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***DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS***

FOR

STONE CURVES CONDOMINIUM

STONE CURVES

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
STONE CURVES CONDOMINIUM

This Declaration of Covenants, Conditions and Restrictions for Stone Curves Condominium is made this 9th day of July, 2003, by Stone Curves Developments, L.L.C., an Arizona limited liability company.

ARTICLE 1.
DEFINITIONS

1.1 **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 amended from time to time.

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

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

1.2.3 **"Assessments"** means the Common Expense Assessments and Special Assessments levied and assessed against each Unit pursuant to Article 7 of this Declaration.

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

1.2.5 **"Association"** means Stone Curves Condominium Owners Association, an Arizona nonprofit corporation, its successors and assigns.

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

1.2.7 **"Building"** means the structures designated as buildings on the Plat.

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

1.2.9 **"Common Elements"** means all portions of the Condominium other than the Units.

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1.2.10 "Common Expenses" means expenditures made by or financial liabilities of the Association, together with any allocations to reserves.

1.2.11 "Common Expense Assessment" means the assessment levied against the Units pursuant to Section 7.2 of this Declaration.

1.2.12 "Common Expense Liability" means the liability for common expenses allocated to each Unit by this Declaration.

1.2.13 "Condominium" means the Parcel, together with all buildings and other Improvements located thereon.

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

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

1.2.16 "Declarant" means Stone Curves Developments L.L.C., an Arizona limited liability company, and its successors and any Person to whom it may transfer any Special Declarant Rights.

1.2.17 "Declaration" means this Condominium Declaration, as amended from time to time.

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

- (a) Add real estate to the Condominium;
- (b) Create easements, Units, Common Elements or Limited Common Elements within the Condominium;
- (c) Subdivide Units, convert Units into Common Elements or convert Common Elements into Units;
- (d) Withdraw real estate from the Condominium;
- (e) Make the Condominium part of a larger condominium or planned community;
- (f) Amend the Declaration during the Period of Declarant Control to comply with the Condominium Act or any other applicable law or to correct any error or

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inconsistency in the Declaration if the amendment does not adversely affect the rights of any Unit Owner;

(g) Amend the Declaration during the Period of Declarant Control to comply with the rules or guidelines, in effect from time to time, of any governmental or quasi-governmental entity or federal corporation guaranteeing or insuring mortgage loans or governing transactions involving mortgage instruments, including, without limitation, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration or the Veterans Administration.

1.2.19 "Eligible Insurer Or Guarantor" means an insurer or governmental guarantor of a First Mortgage who has requested notice of certain matters in accordance with Section 11.1 of this Declaration.

1.2.20 "Eligible Mortgage Holder" means a First Mortgagee who has requested notice of certain matters from the Association in accordance with Section 11.1 of this Declaration.

1.2.21 "First Mortgage" means any mortgage or deed of trust on a Unit with first priority over any other mortgage or deed of trust on the same Unit.

1.2.22 "First Mortgagee" means the holder of any First Mortgage.

1.2.23 "Improvement" means any physical structure, fixture or facility existing or constructed, placed, erected or installed on the land included in the Condominium, including, but not limited to, buildings, private drives, paving, fences, walls, sculptures, signs, hedges, plants, trees and shrubs of every type and kind.

1.2.24 "Lessee" means any Person who is the tenant or lessee under a written lease of a Unit.

1.2.25 "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.

1.2.26 "Member" means any Person who is or becomes a member of the Association.

1.2.27 "Parcel" means the real property described on Exhibit A attached to this Declaration together with all Improvements situated thereon.

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

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

1.230 "Plat" means the condominium plat for Stone Curves Condominium, which plat has been recorded in the records of Pima County, Arizona, and any amendments, supplements or corrections thereto.

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

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

1.233 "Resident" means any person residing in a Unit.

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

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

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

(b) Exercise any Development Right;

(c) Maintain sales offices, management offices, models, and signs advertising the Condominium;

(d) Use easements through the Common Elements for the purpose of making Improvements within the Condominium;

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

1.2.36 "Unit" means a portion of the Condominium designated for separate ownership or occupancy, the boundaries of which are described in Section 2.5 of this Declaration and shown on the Plat.

