variance exist, nor shall it affect in any way the Unit Owner's obligation to comply with all governmental laws and regulations affecting the use of his Unit. The Board shall have the right to condition the granting of a variance as it may determine in the Board's sole discretion, including, without limitation; making a variance temporary or permanent; or requiring the removal or replacement of a non-permanent or semi-permanent structure upon the sale or other conveyance of a Unit. Moreover, because of the unique facts and circumstances surrounding each variance request, the granting of a variance in one instance or under certain terms and conditions does not mandate the granting of a variance under similar or related circumstances, terms or conditions if the experiences of the Association and the Condominium as a whole or the differences in circumstances (however slight) of a variance request from a previously approved variance lead the Board, in good faith, to disapprove a variance request in such instance.

**ARTICLE 5**  
**MAINTENANCE AND REPAIR**  
**OF THE CONDOMINIUM**

**5.0 Duties of the Association.**

(A) The Association shall maintain, repair and make necessary improvements to all Common Elements (including certain Limited Common Elements described herein). Without limiting the foregoing, the Association shall be responsible for maintaining: (i) Building exteriors (exclusive of windows and doors which are part of the Unit as provided in Section 2.1(A) above); (ii) Building roof; (iii) the private water and sewer lines as provided in Section 5.0(C) below; and (iv) other Common Element Improvements including, without limitation, fences, walls, driveways and parking areas and spaces, whether or not allocated as a Limited Common Element of any Unit, and including parking canopy covers, paths, lanes, entries and passages, sidewalks, landscaping, and lighting and light fixtures in the Common Elements. The cost of all such repairs and maintenance shall be a Common Expense and shall be paid for by the Association. In no event shall any Unit Owner undertake any maintenance, repairs or replacements of the exterior of the Buildings or of his Unit (if such would be readily visible from the exterior of the Buildings), including painting or installing Improvements or Modifications thereto, without the express prior written approval of the Board.

(B) The cost of all such repairs, maintenance and improvements shall be a Common Expense and shall be paid for by the Association. The Board shall be the sole and absolute judge as to the appropriate maintenance of the Common Elements and the Condominium. No Unit Owner, Lessee, or their respective Invitees shall obstruct or interfere with the Association in the performance of the Association's maintenance, repair and replacement of the Common Elements.

(C) The Association shall be responsible for maintaining and repairing the private water and sewer lines from the point of connection to each Unit to the point of connection of such lines to the publicly dedicated water and sewer lines maintained by the City of Avondale, Arizona.

**5.1 Duties of Unit Owners.**

(A) Each Unit Owner shall maintain, repair, replace and restore, at his own expense, all portions of his Unit, including all windows and doors. However, the Association shall be responsible for maintaining all other portions of the Buildings exterior notwithstanding that the Buildings exterior may be included in the Unit's vertical boundaries and part of the Unit square footage as provided in Section 2.1(A) and Section 5.0 above.

(B) Each Unit Owner shall be responsible for the maintenance, repair and/or replacement as necessary of any utility meters, heaters, air conditioning units (including compressors and condensers), appliances, wires, or other devices serving only his Unit.

(C) Each Unit Owner shall maintain all Limited Common Elements serving such Unit Owner's Unit, excepting those Limited Common Elements set forth in Section 5.0 above.

**5.2 Repair or Restoration Necessitated by Owner.** Each Unit Owner shall be liable to the Association, to the extent permitted by Arizona law, for any damage to the Common Elements or the Improvements, or equipment thereon, which results from the negligence or willful misconduct or omission of the Unit Owner. The cost to the Association of any such repair, maintenance or replacement required by such act or omission of a Unit Owner or any of its Invitees shall be paid by the Unit Owner, upon demand, to the Association pursuant to Section 7.1(E) below. The Association may enforce collection of any such amounts in the manner provided in this Declaration for the collection of Enforcement Assessments.

**5.3 Unit Owner's Failure to Maintain.** If a Unit Owner fails to maintain in good condition and repair his Unit or any Limited Common Element which he is obligated to maintain under this Declaration and the required maintenance, repair or replacement is not performed within fifteen (15) days after written notice has been given to the Unit Owner by the Association, the Association shall have the right, but not the obligation, to perform the required maintenance, repair or replacement. The cost of any such maintenance, repair or replacement shall be assessed against the nonperforming Unit Owner pursuant to Section 7.1(E) of this Declaration.

**5.4 Sprinkler System.** In accordance with the requirements of the City of Avondale, Arizona, the Buildings will be equipped with a sprinkler system, the heads of which will intrude into the Unit. All pipes, heads and other parts of the sprinkler system (whether located within or outside of the Unit) shall be part of the Common Elements and shall be maintained, repaired and replaced by the Association. If a Unit Owner, Lessee or their respective Invitees, cause the sprinkler system to be activated (other than as a result of a fire) or damages or destroys any part of the sprinkler system, the Unit Owner shall be responsible for the cost of any repairs to the sprinkler system made by the Association and for all other losses or damages resulting from such action.

**ARTICLE 6**  
**THE ASSOCIATION**

**6.0 Rights, Powers and Duties of the Association.** No later than the date on which the first Unit is conveyed to a Purchaser, the Association shall be organized as a nonprofit Arizona corporation. The Association shall be the entity through which the Unit Owners shall act. The Association shall have such rights, powers and duties as are prescribed by law and as are set forth in the Condominium Documents together with such rights, powers and duties as may be reasonably necessary to effectuate the objectives and purposes of the Association as set forth in this Declaration and the Condominium Act. The Association shall have the right to finance capital Improvements in the Condominium by encumbering future Assessments if such action is approved by the written consent or affirmative vote of two-thirds (2/3) of the Unit Owners and by Declarant during the Period of Declarant Control. Unless the Condominium Documents or the Condominium Act specifically require a vote of the Members, approvals or actions to be given or taken by the Association shall be valid if given or taken by the Board.

**6.1 Directors and Officers.**

(A) During the Period of Declarant Control, Declarant shall have the right to appoint and remove the members of the Board of Directors and the officers of the Association. Directors and officers appointed by Declarant do not have to be Unit Owners.

(B) Upon the termination of the Period of Declarant Control, the Unit Owners shall elect the Board of Directors which must consist of at least 5 Member(s), each of whom must be a Unit Owner (or, in case the Unit Owner is not a natural person, the Director shall be an officer, partner, member, manager, trustee, beneficiary, or director of the Unit Owner). The Board of Directors elected by the Unit Owners shall then elect the officers of the Association.

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

**6.2 Rules.** The Board of Directors, from time to time and subject to the provisions of this Declaration and the Condominium Act, may adopt, amend, and repeal rules and regulations. The Rules may, among other things, adopt architectural standards, and restrict and govern the use of Common Elements by any Unit Owner, Lessee, or any Invitee; *provided, however*, that the Rules may not unreasonably discriminate among Unit Owners and shall not be inconsistent with the Condominium Act, this Declaration, the Articles or Bylaws. A copy of the Rules, as they may from time to time be adopted, amended or repealed, shall be mailed or otherwise delivered to each Unit Owner and may be Recorded.

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

**6.4 Personal Liability.** Neither Declarant nor any member of the Board or of any committee of the Association, any officer of the Association nor any manager or other employee of the Association, shall be personally liable to any Member, or to any other Person, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of Declarant, the Association, the Board, the managing agent, any representative or employee of the Association, or any committee, committee member or officer of the Association; *provided, however*, the limitations set forth in this Section 6.4 shall not apply to any Person who has failed to act in good faith or has engaged in willful or intentional misconduct.