1.2.37 "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 Persons having an interest in a Unit merely as security for the performance of an obligation, or a lessee or tenant of a Unit. Unit Owner shall include a purchaser under a contract for the conveyance of real property, a contract for deed, a contract to convey, an agreement for sale or any similar contract subject to A.R.S. § 33-741, et seq. Unit Owner shall not include a purchaser under a purchase contract and receipt, escrow instructions or similar executory contracts which are intended to control the rights and obligations of the parties to executory contracts pending the closing of a sale or purchase transaction. In the case of Units the fee simple title to which is vested in a trustee pursuant to A.R.S. § 33-801, et seq., the Trustor shall be deemed to be the Unit Owner. In the case of Units the fee simple title to which is vested in a trustee pursuant to a subdivision trust agreement or similar agreement, the beneficiary of any such trust who is entitled to possession of the Unit shall be deemed to be the Unit Owner.

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

2.1 Submission of Property. Declarant hereby submits the Parcel to the provisions of the Condominium Act for the purpose of creating a condominium in accordance with the provisions of the Condominium Act and hereby declare that the Parcel shall be held and conveyed subject to the terms, covenants, conditions and restrictions set forth in this Declaration. 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, 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 Condominium and hereby evidences his interest that all the restrictions, conditions, covenants, 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.

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Furthermore, each such Person fully understands and acknowledges that the Condominium Documents shall be mutually beneficial, prohibitive and enforceable by the Association and the various subsequent and future Unit Owners. Declarant and its respective 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 which are appurtenant to the Unit 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.

2.2 Name of Condominium. The name of the Condominium created by this Declaration is Stone Curves Condominium.

2.3 Name of Association. The name of the Association is Stone Curves Condominium Owners Association.

2.4 Identifying Numbers of Units. The identifying numbers of the Units are 1 through 48 as shown on the Plat.

2.5 Unit Boundaries.

2.5.1 The boundaries of each Unit are the interior unfinished surfaces of the perimeter walls, floor, ceiling, doors and windows of the Unit. All lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the finished surfaces of the walls, floor and ceiling are part of the Unit, and all other portions of the walls, floor and ceiling are part of the Common Elements.

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

2.5.3 In the event of any inconsistency or conflict between the provisions of this Section and the Plat in regard to the description of the boundaries of the Unit, this Section shall control.

2.5.4 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.

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

2.6 Allocation of Common Element Interest and Common Expense Liabilities. As used in this Section, "Living Area" means the Unit (excluding the garage or carport) measured from the exterior walls of the Buildings and to the center of any common wall between two Units. Each Unit's percentage interest in the Common Elements and in the Common Expenses shall be allocated based upon the square footage of the Living Area of each Unit as compared to the square footage of the Living Area of all Units in the Condominium. The square footages of the Units are as follows:

<u>TYPE</u>	<u>SQ. FT.</u>	<u># OF UNITS</u>	<u>TOTAL</u>
A	831	4	3,324
B	680	8	5,440
C	816	8	6,528
D	1621	4	6,484
E	1070	6	6,420
F	1255	12	15,060
G	1306	6	7,836
<u>TOTAL</u>		<u>48</u>	<u>51,092</u>

Based upon the square footage of all Living Units and the square footage of the Living Area of the individual Units, the undivided percentage interest in the Common Elements and in the Common Expense Liabilities of each Unit type is as follows:

A	1.625
B	1.325
C	1.60
D	3.17

E	2.09
F	2.46
G	2.56

If the number of Condominium Units is decreased by de-annexation pursuant to Section 2.9 of this Declaration, the undivided interest in the Common Elements and in the Common Expenses of the Association for each Unit shall be reallocated in the manner set forth in Subsection 2.9.1(d) of this Declaration.

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

2.8 Allocation of Limited Common Elements.

2.8.1 The following portions of the Common Elements are Limited Common Elements and are allocated to the exclusive use of one Unit as follows:

2.8.1.1 Any chute, flue, pipe, duct, wire, conduit, bearing wall, bearing column or other fixtures (including, but not limited to, heating and air conditioning units and related equipment and gas, cable television, water and electric pipes, lines or meters), located outside of the boundaries of a Unit, which serve only one Unit are a Limited Common Element allocated solely to the Unit served;

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

2.8.1.3 Any shutters, awnings, window boxes, doorsteps, stoops, porches and exterior doors and windows or other fixtures designed to serve a single Unit, located outside the boundaries of the Unit, are Limited Common Elements allocated exclusively to the Unit served;

2.8.1.4 Each Unit is allocated the parking space(s) designated with the same number as the Unit.

2.8.1.5 Each Owner shall have the right to the exclusive use and possession of the Limited Common Elements allocated to his or her Unit, subject to the

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rights granted to the Declarant or the Association by the Condominium Documents. All Limited Common Elements must be used in accordance with the Declaration and the Rules.

2.8.2 Subject to Board approval, a Limited Common Element may be reallocated by an amendment to this Declaration executed only by the Owners between or among whose Units the allocation is made. The amendment shall state the manner in which the Limited Common Elements are to be reallocated and, before recording, the amendment shall be submitted to the Board of Directors. Unless the Board of Directors determines within thirty (30) days that the proposed amendment is unreasonable, which determination shall be in writing and specifically state the reasons for disapproval, the Association shall execute its approval and record the amendment.

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

2.8.4 So long as the Declarant owns any Unit, the Declarant shall have the right to allocate as a Limited Common Element any parking spaces which are part of the Common Elements and which have not previously been allocated as a Limited Common Element. Any such allocation shall be made by an Amendment to this Declaration executed by the Declarant.

2.9 Withdrawal of Units from Condominium.

2.9.1 Declarant hereby expressly reserves the right, but not the obligation, to withdraw Units, Limited Common Elements and Common Elements from the Condominium created by this Declaration, without the consent of the Association or any other Unit Owner, by executing and recording an amendment to this Declaration containing the following: (a) the legal description of the portion of the Condominium being withdrawn; (b) the number of Units being withdrawn, and the identifying number assigned to each such Unit; (c) a description of the Common Elements and Limited Common Elements being withdrawn and, in the case of Limited Common Elements, a designation of the Unit to which each Limited Common Element is allocated; (d) a reallocation to each Unit of a percentage of undivided interests in the Common Elements and in the Common Expenses of the Association and in the votes in the Association; (e) a description of any Special Declarant Rights or Development Rights reserved by the Declarant with respect to the property being withdrawn.

2.9.2 Unless otherwise provided in the amendment withdrawing property from the Condominium, the effective date of the withdrawal and the date for reallocating

to each Unit a percentage of undivided interests in the Common Elements of the Association shall be the date on which the amendment of withdrawal is Recorded..

2.9.3 Any withdrawn property shall no longer be subject to the use restrictions contained in this Declaration and shall not be subject in any respect to the Condominium Documents.

2.10 **Combination of Units.** If adjoining Units are owned by the same Owner, he or she may remove all or a portion of the demising wall between the adjoining Units provided that such removal is approved in writing by the Board of Directors prior to removal. The Board of Directors may impose any conditions on said removal that it deems necessary or desirable. The fact that a demising wall between adjoining Units is removed with approval of the Board of Directors shall not affect the respective Units' percentage undivided interest in the Common Elements or the Units' respective Common Expense Liability. Any removed demising wall may be reconstructed with the prior written approval of the Board of Directors, including the imposition of any conditions that the Board deems necessary or desirable.

ARTICLE 3. EASEMENTS AND DEVELOPMENT RIGHTS

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

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

3.3 **Unit Owners' Easements of Enjoyment.**

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3.3.5 The provisions of this Section 3.3 shall not apply to any of the Limited Common Elements that are allocated to one or more but less than all of the Units.

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

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

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

3.4.3 So long as Declarant is marketing Units in the Condominium, Declarant shall have the right to restrict the use of the parking spaces which are not allocated as Limited Common Elements. Such right shall include reserving such spaces for use by prospective Unit purchasers, Declarant's employees and others engaged in sales, leasing, maintenance, construction or management activities.

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

3.4.5 In the event of any conflict or inconsistency between this Section 3.4 and any other provision of the Condominium Documents, this Section 3.4 shall control and prevail over such other provisions.

3.5 Declarant's Development Rights and Easements.

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

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3.5.2 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 correcting drainage of surface, roof or storm water. The easement created by this Subsection expressly includes the right to cut any trees, bushes, or shrubbery, to grade the soil or to take any other action reasonably necessary.

3.5.3 The 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.

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

3.5.5 Declarant shall have the right to create additional Units, Common Elements and Limited Common Elements within the Condominium.

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

3.5.7 In the event of any conflict or inconsistency between this Section 3.5 and any other provision of the Condominium Documents, this Section 3.5 shall control and prevail over such other provisions.