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

## **ARTICLE 7 ASSESSMENTS**

### **7.0 Preparation of Budget.**

(A) At least thirty (30) days (or soon thereafter as feasible) before the beginning of the first full fiscal year of the Association after the first Unit is conveyed to a Purchaser and each fiscal year thereafter, the Board of Directors shall adopt a budget for the Association containing an estimate of the total amount of funds which the Board of Directors believes will be required during the ensuing fiscal year to pay all Common Expenses including, but not limited to: (i) the amount required to pay the cost of maintenance, management, operation, repair and replacement of the Common Elements and those parts of the Units, if any, which the Association has the responsibility of maintaining, repairing and replacing; (ii) the cost of wages, materials, insurance premiums, services, supplies and other expenses required for the administration, operation, maintenance and repair of the Condominium; (iii) the amount required to render to the Unit Owners all services required to be rendered by the Association under the Condominium Documents; and (iv) such amounts as are necessary to provide general operating reserves and reserves for contingencies and replacements. The budget shall separately reflect any Common Expenses to be assessed against less than all of the Units pursuant to Section 7.1(E) or Section 7.1(F) below and must include an adequate allocation to reserves as part of the Common Expense Assessment.

(B) At least ten (10) days before the beginning of each fiscal year of the Association (except for the first fiscal year), the Board of Directors shall send to each Unit Owner a summary of the budget and a statement of the amount of the Common Expense Assessment assessed against the Unit of the Unit Owner in accordance with Section 7.1 of this Declaration. The failure or delay of the Board of Directors to prepare or adopt a budget for any fiscal year shall not constitute a waiver or release in any manner of a Unit Owner's obligation to pay his allocable share of the Common Expenses as provided in Section 7.1 of this Declaration and each Unit Owner shall continue to pay the Common Expense Assessment against his Unit as established for the previous fiscal year until notice of the Common Expense Assessment for the new fiscal year has been established by the Board of Directors.

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

### 7.1 Common Expense Assessment.

(A) For each fiscal year of the Association commencing with the fiscal year in which the first Unit is conveyed to a Purchaser, the total amount of the estimated Common Expenses set forth in the budget adopted by the Board of Directors (except for the Common Expenses which are to be assessed against fewer than all of the Units pursuant to Section 7.1 (E) and Section 7.1(F) below) shall be assessed against each Unit in the Condominium in proportion to the Unit's Common Expense Liability as set forth in Section 2.3 (subject to reduction regarding Units owned by Declarant). The amount of the Common Expense Assessment assessed pursuant to this subsection (A) shall not exceed the maximum Common Expense Assessment for the fiscal year as computed pursuant to Section 7.1(B) below. If the Board of Directors determines during any fiscal year that its funds budgeted or available for that fiscal year are, or will, become inadequate to meet all Common Expenses for any reason, including, without limitation, nonpayment of Assessments by Members, it may increase the Common Expense Assessment for that fiscal year and the revised Common Expense Assessment shall commence on the date designated by the Board of Directors, except that no increase in the Common Expense Assessment assessed pursuant to this subsection (A) exceeding the maximum Common Expense Assessment for such fiscal year shall become effective unless approved by the requisite number of Members provided in Section 7.1(B) below.

(B) The maximum Common Expense Assessment for each fiscal year of the Association after the first full or partial fiscal year thereof shall not be greater than an amount equal to one hundred ten percent (110%) of the previous year's Common Expense Assessment established by the Board and assessed against the Units. From and after January 1 of the year immediately following the conveyance of the first Unit to a Purchaser, the Common Expense Assessment for any fiscal year of the Association may be increased by an amount greater than the maximum increase allowed in this Section 7.1(B), only by a vote of Members entitled to cast at least two-thirds (2/3) of the votes entitled to be cast by Members who are voting in person or by proxy at a meeting duly called for such purpose. The maximum Common Expense

Assessment limitations herein contained shall apply only to the amount of the Common Expense Assessment assessed pursuant to subsection (A) of this section and shall not apply to the amount of Common Expenses assessed pursuant to Section 7.1 (E) or 7.1(F) below.

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

(D) Except as otherwise expressly provided for in this Declaration, all Common Expenses, including, but not limited to, Common Expenses associated with the maintenance, repair and replacement of a Limited Common Element, and reserves for Common Expenses shall be assessed against all of the Units in accordance with Section 7.1(A) above.

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

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

(G) The Common Expense Assessment for any Unit in the Condominium on which construction has not been substantially completed (as defined hereinbelow) shall be an amount equal to twenty-five percent (25%) of the Common Expense Assessment for Units which have been substantially completed. So long as any Unit owned by Declarant qualifies for the reduced Common Expense Assessment provided for in this subsection (G), and, only if Declarant elects to pay such reduced Assessment, Declarant shall be obligated to pay to the Association any deficiencies in the monies resulting from Declarant having paid a reduced Common Expense Assessment and necessary for the Association to be able to timely pay all Common Expenses. Without limiting the foregoing, "substantial completion" of a Unit shall mean a Unit that is ready for immediate occupancy by a Unit Owner or Lessee, including installation of carpeting and tenant improvements and a certificate of occupancy has been issued for such Unit. ?

(H) All Assessments, monetary penalties, late charges, interest, Collection Costs, and other fees and charges levied against a Unit shall be the personal obligation of the Unit Owner of the Unit at the time the Assessments, monetary penalties, late charges, interest, Collection Costs, or other fees and charges became due. The personal obligation of a Unit Owner for Assessments, monetary penalties, late charges, interest, Collection Costs, and other fees and charges levied against his Unit shall not pass to the Unit Owner's successors in title unless expressly assumed by them.

**7.2 Special Assessment.** In addition to Common Expense Assessments, the Association may levy, in any fiscal year of the Association, a special assessment applicable to that fiscal year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of a capital improvement of the Common Elements, including fixtures and personal property related thereto, or for any other lawful Association purpose (a "**Special Assessment**"). Any Special Assessment (other than a Special Assessment levied pursuant to Section 8.5 of this Declaration) shall have first been approved by Unit Owners representing two-thirds (2/3) of the votes in the Association and who are voting in person or by proxy at a meeting duly called for such purpose and approved by Declarant, while Declarant owns any Units. Unless otherwise specified by the Board of Directors, Special Assessments shall be due thirty (30) days after they are levied by the Association and notice of the Special Assessment is given to the Unit Owners.

**7.3 Notice and Quorum for Any Action Under Section 7.1 or 7.2.** Written notice of any meeting called for the purpose of obtaining the consent of the Members for any action for which the consent of Members is required under Sections 7.1 or 7.2 shall be sent to all Members not less than thirty (30) days nor more than fifty (50) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes in the Association shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than fifty (50) days following the preceding meeting.

**7.4 Enforcement Assessment.** The Association may assess against a Unit Owner as an Enforcement Assessment any of the following expenses: (i) any Collection Costs incurred by the Association in attempting to collect Assessments or other amounts payable to the Association by the Unit Owner; (ii) any Collection Costs, including attorneys' fees (whether or not a law suit is filed), incurred by the Association with respect to any violation of the Condominium Documents by the Unit Owner, his Lessee or any other Invitee to his Unit; (iii) any monetary penalties levied against the Unit Owner; or (iv) any amounts (other than Common Expense Assessments or Special Assessments) which become due and payable to the Association by the Unit Owner, his Lessee or any other Invitee to his Unit pursuant to the Condominium Documents.