3.6 **Declarant's Use of Clubhouse and Recreational Facilities.** The Declarant shall have the right to the exclusive use, without charge, of any portion of any clubhouse or other recreational facilities within the Common Elements on a short term basis for employee meetings, administrative purposes, special events or any other purpose, subject to the following: (i) the availability of the facilities at the time a request is submitted by Declarant to the Association; (ii) the Declarant shall indemnify the Association against any loss or damage resulting from Declarant's use thereof; and (iii) the Declarant shall return the facilities to the Association in the same condition as existed prior to Declarant's use thereof. The rights of the Declarant set forth in Section 3.6 shall be enforceable by injunction, by any other remedy in law or in equity and/or by any other means provided in this Declaration. In the event of any conflict or inconsistency between this Section 3.6 and any other provision of the Condominium Documents, the provisions of this Section 3.6 shall control and prevail over such other provisions.

3.7 **Easement for Support.** To the extent necessary, each Unit shall have an easement for structural support over every other Unit in the Building, the Common Elements and the Limited Common Elements, and each Unit and the Common Elements

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shall be subject to an easement for structural support in favor of every other Unit in the Building, the Common Elements and the Limited Common Elements.

3.8 Easement in Favor of the Association.

3.8.1 The Common Elements shall be subject to an easement in favor of the Association and its agents, employees and independent contractors for the purpose of the inspection, upkeep, maintenance, repair and replacement of the Common Elements and for the purpose of exercising all rights of the Association and discharging all obligations of the Association.

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

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

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

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

3.9.3 For driving and removing nails, screws, bolts and other attachment devices into the Unit side surface of the stone, block, brick or other masonry walls bounding the Unit and the Unit side surface of the studs which support the dry wall or plaster perimeter walls bounding the Unit, the bottom surface of floor joists above the Unit and the top surface of the floor joists below the Unit to the extent such nails, screws, bolts and other attachment devices may encroach into a part of a Common Element adjacent to such Unit; provided that any such action will not unreasonably interfere with the common use of any part of the Common Elements, adversely affect either the thermal or acoustical character of the Building or impair or structurally weaken the Building.

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

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

3.10 Units and Limited Common Elements Easement in Favor of Association. The Units 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:

3.10.1 For inspection at reasonable times and upon reasonable notice to the Unit Owner 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;

3.10.2 For inspection, maintenance, repair and replacement of the Common Elements or the Limited Common Elements situated in or accessible from such Units or Limited Common Elements;

3.10.3 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.

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

3.10.5 For inspection, at reasonable times and upon reasonable notice to the Unit Owner, of the Units and the Limited Common Elements in order to verify that the provisions of the Condominium Documents are being complied with by the Unit Owners, Lessees and Residents of the Unit.

3.11 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, shifting or settling, or alteration or restoration authorized by this Declaration or any reason other than the intentional encroachment on the Common Elements or any Unit by a Unit Owner, a valid easement for the encroachment, and for the maintenance thereof, exists.

3.12 Easement for Utilities and Maintenance. On behalf of all Owners, the Association may create and dedicate easements over the Common Elements: (a) for the

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benefit of all service providers for the installation, repair, replacement and maintenance of sanitary sewers, water, electric, gas and telephone lines and facilities, heating and air-conditioning facilities, cable telephone or master television antenna or satellite lines or cable, and drainage facilities, and for ingress to and egress from the Condominium in connection therewith, and (b) for ingress to and egress from the Condominium for the benefit of all municipal, state and federal vehicles, including, without limitation, all emergency and service type vehicles as may be required from time to time to service the Condominium and the Owners, Lessees and Occupants including, without limitation, for U.S. Mail distribution and collection and private or municipal refuse collection, without the joinder or consent of any First Mortgagee or other Person.

3.13 Private Sewer Easement. The 15' x 140' private sewer easement that is shown on the approved plat shall be designated for use by the owner of Pima County Assessor's parcel number 105 12 050A, immediately west of Stone Curves. It shall be the user's (i.e., the owner of parcel number 105 12 050A) responsibility to maintain, at the user's cost, the private sewer facilities that lie within the dedicated easement. The private sewer downstream into the public sewer in Stone Avenue will be maintained by the Association.