**7.5 Effect of Nonpayment of Assessments; Association Remedies.**

(A) Any Assessment, or any installment of an Assessment, which is not paid within fifteen (15) days after the Assessment first became due shall be deemed delinquent and shall bear interest from the date of the delinquency at the rate of interest established from time to time by the Board of Directors. In addition, the Board of Directors may establish a reasonable late charge to be charged to a Unit Owner and assessed against his Unit as part of the Assessment Lien for each installment of an Assessment that is deemed delinquent.

(B) All Assessments, monetary penalties, late charges, interest, Collection Costs, and other fees and charges imposed or levied against any Unit or Unit Owner shall be secured by the Assessment Lien as provided for in the Condominium Act. The Assessment Lien shall have priority over all liens or claims except for: (i) tax liens for real property taxes; (ii) assessments in favor of any municipal or other governmental body; and (iii) the lien of any First Mortgage. The Recording of this Declaration constitutes record notice and perfection of the Assessment Lien and no further recordation of any claim of lien shall be required. Although not required to perfect the Assessment Lien, the Association shall have the right, but not the obligation, to record a notice setting forth the amount of any delinquent Assessments, monetary penalties, late charges, interest, Collection Costs, or other fees or charges imposed or levied against the Unit or the Unit Owner which are secured by the Assessment Lien. The Association shall not be obligated to release the Assessment Lien until all delinquent Assessments, monetary penalties, late charges, interest, Collection Costs and all other sums payable to the Association by the Unit Owner of the Unit have been paid in full.

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

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

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

**7.8 Certificate of Payment.** The Association, on written request, shall furnish to a lienholder, Unit Owner or Person designated by a Unit Owner, a recordable statement setting forth the amount of unpaid Assessments, monetary penalties, late charges, interest, and Collection Costs against his Unit. The statement shall be furnished within twenty (20) business days after receipt of the request and is binding on the Association, the Board of Directors, and every Unit Owner. The Association may charge a reasonable fee in an amount established by the Board of Directors for each such statement. In addition, the Association shall furnish such statements as may be required under A.R.S. §33-1260 of the Condominium Act within the time frames set forth therein for compliance.

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

**7.10 Working Capital Fund.** Upon the closing of the sale of each Unit by Declarant, the Purchaser shall pay to the Association an amount equal to two (2) monthly installments of the Common Expense Assessment for the Unit to establish a working capital fund to meet unforeseen expenditures or to purchase any additional equipment or services by or for the Association. Amounts paid to the Association pursuant to this Section 7.10 shall be nonrefundable and shall not be considered as an advance payment of any Assessments levied by the Association pursuant to this Declaration. During the Period of Declarant Control, such funds shall not be used to defray Association expenses, reserve contributions, or construction costs or to make up budget deficits.

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

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

**7.13 Transfer Fee.** Each Purchaser of a Unit shall pay to the Association immediately upon becoming a Unit Owner a transfer fee in such amount as is established from time to time by the Board of Directors, which fee may be paid to the managing agent of the Association, other than Declarant, as partial compensation for maintaining the books and records of the Association. Any transfer fee established pursuant to this Section 7.13 is in addition to and not part of or in lieu of the fee which the Association is entitled to charge for the Certificate

provided pursuant to Section 7.8 of this Declaration and A.R.S. §33-1260(C) of the Condominium Act.

**7.14 Reserves.** The Assessments shall include a reasonable amount for reserves as determined by the Board of Directors for the future periodic maintenance, repair or replacement of all or a portion of the Common Elements, or any other purpose as determined by the Board of Directors. All amounts collected as reserves, whether pursuant to this Section 7.14 or otherwise, shall be deposited by the Board of Directors in a separate bank account (the "**Reserve Account**") no later than the termination of the Period of Declarant Control. All funds in the Reserve Account shall be held in trust for the purposes for which they are collected and are to be segregated from and not commingled with other Association funds. Such reserves shall be deemed a contribution to the capital account of the Association by the Members. The Board of Directors shall not expend funds from the Reserve Account for any other purpose other than those purposes for which they are collected. Withdrawal of funds from the Reserve Account shall require the signatures of two members of the Board of Directors or one member of the Board and an officer of the Association who is not also a Board member. After the termination of the Period of Declarant Control, the Board of Directors shall obtain a reserve study at least once every seven years, which study shall at a minimum include: (i) identification of the major components of the Common Elements having a remaining useful life of less than thirty (30) years as of the date of the study and their estimated probable remaining useful life; (ii) an estimate of the cost of maintenance, repair, replacement, restoration of such Common Elements during and at the end of their useful life; (iii) an estimate of the annual contribution to the Reserve Account necessary to defray such costs, after subtracting the funds in the Reserve Account as of the date of the study. The Board of Directors shall modify the budget in accordance with the findings of the reserve study.

## **ARTICLE 8 INSURANCE**

### **8.0 Scope of Coverage.**

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

(i) Property insurance on the Common Elements and Units, exclusive of Improvements and betterments which were not part of the original construction and were supplied or installed by Unit Owners and furniture, furnishings or personal property of the Unit Owners. The policy is to be issued on blanket causes of loss - "Special Form" policy or its equivalent. Such property insurance shall cover the interests of the Association, the Board of Directors and all Unit Owners and their mortgagees (as their interests may appear) (subject, however, to the loss payment adjustment provisions in favor of the Insurance Trustee) in an amount equal to one hundred percent (100%) of the current replacement cost of the Condominium, exclusive of land, excavations, foundations and other items normally excluded from such coverage, without deduction for depreciation. The replacement cost shall be reviewed

annually by the Board of Directors with the assistance of the insurance company affording such coverage. The Board of Directors shall also obtain and maintain such coverage on all personal property owned by the Association.

(ii) Broad form Comprehensive General Liability insurance, for a limit to be determined by the Board, but not less than \$1,000,000.00 for any single occurrence and \$2,000,000 general aggregate. Such insurance shall cover all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Common Elements. Such policy may include, at the discretion of the Board, medical payments insurance and contingent liability coverage arising out of the use of hired and nonowned automobiles and coverage for any legal liability that results from law suits related to employment contracts in which the Association is a party.

(iii) Workmen's compensation insurance to the extent necessary to meet the requirements of the laws of Arizona and a policy of employer's liability insurance with coverage limits as the Board may determine from time to time, if the Association employs any Persons.

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

(v) Blanket fidelity bond coverage for all officers, directors, trustees and employees of the Association and all other Persons handling or responsible for funds of or administered by the Association including, without limitation, any management company, whether or not they receive compensation for their services. The total amount of the fidelity bonds maintained by the Association shall be based on the best business judgment of the Board, but shall not be less than the estimated funds, including the Reserve Account, in the custody of the Association or management agent, as the case may be, at any given time during the term of the bond or the sum equal to three (3) months' aggregate Common Expense Assessments on all Units plus the Reserve Account amount. Fidelity bonds obtained by the Association shall name the Association as an obligee, shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of Persons serving without compensation from the definition of "employees" or similar terms or expressions; shall provide that they may not be cancelled or substantially modified without at least ten (10) days' prior notice to the Association and each First Mortgagee named in the bond. In the case the Association employs a management company to manage the Common Elements and to handle the general affairs of the Association, the Board of Directors shall require the management agent to maintain the fidelity bond required of the Association pursuant to this Section 8.0(A).

(vi) Such other insurance as the Association shall determine from time to time to be appropriate to protect the Association, the members of the Board of Directors, or the Unit Owners, including, without limitation, umbrella general liability insurance which would provide general liability coverage in excess of the coverage provided by the policy to be obtained pursuant to Section 8.0(A)(ii).

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

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

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

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

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

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

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

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

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

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

(x) If the Condominium is located in an area identified by the Secretary of Housing and Urban Development as an area having special flood hazards, a "blanket policy" of flood insurance on the Condominium in the lesser of one hundred percent (100%) of the current replacement cost of the Buildings and any other property covered on the required form of policy or the maximum limit of coverage available under the National Insurance Act of 1968, as amended.

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

**8.1 Payment of Premiums.** Premiums for all insurance obtained by the Association pursuant to this Article and all deductibles thereunder shall be Common Expenses and shall be paid for by the Association; provided, however, the Association may assess to a Unit Owner any deductible amount expended as a result of the negligence, misuse or neglect for which such Unit Owner is legally responsible under this Declaration and Arizona law. The Board of Directors may select deductibles in reasonable amounts applicable to the insurance coverage maintained by the Association pursuant to Section 8.0(A) above to reduce the payments payable for such insurance.

**8.2 Insurance Obtained by Unit Owners/Non-Liability of Association.** The issuance of insurance policies to the Association pursuant to this Article 8 shall not prevent a Unit Owner from obtaining insurance for his own benefit and at his own expense covering his Unit (including all additions, alterations and Improvements thereto), his personal property and providing personal liability coverage and such other coverages as are not provided by the Association pursuant to this Article 8. Notwithstanding the obligation of the Association to obtain insurance coverage as stated in this Declaration, neither Declarant nor the Association, or their respective officers, directors, employees and agents, shall be liable to any Unit Owner or any other party if any risks or hazards are not covered by the insurance to be maintained by the Association or if the amount of the insurance is not adequate, and it shall be the responsibility of each Unit Owner to ascertain the coverage and protection afforded by the Association's insurance and to procure and pay for any additional insurance coverage and protection that the Unit Owner may desire. All policies of property insurance carried by Unit Owners shall be without contribution with respect to the policies of property insurance obtained by the Board of Directors for the benefit of all Unit Owners pursuant to Section 8.0(A) above. For purposes of this Section 8.2, "additions, alterations and Improvements" shall mean any property (excluding personal property readily removable without damage to the Unit) attached to the Unit, including, without limitation, carpeting, flooring, wall coverings, paint and paneling.

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

**8.4 Insurance Trust.** Notwithstanding any of the other provisions of this Article 8 to the contrary, there may be named 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 who shall have exclusive authority to negotiate losses under any policy providing such property or liability insurance and to perform such other functions as are necessary to accomplish such purpose. Each Unit Owner appoints the Association, or any insurance trustee or substitute insurance

trustee designated by the Association, as attorney-in-fact for the purpose of purchasing and maintaining such insurance, including: (i) the collection and appropriate disposition of the proceeds thereof; (ii) the negotiation of losses and execution of releases of liability; and (iii) the execution of all documents; (iv) the performance of all other acts necessary to accomplish such purposes.

**8.5 Automatic Reconstruction.** Any portion of the Condominium for which insurance is maintained by the Association which is damaged or destroyed shall be repaired or replaced promptly by the Association unless: (a) the Condominium is terminated; (b) repair or replacement would be illegal under any state or local health or safety statute or ordinance; or (c) eighty percent of the Unit Owners, including every Owner of a Unit or allocated Limited Common Element which will not be rebuilt, vote not to rebuild. The cost of repair or replacement of the damaged or destroyed portion of the Condominium in excess of insurance proceeds and reserves shall be a Common Expense and shall be assessed to the Members as a Special Assessment pursuant to Section 7.2 of this Declaration.

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

## **ARTICLE 9 RIGHTS OF FIRST MORTGAGEES**

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

(A) Any condemnation loss or any casualty loss which affects a material portion of the Condominium or any Unit on which there is a First Mortgage; (b) Any delinquency in the payment of Assessments or charges owed by a Unit Owner subject to a First Mortgage or any obligation under the Condominium Documents, which delinquency or default remains uncured for the period of sixty (60) days; (c) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; (d) Any proposed action which requires the consent of a specified percentage of First Mortgagees and (e) the date and time of all meetings of the Members of the Association and such First Mortgagee shall be permitted to designate a representative to attend all such meetings.

**9.1 Prohibition Against Right of First Refusal.** The right of a Unit Owner to sell, transfer or otherwise convey his Unit shall not be subject to any right of first refusal or

similar restriction. This provision may not be amended without the written consent of all First Mortgagees then of record.

**9.2 Right of Inspection of Records.** Any Unit Owner or First Mortgagee shall, upon written request, be entitled to inspect, during normal business hours, the current copies of the Condominium Documents and the books, records and any financial statements of the Association as have been prepared or are available as provided in A.R.S. §10-11602. Notwithstanding the foregoing, the Board of Directors may withhold from disclosure such books, records and documents of the Association, or portions thereof, designated under A.R.S. §10-11602(F). In addition, all First Mortgagees shall be entitled to receive, within a reasonable time after request, an audited financial statement of the Association for the immediately preceding fiscal year of the Association at the expense of the requesting party if an audited financial statement has not otherwise been previously prepared. The Association shall have the right to charge for copying expenses and the reasonable cost of postage, shipping or transmission of any information requested under this Section 9.2 or Arizona law.

**9.3 Prior Written Approval of First Mortgagees.** Except as provided by statute in case of condemnation or substantial loss to the Units or the Common Elements, unless at least three-fourths (3/4) of all First Mortgagees (based upon one vote for each First Mortgage owned) or three-fourths (3/4) of the Unit Owners (other than Declarant have given their prior written approval, the Association shall not be entitled to: (i) by act or omission, seek to abandon or terminate this Declaration or the Condominium; (ii) change the pro rata interest or obligations of any individual Unit for the purpose of levying Assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards or determining the pro rata share of ownership of each Unit in the Common Elements; (iii) partition or subdivide any Unit; (iv) by act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Elements (provided, however, the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements shall not be deemed a transfer within the meaning of this subsection; or (v) use hazard insurance proceeds for losses to any Units or the Common Elements for any purpose other than the repair, replacement or reconstruction of such Units or the Common Elements.

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

**9.5 Condemnation or Insurance Proceeds.** No Unit Owner, or any other party, shall have priority over any rights of any First Mortgagee of the Unit pursuant to its mortgage in the case of a distribution to such Unit Owner of insurance proceeds or condemnation awards for losses to or a taking of Units and/or Common Elements. Subject to the foregoing, the allocation of awards for the exercise of eminent domain, or deeds in lieu thereof, shall be governed by the provisions of §33-1206 of the Condominium Act.