ARTICLE 4. USE AND OCCUPANCY RESTRICTIONS

4.1 Residential Use.

4.1.1 All Units shall be used, improved and devoted exclusively to residential use.

4.1.2 Except as authorized by the Board of Directors, no trade or business may be conducted in or from any Unit, except that an Owner or other resident of a Unit may conduct a business activity within a Unit so long as:

4.1.2.1 the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Unit;

4.1.2.2 the business activity conforms to all applicable zoning ordinances or requirements for the Condominium;

4.1.2.3 the business activity is consistent with the residential character of the Condominium and does not constitute a nuisance or a hazardous or offensive use or threaten security or safety of other residents in the Condominium, as may be determined from time to time in the sole discretion of the Board of Directors.

4.1.3 The terms "business" and "trade" as used in this Section shall be construed to have ordinary, generally-accepted meanings, and shall include, without

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limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether: (A) such activity is engaged in full or part time; (B) such activity is intended to or does generate a profit; or (C) a license is required for such activity.

4.1.4 The leasing of a Unit by the Unit Owner thereof, in accordance with the provisions of this Declaration, and the administration of the Association's functions or services, shall not be considered a trade or business within the meaning of this Section.

4.2 **Antennas.** No antenna, satellite television dish or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation shall be erected, used or maintained outdoors on any portion of the Condominium whether attached to a Building or structure or otherwise, unless approved in writing by the Board of Directors, unless applicable law prohibits the Board of Directors from requiring such prior approval. Even if applicable law prohibits the Board of Directors from requiring prior approval of certain types of antennas, any such antennas must be installed or constructed in accordance with such rules and regulations as the Board of Directors may adopt.

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

4.4 **Improvements and Alterations.** Any Unit Owner may make nonstructural additions, alterations and improvements within his Unit without the prior written approval of the Board of Directors, but such Unit Owner shall be responsible for any damage to other Units and to the Common Elements which results from any such alterations, additions or improvements. No Unit Owner shall make any structural additions, alterations or improvements within a Unit, unless prior to the commencement of each addition, alteration or improvement, the Unit Owner receives the prior written approval of the Board of Directors and an architect or engineer, licensed in Arizona, certifies that such addition, alteration or improvement will not impair the structural integrity of the Building within which such addition, alteration or improvement is to be made. The Unit Owner shall be responsible for any damage to other Units and to the Common Elements which results from any such additions, alterations or improvements. Notwithstanding the foregoing, no addition, alteration or improvement within a Unit or

within any Limited Common Element allocated to the exclusive use of a Unit, whether structural or not, which would be visible from the exterior of the Building in which the Unit is located or from the exterior of the Limited Common Element (including, but not limited to, the enclosing of a patio), shall be made without the prior written approval of the Board of Directors, which approval shall only be granted if the Board of Directors affirmatively finds that the proposed addition, alteration or improvement is aesthetically pleasing and in harmony with the surrounding Improvements. No Unit Owner shall make any addition, alteration or improvement to the Common Elements without the prior written approval of the Board of Directors.

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

4.6 **Machinery and Equipment.** No machinery or equipment of any kind shall be placed, operated or maintained upon the Condominium except with the prior written authorization of the Board of Directors.

4.7 **Animals.**

4.7.1 **Restricted to Reasonable Number.** No animal, bird, fowl, poultry or livestock, other than a reasonable number of generally recognized household pets, shall be maintained or kept in any Unit or on any other portion of the Condominium, and then only if they are kept, bred or raised solely as domestic pets and not for commercial purposes.

4.7.2 **Definition of "Generally Recognized Household Pet".** For purposes of this Section, a "generally recognized household pet" shall mean a dog, cat, household bird, or any other pet authorized in writing by the Board of Directors.

4.7.3 **Nuisance.** No pet shall be allowed to make an unreasonable amount of noise, cause an odor, endanger the health of residents, or to become a nuisance. The Board of Directors, in its sole discretion, shall determine whether the number of pets in a Unit is "reasonable" and whether the presence of the pet constitutes a nuisance. If a pet is determined to be a nuisance, the pertinent Unit Owner may be fined in accordance with applicable rules and regulations, or said pet may be forbidden from coming upon the Condominium.

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4.7.4 Required Use of Leash and Clean-Up. All dogs shall be restrained on a hand-held leash when outside a Unit, and all dogs shall be directly under the Unit Owner's control at all times. An owner must clean up after his/her pet and dispose of droppings, bagged, in a trash receptacle. Any Unit or Limited Common Element where a pet is kept or maintained shall at all times be kept in a neat and clean condition.