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

**9.7 Conflicting Provisions.** In the event of any conflict or inconsistency between the provisions of this Article 9 and any other provision of the Condominium Documents, the provisions of this Article 9 shall prevail; provided, however, that in the event of any conflict or inconsistency between the different sections of this Article 9 and any other provision of the Condominium Documents with respect to the number or percentage of Unit Owners or First Mortgagees that must consent to (i) an amendment to any of the Condominium Documents; (ii) a termination of the Condominium; or (iii) certain actions of the Association, the provision requiring the consent of the greatest number or percentage of Unit Owners or First Mortgagees shall prevail except to the extent that Declarant may unilaterally undertake certain amendments and other acts as a Development or Special Declarant Right.

## **ARTICLE 10 ENFORCEMENT**

**10.0 General Right of Enforcement.** Subject to the further provisions of Article 11, the Association, or any Unit Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens or charges now or hereafter imposed by the provisions of the Condominium Documents. Failure by the Association or by any Unit Owner to enforce any covenant or restriction contained in the Condominium Documents shall in no event be deemed a waiver of the right to do so thereafter.

**10.1 Items of Construction/Equitable Relief.** As provided in Section 4.3(I) and Section 10.2 of this Declaration, Declarant, the Association, and/or any Unit Owner shall have the right to use summary abatement or similar means to enforce the restrictions set forth in this Declaration, provided, however, a judicial decree authorizing such action must be obtained before any items of construction or any Modification can be altered or demolished by any Person other than the Unit Owner who caused the Modification to be made. Each Unit Owner shall be subject to all rights and duties assigned to Unit Owners under this Declaration.

**10.2 Enforcement by Association.** The Association may enforce the Condominium Documents in any manner provided for in the Condominium Documents or by law or in equity, including, but not limited to:

(A) imposing reasonable monetary penalties after notice and hearing as provided in the Bylaws. A Unit Owner shall be responsible for payment of any fine levied or imposed against a Unit Owner as a result of the actions or omissions of the Unit Owner, his Lessee, or their respective Invitees;

(B) suspending a Unit Owner's right to vote for as long as the Unit Owner is in violation of any provision of these Condominium Documents;

(C) suspending any Person's right to use any facilities within the Common Elements, provided, however, that nothing shall authorize the Board to limit ingress or egress to or from a Unit or to an allocated parking space Limited Common Element by a Person to park in that space;

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

(E) exercising self-help or taking action to abate any violation of the Condominium Documents or to remove any structure of Improvement further subject to any limitations of Arizona law and the provisions of Section 10.2 of this Declaration;

(F) without liability to any Person, prohibiting any Invitee of a Unit Owner or Lessee who fails to comply with the terms and provisions of the Condominium Documents from continuing or performing any further activities on the Condominium;

(G) towing Vehicles which are parked in violation of this Declaration or the Rules as further provided in Section 4.11 of this Declaration;

(H) filing a suit at law or in equity to enjoin a violation of the Condominium Documents, to compel compliance with the Condominium Documents, to recover Assessments, monetary penalties, Collection Costs or damages or to obtain such other relief as to which the Association may be entitled, including the remedies provided for in Section 7.5 of this Declaration;

(I) Recording a written notice of violation by any Unit Owner of any restriction or provision of the Condominium Documents as further provided in Section .16 of this Declaration; and

(J) Recording an Assessment Lien against a Unit as provided in Section 7.5(B) of this Declaration and the Condominium Act.

**10.3 Limited Enforcement Obligation.** The Association shall not be obligated to take any enforcement action if the Board of Directors determines, in its sole discretion, that, because of the strength of the Association's possible defenses, the time and expense of litigation or other enforcement action, the likelihood of a result favorable to the Association, or other facts deemed relevant by the Board of Directors, enforcement action would not be appropriate or in the best interests of the Association.

## **ARTICLE 11 CONSTRUCTION CLAIMS PROCEDURES**

**11.0 Right to Cure Alleged Defects.** It is Declarant's intent that the Common Elements, each Unit, the Buildings and other Improvements constructed within the

Condominium be built in compliance with all applicable building codes and ordinances and that they be of a quality that is consistent with good construction and development practices for production housing of this type. Nevertheless, due to the complex nature of construction and the subjectivity involved in evaluating such quality, disputes may arise as to whether a defect exists and Declarant's responsibility therefor. It is Declarant's intent to resolve all disputes and claims regarding "Alleged Defects" (as defined below) amicably, and without the necessity of time-consuming and costly litigation. Accordingly, the Association, Board and all Owners shall be bound by the following claim resolution procedure:

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

(B) Nothing set forth in this Section 11.0 shall be construed to impose any obligation on Declarant or any of its Agents to inspect, test, repair or replace any item or Alleged Defect for which Declarant or such other Person is not otherwise obligated under applicable law or any limited warranty provided by Declarant or such other Person in connection with the sale of Units. The right of Declarant and its Agents to enter, inspect, test, repair and/or replace reserved hereby shall be irrevocable and may not be waived or otherwise terminated except by a writing, in recordable form, executed and Recorded by Declarant. In no event shall any statute of limitations be tolled during the period in which Declarant and/or its Agents conduct any inspection or testing of any Alleged Defects.

**11.1 Legal Actions.** All legal actions initiated by Claimants (as defined in Section 11.0 above) shall be brought in accordance with and subject to Sections 11.2 and 11.3 below. In the event a Claimant initiates any legal action, cause of action, proceeding, reference or arbitration against Declarant or any Agent of Declarant alleging damages for: (i) an Alleged Defect, (ii) the diminution in value of any real or personal property resulting from such Alleged

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

**11.2 Approval of Litigation.** The Board shall not be authorized to incur legal expenses, including without limitation, attorneys' fees or bring any legal proceeding of a material nature for which the claimed or alleged damages or the current economic value of other available remedies would exceed \$25,000 in the aggregate, unless the Association has received the consent of not less than seventy-five percent (75%) of the votes allocated in the Membership (other than votes allocated to Declarant or any other Unit Owner who would be a defendant in such proceedings) to commence such an action or to incur such expenses. The foregoing restriction shall not apply to: (i) actions to enforce the collection of Assessments or an Assessment Lien; (ii) actions to challenge ad valorem taxation or condemnation proceedings; (iii) actions to defend claims filed against the Association or to assert mandatory counterclaims therein; (iv) actions to enforce any specific covenant hereunder; or (v) or claims brought by an Owner in his individual capacity concerning his Unit and Improvements located solely within his Unit; provided, further that each Unit Owner shall be bound by the mandatory arbitration provisions set forth herein and in any contract of purchase. In the event of any conflict between the arbitration provisions of this Article 11 and the contract of purchase, the contract of purchase shall provide. Otherwise, all provisions of this Article 11 shall be binding upon the Unit Owner. The Association must finance any legal proceeding with monies that are specifically collected for same and may not borrow money or use reserve funds or other monies that are collected for specific Association obligations other than legal fees. In the event that the Association commences any legal proceedings, all Owners must notify prospective purchasers of such legal proceedings and must provide such prospective purchasers with a copy of the Notice of Alleged Defect provided to Declarant in accordance with Section 11.0 above.

**11.3 Binding Arbitration.** In the event of a dispute between Declarant or its Agents, and any Unit Owner(s) or the Association regarding any controversy or claim, including any claim based on contract, tort or statute, arising out of or in any way related to the rights or duties of the parties under this Declaration, the design or construction of the Condominium, or an Alleged Defect, the matter will be resolved by binding arbitration which shall be conducted in accordance with the following rules:

(A) The arbitration shall be initiated by either party delivering to the other a Notice of Intention to Arbitrate as provided for in the American Arbitration Association (“AAA”) Commercial Arbitration Rules, as amended from time to time (the “AAA Rules”). The arbitration shall be conducted in accordance with the AAA Rules and A.R.S. §12-1501 et seq. In the event of a conflict between the AAA Rules and this Section 11.3, the provisions of this Section 11.3 shall govern. In the event of a conflict between this Article 11 and any other provision of the Condominium Documents, this Article 11 shall control.