4.7.5 No Structures for Animals. Except as approved in writing by the Board of Directors, no structure for the care, housing, confinement, or training of any animal or pet shall be maintained on any portion of the Common Elements or in any Unit so as to be visible from the exterior of the Building in which the Unit is located.

4.7.6 Determination of Non-Compliance. Upon the written request of any Unit Owner, the Board of Directors, in its sole discretion, shall determine whether, for the purposes of this Section, the number of pets within a Unit is reasonable; whether pet is a nuisance or is making an unreasonable amount of noise or is causing an odor.

4.7.7 Rules and Regulations. The Board of Directors shall have the right to adopt, amend and repeal rules and regulations governing the keeping of pets in the Condominium, and such rules and regulations may include an enforcement procedure as well as limitations on the permitted height and weight of pets.

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

4.9 Clothes Drying Facilities. Outside clotheslines or other outside facilities for drying or airing clothes shall not be erected, placed or maintained on the Condominium, except as designated by the Board of Directors.

4.10 Mineral Exploration. 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.

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

4.12 Trucks, Trailers, Campers and Boats. No truck, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, recreational vehicle, boat, boat trailer,

or other similar equipment or vehicle may be parked, kept, maintained, constructed, reconstructed or repaired on any part of the Condominium except as designated by the Board of Directors.

4.13 Motor Vehicles. The Board of Directors shall adopt rules and regulations pertaining to the use of motor vehicles within the Condominium, which shall address parking and use restrictions. These rules and regulations are incorporated herein by this reference and shall be enforceable like any restriction in this Declaration.

4.14 Towing of Vehicles. The Board of Directors shall have the right to have any truck, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, recreational vehicle, boat, boat trailer or similar equipment or vehicle or any automobile, motorcycle, motorbike, or other motor vehicle parked, kept, maintained, constructed, reconstructed or repaired in violation of the Condominium Documents towed away at the sole cost and expense of the owner of the vehicle or equipment. Any expense incurred by the Association in connection with the towing of any vehicle or equipment shall be paid to the Association upon demand by the owner of the vehicle or equipment.

4.15 Signs. No advertisement, poster, sign or billboard (temporary or permanent) shall be permitted within the boundaries of the Properties without the prior written authorization of the Board, except for one "For Sale" or "For Lease" sign of a standard size.

4.16 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.

4.17 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 Resident or is an annoyance to any Unit Owner, Lessee or Resident. The Board of Directors shall have the discretion to determine whether an action or condition constitutes a "nuisance." No exterior speakers, horns, whistles, bells or other sound devices, except security or other emergency devices used exclusively for security or emergency purposes, shall be located, used or placed on the Condominium without the prior written approval of the Board of Directors.

4.18 Window Coverings. No reflective materials, including, but 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 without the prior written approval of the Board of Directors. No enclosures, drapes, blinds, shades, screens

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or other items affecting the exterior appearance of a Unit or any Limited Common Elements allocated to the Unit shall be constructed or installed without the prior written consent of the Board of Directors.

4.19 Rental of Units. Subject to any rules and regulations adopted by the Board of Directors, which may include a limitation on the number of Units within the Condominium that can be rented at any one time, each Owner shall have the right to lease or rent all or part of his or her Unit. Any lease agreement, including any agreement to lease the Unit on a month-to-month basis, must be in writing and must provide that the failure of any lessee or tenant to comply with the Rules, By-Laws, Articles and provisions of this Declaration shall be a default under the lease. Any lease agreement shall be for a period of not less than thirty (30) days, and a copy thereof shall be delivered to the Association. Any Unit Owner who leases his Unit must provide the Lessee with copies of this Declaration and the Rules. The Unit Owner shall be liable for any violation of this Declaration or the Rules by the Lessees or other persons residing in the Unit and their guests or invitees and, in the event of any such violation, the Unit Owner, upon demand of the Association, shall immediately take all necessary actions to correct any such violations.

4.20 Security. The Association may, from time to time, provide measures of security on the condominium property; however, the Association is not a provider of security and shall have no duty to provide any security on the condominium property. The obligation to provide security lies solely with each unit owner individually. The Association shall not be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken, nor for the acts and omissions of any third parties or of any other Owner or Owner's family members, guests, tenants and invitees resulting in damages or injury to person or property.

**ARTICLE 5.
MAINTENANCE AND REPAIR OF
COMMON ELEMENTS AND UNITS**

5.1 Duties of the Association. The Association shall maintain, repair and replace all Common Elements, whether located inside or outside the Units, except for the Limited Common Elements which the Unit Owners are obligated to maintain, repair and replace pursuant to Section 5.2 of this Declaration. The cost of all such maintenance, repairs and replacements shall be a Common Expense and shall be paid for by the Association. The Board of Directors shall be the sole judge as to the appropriate maintenance, repair and replacement of all Common Elements, but all Common Elements shall be maintained in good condition and repair at all times. No Owner, Lessee, Resident or other Person shall construct or install any Improvements on the Common Elements or alter, modify or remove any Common Elements without the approval of the Board of Directors. No Owner, Lessee, Resident or other Person shall obstruct or interfere with the Association in the performance of the Association's maintenance, repair and replacement of the Common Elements.

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5.2 **Duties of Unit Owners.** Each Unit Owner shall maintain, repair and replace, at his own expense, all portions of his Unit. In addition, each Unit Owner shall be responsible for the maintenance and repair of the Limited Common Elements allocated to his Unit pursuant to Subsections 2.8.1(a) and (b); the exterior doors and door frames and windows allocated to the Unit as Limited Common Elements pursuant to Section 2.8.1(c) and the frames and glass for such windows and the hardware for the exterior doors; the interior of the patio allocated to the Unit by Subsection 2.8(d), as well as any walls enclosing the patios allocated to the exclusive use of the Unit.

5.3 **Repair or Restoration Necessitated by Owner.** Each Unit Owner shall be liable to the Association for any damage to the Common Elements or the Improvements, landscaping or equipment thereon which results from the negligence or willful misconduct of the Unit Owner. The cost to the Association of any such repair, maintenance or replacements required by such act of a Unit Owner shall be paid by the Unit Owner, upon demand, to the Association. The Association may enforce collection of any such amounts in the same manner and to the same extent as provided for in this Declaration for the collection of Assessments.

5.4 **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 Subsection 7.2.4 of this Declaration.

ARTICLE 6.

THE ASSOCIATION; RIGHTS AND DUTIES; MEMBERSHIP

6.1 **Rights, Powers and Duties of the Association.** No later than the date on which the first Unit is conveyed to a Purchaser, the Association shall be organized as a nonprofit Arizona corporation. The Association shall be the entity through which the Unit Owners shall act. The Association shall have such rights, powers and duties as are prescribed by law and as are set forth in the Condominium Documents together with such rights, powers and duties as may be reasonably necessary in order to effectuate the objectives and purposes of the Association as set forth in this Declaration and the Condominium Act. The Association shall have the right to finance capital improvements in the Condominium by encumbering future Assessments if such action is approved by the written consent or affirmative vote of Unit Owners representing at least eighty percent (80%) of the votes in the Association. Unless the Condominium Documents or the

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Condominium Act specifically require a vote of the Members, the Board of Directors may act in all instances on behalf of the Association.

6.2 Rules. The Board of Directors, from time to time and subject to the provisions of this Declaration and the Condominium Act, may adopt, amend, and repeal rules and regulations. The Rules may, among other things, restrict and govern the use of any area by any Unit Owner, by the family of such Unit Owner, or by any invitee, licensee or lessee of such Unit Owner.

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 shall be mandatory. A Unit Owner shall automatically, upon becoming a Unit Owner, be a member of the Association and shall remain a member of the Association until such time as his/her ownership ceases for any reason, at which time his/her membership in the Association shall automatically cease. Membership in the Association shall be appurtenant to each Unit and may not be separately assigned, transferred or conveyed.

ARTICLE 7. ASSESSMENTS

7.1 Preparation of Budget. An annual budget shall be prepared under the supervision of the Treasurer and the Budget Committee. The Board of Directors shall present the budget to the annual meeting of the Association.

7.1.2 Contents of Budget. The budget shall clearly state the projects and maintenance items to be performed during the coming year and their estimates of cost. The budget shall contain:

7.1.2.1 estimated revenue and expenses which the Board of Directors believes will be required during the ensuing fiscal year to pay all Common Expenses including, but not limited, to: (A) 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; (B) the cost of wages, materials, insurance premiums, services, supplies and other expenses required for the administration, operation, maintenance and repair of the Condominium; and (C) the amount required to render to the Unit Owners all services required to be rendered by the Association under the Condominium Documents; and

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