(B) The parties shall appoint a single arbitrator by mutual agreement; provided, however, that if the amount of the Alleged Defect exceeds \$150,000, then the matter shall be arbitrated by a panel of three arbitrators. If the parties have not agreed within ten (10) days of the date of the Notice of Intention to Arbitrate on the selection of an arbitrator (or arbitrators) willing to serve, the AAA shall appoint a qualified arbitrator or arbitrators to serve. Any arbitrator chosen in accordance with this Section 11.3 is referred to herein as the “Arbitrator.” The Arbitrator shall be neutral and impartial. The Arbitrator shall be fully active in such Arbitrator’s occupation or profession, knowledgeable as to the subject matter involved in the dispute, and experienced in arbitration proceedings. The foregoing shall not preclude otherwise qualified retired lawyers or judges. Any candidate for the role of Arbitrator shall promptly disclose to the parties all actual or perceived conflicts of interest involving the subject matter of the dispute or the parties. If an Arbitrator resigns or becomes unwilling to continue to serve as an Arbitrator, a replacement shall be selected in accordance with the procedure set forth in this Section 11.3. The Arbitrator shall be fully compensated for all time spent in connection with the arbitration proceedings in accordance with the Arbitrator’s hourly rate not to exceed Three Hundred Dollars (\$300.00) per hour, unless otherwise agreed to by the parties, for all time spent by the Arbitrator in connection with the arbitration proceeding. Pending the final award, the Arbitrator’s compensation and expenses shall be advanced equally by the parties.

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

binding arbitration pursuant to this Section 11.3 shall apply to the commencement of arbitration proceedings under this Section 11.3. If arbitration proceedings are not initiated within the applicable period, the claim shall forever be barred.

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

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

**BY ACCEPTANCE OF A DEED OR BY ACQUIRING A UNIT, EACH PERSON, FOR HIMSELF, HIS HEIRS, PERSONAL REPRESENTATIVES, SUCCESSORS, TRANSFEREES AND ASSIGNS, AGREES TO HAVE ANY CLAIM FOR ALLEGED DEFECT RESOLVED ACCORDING TO THE PROVISIONS OF THIS ARTICLE 11 AND WAIVES THE RIGHT TO PURSUE DECLARANT OR ANY DECLARANT AGENTS IN ANY MANNER OTHER THAN AS PROVIDED IN THIS ARTICLE 11. THE ASSOCIATION, EACH UNIT OWNER AND DECLARANT ACKNOWLEDGE THAT BY AGREEING TO RESOLVE ALL CLAIMS FOR ALLEGED DEFECTS AS PROVIDED IN THIS ARTICLE 11, THEY ARE GIVING UP THEIR RESPECTIVE RIGHTS TO HAVE SUCH CLAIMS TRIED BEFORE A JURY. THE ASSOCIATION, EACH UNIT OWNER AND DECLARANT FURTHER WAIVE THEIR RESPECTIVE RIGHTS TO AN AWARD OF PUNITIVE AND CONSEQUENTIAL DAMAGES RELATING TO A CLAIM FOR ALLEGED DEFECT BY ACCEPTANCE OF A DEED OR BY ACQUIRING A UNIT, EACH UNIT OWNER VOLUNTARILY ACKNOWLEDGES THAT HE IS GIVING UP ANY RIGHTS HE MAY POSSESS TO PUNITIVE AND CONSEQUENTIAL DAMAGES OR THE RIGHT TO A TRIAL BEFORE A JURY RELATING IN ANY WAY TO A CLAIM FOR ALLEGED DEFECT.**

**ARTICLE 12**  
**CONDEMNATION**

**12.0 Total Taking of a Unit.** If a Unit is acquired by eminent domain, or if part of a Unit is acquired by eminent domain leaving the Owner with a remnant which may not be practically or lawfully used for any purposes permitted by this Declaration, the award must compensate the Owner for his Unit and interest in the Common Elements, regardless of whether any Common Elements are taken. Upon such a taking, unless the decree otherwise provides, such taken Unit's allocated interests in the Common Elements and in the Common Expenses shall automatically be reallocated to the remaining Units in proportion to their respective allocated interests immediately before the taking. Upon such a taking, the Association shall prepare, execute and record an amendment to the Declaration in compliance with the Act. Any remnant of a Unit remaining after part of a Unit is taken becomes a Common Element.

**12.1 Partial Taking of a Unit.** Except as provided in Section 12.1, if part of a Unit is acquired by eminent domain, the award must compensate the Owner for the reduction in the value of his Unit and interest in the Common Elements, regardless of whether any Common Elements are taken. On acquisition, unless the decree otherwise provides, that Unit's allocated interests in the Common Elements and in the Common Expenses shall be reduced in proportion to the reduction in size of the Unit and the portion of the allocated interests divested from the partially acquired Unit shall automatically be reallocated to that Unit and the remaining Units in proportion to their respective interests immediately before the taking, with the partially acquired Unit participating in the reallocation on the basis of its reduced interest.

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

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

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

**ARTICLE 13**  
**GENERAL PROVISIONS**

**13.0 Contract Limitations.**

(A) Any agreement for professional management of the Condominium entered into by or on behalf of the Association at any time may not exceed a term of three (3) years and must also provide for termination by either party without cause and without payment of a termination fee upon ninety (90) days' or less written notice.

(B) During the Period of Declarant Control, any: (i) employment contract; (ii) lease; and (iii) or agreement of any nature with Declarant, or any member, agent or representative of Declarant or providing for services of Declarant and/or its affiliates, entered into by or on behalf of the Board or the Association must also provide for termination of such contract, lease or agreement by any Board elected by the Unit Owners after the Period of Declarant Control has expired or is terminated. The foregoing limitations shall not apply to bulk service provider contracts such as, without limitation, telephone, communications, satellite or cable TV or other similar service contracts, as long as Declarant, and its affiliates, are not the parties providing such services.

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

**13.2 Duration.** Unless terminated as provided in Section .3 of this Declaration, the covenants and restrictions of this Declaration, as amended from time to time, shall run with the land and bind the Condominium in perpetuity.

**13.3 Termination of Condominium.** Subject to the further provisions of this Declaration regarding Mortgagee notice and consent requirements, the Condominium may be terminated only in the manner provided for in A.R.S. § 33-1228 of the Condominium Act.

**13.4 Amendment.**

(A) Except in cases of amendments that may be executed by Declarant in the exercise of its Development Rights under this Declaration or under §33-1220 of the Condominium Act, by the Association under §§ 33-1206 or 33-1216(D) of the Condominium Act or this Declaration, or by certain Unit Owners under §§ 33-1218(B), 33-1222, 33-1223 or 33-1228(B) of the Condominium Act, and except to the extent permitted or required by other provisions of the Condominium Act or this Declaration, both the Declaration and the Plat, may be amended only by a vote of the Unit Owners to which at least sixty-seven percent (67%) of the votes in the Association are allocated. Such amendment pursuant to this Section .4(A) may be made at any time and without regard to whether such amendment has uniform application to the Units or the Condominium as a whole.

(B) Except to the extent expressly permitted or required by the Condominium Act, an amendment to the Declaration shall not create or increase Special Declarant Rights, increase the number of Units or change the boundaries of any Unit, the Allocated interest of a Unit, or the use as to which any Unit is restricted, in the absence of unanimous consent of the Unit Owners.

(C) No amendment to Article 11 of the Declaration or purporting to terminate or decrease any unexpired Development Right, Special Declarant Right or Period of Declarant Control shall be effective unless Declarant approves the amendment in writing, regardless of whether Declarant owns any Units at the time of such amendment; *provided, further, however,* that if Declarant is deemed by any court of applicable jurisdiction not to have such an interest, then, in no event may Article 11 of this Declaration be amended without the consent of one hundred percent (100%) of the then Unit Owners.

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

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

(F) Any amendment adopted by the Unit Owners pursuant to subsection (A) above shall be signed by the President or Vice-President of the Association and shall be Recorded. Any such amendment shall certify that the amendment has been approved as required by this section. Any amendment made by Declarant pursuant to subsection (D) or (E) of this section or the Condominium Act shall be executed by Declarant and shall be Recorded.

**13.5 Remedies Cumulative.** Each remedy provided in Article 10 and elsewhere in this Declaration is cumulative and not exclusive and the exercise of one right or remedy shall not waive the right to exercise another right or remedy.

**13.6 Notices.** All notices, demands, statements or other communications required to be given or served under this Declaration shall be in writing and shall be deemed to have been duly given and served if delivered personally or sent by United States mail, postage prepaid, return receipt requested, addressed as follows: (i) if to a Unit Owner, at the address at which the Unit Owner shall designate in writing and file with the Association or, if no such address is

designated, at the address of the Unit of such Unit Owner or (ii) if to the Association (during the Period of Declarant Control) or to Declarant, to Post Office Box 14136, Scottsdale, Arizona 85267, Attention: Lewis E. Patrick. A Unit Owner may change his address on file with the Association for receipt of notices by delivering a written notice of change of address to the Association pursuant to this section. A notice given by mail, whether regular, certified or registered, shall be deemed to have been received by the Person to whom the notice was addressed on the earlier of the date the notice is actually received or three days after the notice is mailed. If a Unit is owned by more than one Person, notice to one of the Unit Owners shall constitute notice to all Unit Owners of the same Unit. Each Unit Owner shall file his correct mailing address with the Association, and shall promptly notify the Association in writing of any subsequent change of address. Notices to the Association and/or Declarant shall be sent to the known business address of such Person on file with the Arizona Corporation Commission, and if such address is no longer valid, then to the address of the statutory agent of such Person.

**13.7 Binding Effect.** By acceptance of a deed or by acquiring any ownership interest in any portion of the Condominium, each Person, for himself, his heirs, personal representatives, successors, transferees and assigns, binds himself, his heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, easements, rules, and regulations now or hereafter imposed by the Condominium Documents and any amendments thereof. In addition, each such Person by so doing thereby acknowledges that the Condominium Documents set forth a general scheme for the improvement and development of the real property covered thereby and hereby evidences his interest that all the restrictions, conditions, covenants, easements, rules, and regulations contained in the Condominium Documents shall run with the land and be binding on all subsequent and future Unit Owners, grantees, purchasers, assignees, and transferees thereof. Furthermore, each such Person fully understands and acknowledges that the Condominium Documents shall be mutually beneficial, prohibitive and enforceable by the various subsequent and future Unit Owners and all other Persons having any interest in the Condominium. Declarant, its successors, assigns and grantees, covenants and agrees that the Units and the membership in the Association and the other rights created by the Condominium Documents shall not be separated or separately conveyed and each shall be deemed to be conveyed or encumbered with its respective Unit even though the description in the instrument of conveyance or encumbrance may refer only to the Unit.

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

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

**13.10 Survival of Liability.** The termination of membership in the Association or the cessation of occupancy of a Unit shall not relieve or release any such former Unit Owner, Member or Lessee from any liability or obligation incurred under, or in any way connected with,

the Association or this Declaration during the period of such ownership, membership, or occupancy or impair any rights or remedies which the Association may have against such former Unit Owner, Member or Lessee arising out of, or in any way connected with, such ownership, membership or occupancy and the covenants and obligations incident thereto.

**13.11 Construction.** In the event of any discrepancies, inconsistencies or conflicts between the provisions of this Declaration and the provisions of any other Condominium Document, the provisions of this Declaration shall prevail.

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

**13.13 Third Party Compliance.** Each Unit Owner shall, to the extent permitted by Arizona law, be responsible for compliance by each of his Lessees and their respective Invitees with the provisions of the Condominium Documents. A Unit Owner's failure to ensure compliance by such Persons shall be grounds for the same action of enforcement to be available to the Association or any other Unit Owner desiring to enforce this Declaration against such Persons. Notwithstanding the foregoing, no provision of the Condominium Documents shall be interpreted or construed as imposing on Unit Owners absolute liability for damage to the Common Elements or the Units. Unit Owners shall only be responsible for damage to the Common Elements or Units caused by the negligence or intentional acts of the Unit Owners, Lessees or other Persons for whom they are legally responsible under Arizona law.

**13.14 Attorneys' Fees.** In the event Declarant, the Association or any Unit Owner employs an attorney or attorneys to enforce an Assessment Lien or to collect any amounts due from a Unit Owner or to enforce compliance with or recover damages for any violation or noncompliance with the Condominium Documents or in any other manner arising out of the Condominium Documents or the operations of the Association as provided in Article 10 and elsewhere in this Declaration, the prevailing party in any such action shall be entitled to recover from the other party his reasonable attorneys' fees incurred in the action.

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

**13.16 Notice of Violation.** The Association shall have the right to record a written notice of a violation by any Unit Owner of any restriction or provision of the Condominium Documents. The notice shall be executed and acknowledged by an officer of the Association and shall contain substantially the following information: (i) the name of the Unit Owner; (ii) the legal description of the Unit against which the notice is being Recorded; (iii) a brief description of the nature of the violation; (iv) a statement that the notice is being Recorded by the Association pursuant to this Declaration; and (v) a statement of the specific steps which must be

taken by the Unit Owner to cure the violation. Recordation of a Notice of Violation shall serve as a notice to the Unit Owner and to any subsequent Purchaser of the Unit that there is a violation of the provisions of the Condominium Documents. If, after the recordation of such Notice, it is determined by the Association that the violation referred to in the Notice has been cured, the Association shall record a notice of compliance which shall state the legal description of the Unit against which the Notice of Violation was recorded, the Recording data of the Notice of Violation, and shall state that the violation referred to in the Notice of Violation has been cured, or if such be the case, that it did not exist.

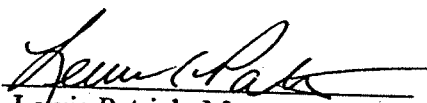
**13.17 Declarant's Disclaimer of Representations.** While Declarant has no reason to believe that any of the provisions contained in this Declaration are or may be invalid or unenforceable for any reason or to any extent, Declarant makes no warranty or representation as to the present or future validity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

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

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

**DECLARANT:**

**GREENFIELD, LLC**  
an Arizona limited liability company

By:   
Lewis Patrick, Manager

STATE OF ARIZONA     )  
  )ss.  
COUNTY OF Maricopa    )

The foregoing instrument was acknowledged before me this 20<sup>th</sup> day of March, 2004, the undersigned notary public in and for said county and state, by Lewis Patrick, the Manager of GREENFIELD, LLC, an Arizona limited liability company, for and on behalf of said limited liability company.

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

Patricia S. Smith  
Notary Public

My Commission Expires:

February 9, 2007

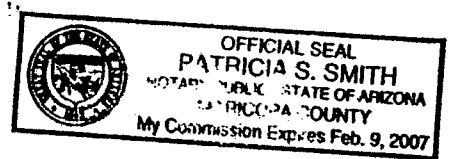


Exhibit A

Legal Description of the Condominium

Suites A-1001, Building A; A-1002, Building A; A-1003, Building A; A-1004, Building A; B-2005, Building B; B-2006, Building B; B-2007, Building B; B-2008, Building B; C-3009, Building C; C-3010, Building C; D-4011, Building D; D-4012, Building D; E-5013, Building E; E-5014, Building E; E-5015, Building E; E-5016, Building E; F-6017, Building F; F-6018, Building F; F-6019, Building F; F-6020, Building F; G-7021, Building G; G-7022, Building G; G-7023, Building G; G-7024, Building G; H-8025, Building H; H-8026, Building H; H-8027, Building H; H-8028, Building H; I-9029, Building I; I-9030, Building I; I-9031, Building I; I-9032, Building I; J-1033, Building J; J-1034, Building J; K-1135, Building K; K-1136, Building K; L-1237, Building L; L-1238, Building L; L-1239, Building L; L-1240, Building L; M-1341, Building M; M-1342, Building M; M-1343, Building M; N-1444, Building N; N-1445, Building N; N-1446, Building N; and N-1447, Building N, according to the Declaration of Condominium recorded in Document No. 2004-0174725, and the Plat recorded in Book 671 of Maps, Page 19, records of Maricopa County, Arizona.

\* CORR 2004-0317798

\* CORR 2004-0317797

Exhibit C

**SIGN CRITERIA  
GATEWAY OFFICE CONDOS  
AVONDALE, ARIZONA**

1. **Introduction.**

The intent of this sign criterion is to establish and maintain guidelines consistent with the signage policies of the Board and City of Avondale. Further, the purpose is to assure a standard of design, size, fabrication techniques and materials for the signage of the Project.

2. **General Requirements.**

- A. Each sign request shall be made to the Board by submitting two (2) sets of scale drawings of proposed signage for approval. An approved copy will be returned to the applicant.
- B. Signs installed without prior written approval from the Board may be subject to removal and proper re-installation at owner's expense.
- C. Any damage caused during installation of signage shall be repaired by contractor or applicant, at their expense.
- D. No labels shall be permitted on the exposed surface of signs, except those required by local ordinance. Those required must be installed in an inconspicuous location.
- E. Flashing, moving or audible signs are not permitted.
- F. No window signs are permitted without the express approval of the Board.
- G. No portable signs are to be displayed on the site.
- H. No secondary exterior signs are to be placed on building wall elevations.
- I. A Sign Permit must be obtained from the City of Avondale prior to installation of any signage.

3. **Wall Signage (No Freestanding Signs).**

- A. Format – All signage is to be illuminated, reverse-pan, channel aluminum letters with 4” deep aluminum returns and clear Lexan backs.
- B. Sign Area and Size – Each owner shall be allowed twenty-four (24) square feet of signage or one (1) square foot of signage for each linear foot of store frontage adjacent to an

arterial, whichever is greater. The allowable square footage may be transferred to any building elevation of the building occupied by the owner, except any elevation directly adjacent to any residential area. No wall signs shall be allowed to extend above the roofline. Each sign is to have one (1) line of copy. Two (2) lines will be allowed only if an office name can not fit within the specified width. Signs shall not exceed 70% of the width of the storefront. Maximum letter size is 18" for one line copy. For two (2) lines of copy overall height will not exceed 27" and maintain a 3" minimum space between lines. Minimum letter height shall not be less than 12" in height.

C. Letter Style – Letter style shall be Georgia Bold.

D. Color – All faces & returns shall be painted Black.

E. Logos – No logos are permitted.

F. Installation Location – All copy shall be installed vertically centered on the sign band fascia, and shall not exceed a horizontal length of 70% of the leased building frontage. All signage attachments and/or electrical conduit attachments shall be made so as to minimize marring of the fascia.

G. Front Door Signage – Business name, address and hours shall be white vinyl with a maximum letter height of 1-1/2", limited to three (3) lines of copy.

4. Approvals.

No signs shall be installed without first securing the necessary permits from the City of Avondale. Artwork and sign locations are to be approved by the Board. The Board reserves the right to reject any sign that does not comply with the intent and spirit of the sign criteria.

**EXHIBIT B**

Amended Suite #	Suites	SQ.FT.	Covered Parking #	% of total sq feet
A-1001	1 A-1	1215	60	1.83
A-1002	2 A-2	1191	61,62	1.80
A-1003	3 A-3	1182	63,64	1.78
A-1004	4 A-4	1164	65	1.76
B-2005	5 B-1	1215	71	1.83
B-2006	6 B-2	1191	72,73	1.80
B-2007	7 B-3	1182	74,75	1.78
B-2008	8 B-4	1164	76	1.76
C-3009	9 C-1	1249	79,80	1.89
C-3010	10 C-2	1364	77,78	2.06
D-4011	11 D-1	1249	83,84	1.89
D-4012	12 D-2	1364	81,82	2.06
E-5013	13 E-1	1215	23	1.83
E-5014	14 E-2	1191	24,25	1.80
E-5015	15 E-3	1182	27,28	1.78
E-5016	16 E-4 ✓	1164	26	1.76
F-6017	17 F-1	1215	34	1.83
F-6018	18 F-2	1191	32,33	1.80
F-6019	19 F-3	1182	30,31	1.78
F-6020	20 F-4	1164	29	1.76
G-7021	21 G-1	1215	17	1.83
G-7022	22 G-2	1191	18,19	1.80
G-7023	23 G-3	1182	20,21	1.78
G-7024	24 G-4	1164	22	1.76
H-8025	25 H-1	1908	15,16	2.88
H-8026	26 H-2	2050	1,2	3.09
H-8027	27 H-3	2346	3,4,14	3.54
H-8028	28 H-4	2573	5,12,13	3.88
I-9029	29 I-1	1215	8	1.83
I-9030	30 I-2	1191	9,10	1.80
I-9031	31 I-3	1182	6,7	1.78
I-9032	32 I-4	1164	11	1.76
J-1033	33 J-1	1448	37,48	2.19
J-1034	34 J-2	1561	35,36	2.36
K-1135	35 K-1	1448	46,47	2.19
K-1136	36 K-2	1561	38,39	2.36
L-1237	37 L-1	1215	43	1.83
L-1238	38 L-2	1191	44,45	1.80
L-1239	39 L-3	1182	41,42	1.78
L-1240	40 L-4	1164	40	1.76
M-1341	41 M-1 ✓	1423	54,55	2.15
M-1342	42 M-2	1195	56,57	1.80
M-1343	43 M-3	1363	58,59	2.06
N-1444	44 N-1	1908	69,70	2.88
N-1445	45 N-2	2050	66,67	3.10
N-1446	46 N-3	2346	51,52,68	3.54
N-1447	47 N-4	2573	49,50,53	3.89

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