

7.1.2.2 the amount of the total cash reserves of the Association currently available for replacement or major repair of Common Elements and for contingencies; and

7.1.2.3 an itemized estimate of the remaining life of, and the methods of funding to defray repair, replacement of or addition to, major components of the Common Elements; and

7.1.2.4 a general statement setting forth the procedures used by the Board in the calculation and establishment of reserves to defray the costs of repair, replacement or additions to major components of the Common Elements.

7.1.3 No Waiver if Budget is Not Prepared Timely. 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/her allocable share of the Common Expenses as provided in Section 7.2 of this Declaration, and each Unit Owner shall continue to pay the Common Expense Assessment against his/her 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.

7.1.4 Assessments to Less Than All Units. The budget shall separately reflect any Common Expenses to be assessed against less than all of the Units in accordance with Section 7.2.4 and 7.2.5 below.

7.1.5 Notice to Unit Owners. At least thirty (30) days prior to the annual meeting, 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 7.2 of this Declaration.

7.1.6 Adoption and Ratification of Annual Budget. The Board of Directors is expressly authorized to adopt and amend budgets for the Association. However, if the budget includes an increase in the Common Expense Assessment that exceeds 20% of the current year's assessment, a majority of the Members must approve, as set forth in Arizona's Planned Communities Act. Furthermore, eighty percent (80%) of Members present in person or by proxy at an Association meeting at which at least seventy-five percent (75%) of the Members are present, may vote to reject the budget due to specific line items. In this case, the Board must present a revised budget within thirty (30) days for the approval of eighty percent (80%) of Members present in person or by proxy at an Association meeting at which at least seventy-five percent (75%) of the Members are present

7.2 Common Expense Assessment.

7.2.1 Installment Payments. Common Expense Assessments shall be levied on a fiscal year basis, although the Board may provide that such annual assessment is payable in equal monthly installments or any other increment. Unless otherwise specified by the Board of Directors, Common Expense Assessments shall be due and payable in monthly installments on the first day of each month.

7.2.2 Amount of Assessment. The initial assessment of the Association for each of the Units is as follows: \$70.00 for each Floor Plan Type A Unit; \$57.00 for each Floor Plan Type B Unit; \$68.00 for each Floor Plan Type C Unit; \$134.00 for each Floor Plan Type D Unit; \$90.00 for each Floor Plan Type E Unit; \$103.00 for each Floor Plan Type F Unit; and \$109.00 for each Floor Plan Type G Unit.

Owners shall pay Assessments in accordance with the prorations set forth in Section 2.6.

7.2.3 Owner Misconduct. If any Common Expense is caused by the action or misconduct of any Unit Owner, the Association shall assess that Common Expense exclusively against his/her Unit.

7.2.4 Judgments against the Condominium. 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.

7.2.5 Personal Obligation of Owner. All Assessments, monetary penalties and other fees and charges levied against a Unit pursuant to this Declaration or the Rules and Regulations, shall be the personal obligation of the Unit Owner of the Unit at the time the Assessments, monetary penalties or other fees and charges became due. The personal obligation of a Unit Owner for Assessments, monetary penalties and other fees and charges levied against his/her Unit shall not pass to the Unit Owner's successors in title unless expressly assumed by them.

7.3 Special Assessments. In addition to Common Expense Assessments, the Association may levy, in any fiscal year, a special assessment applicable to that fiscal year for: (A) constructing capital improvements; (B) correcting an inadequacy in the current operating account; (C) defraying, in whole or in part, the cost of any construction, reconstruction, unexpected repair or replacement of improvements in the Unit(s) or Common Elements; or (D) paying for such other matters as the Board may deem appropriate for the Condominium. Special Assessments shall be levied in the same manner as Common Expense Assessments and must be approved by at least eighty percent (80%) of the Members present and voting in person or by proxy at a meeting duly called for such purpose, as authorized by the Bylaws. 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.

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7.4 Reimbursement Assessments. The Association shall levy a Reimbursement Assessment against any Owner and his/her Unit if a failure to comply with the Condominium Documents has (A) necessitated an expenditure of monies by the Association to bring the Owner or his/her Unit into compliance or (B) resulted in the imposition of a fine or penalty. A Reimbursement Assessment shall not be levied by the Association until Notice and an opportunity for a Hearing has been given. Reimbursement Assessments may be enforced in the same manner as Common Expense and Special Assessments, including the filing of a Notice of Lien as provided in this Declaration.

7.5 Liability for Payment; Effect of Nonpayment of Assessments; Remedies of the Association.

7.5.1 Covenants. The obligation to pay assessments to the Association shall run with the land so that each successive record Owner of a Unit shall become liable to pay all such assessments. Each Owner, by the acceptance of a deed to a Unit, whether or not it is expressly stated in the deed, covenants and agrees to pay to the Association all assessments and any additional charges levied pursuant to this Article 7.

7.5.2 No Waiver or Offset. No Unit Owner may waive or otherwise escape personal liability for or release the Unit owned by him/her from payment of Assessments, monetary penalties and other fees and charges levied pursuant to the Condominium Documents, by nonuse of any of the Common Elements and facilities or by the abandonment of his/her Unit, attempting to renounce rights in the Common Elements or the facilities or services within the Condominium, or for any other reason.

7.5.3 Delinquency. 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 delinquency at the rate of interest established from time to time by the Board of Directors.

7.5.4 Successor Liability. The personal obligation of an Owner for delinquent assessments shall not pass to a successive Owner unless the personal obligation is assumed by the successive Owner. No such assumption of personal liability by a successive Owner (including a contract purchaser under an installment land contract) shall relieve any Owner from personal liability for delinquent assessments. After an Owner transfers fee title of record to his/her Unit, he/she shall not be liable for any charge thereafter levied against the Unit. Upon the sale or transfer of any Unit, the Owner's interest in the funds shall be deemed automatically transferred to the successive Owner. All transfers shall be deemed complete upon the recordation of a deed in favor of a subsequent Owner within the Pima County Recorder's Office.

7.5.5 Assessment Lien. All Assessments, monetary penalties and other fees and charges imposed or levied against any Unit or Unit Owner, including attorney fees and

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costs, shall be secured by the Assessment Lien as provided for in the Condominium Act. The recording of this Declaration constitutes record notice and perfection of the Assessment Lien, and no further recordation of any claim of lien shall be required. Although not required in order to perfect the Assessment Lien, the Association shall have the right but not the obligation, to record a notice setting forth the amount of any delinquent assessments, monetary penalties or other fees or charges imposed or levied against a Unit or the Unit Owner which is secured by the Assessment Lien. The lien provided for in this Section shall be in favor of the Association and shall be for the benefit of all the Owners. Further, except for the transfer of a Unit pursuant to a foreclosure proceeding, the sale or transfer of a Unit shall not affect such lien.

7.5.6 Enforcement. The Association shall have the right, at its option, to enforce collection of any delinquent Assessments, monetary penalties and all other fees and charges owed to the Association in any manner allowed by law including, but not limited to: (A) bringing an action at law against the Unit Owner personally obligated to pay the delinquent amounts. Such action may be brought without waiving the Assessment Lien securing any such delinquent amounts; or (B) bringing an action to foreclose its Assessment Lien against the Unit in the manner provided by law for the foreclosure of a realty mortgage. 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. Each Owner waives the benefit of any homestead or exemption laws of the State of Arizona now or then in effect regarding any lien created pursuant to this Declaration.

7.5.7 Additional Charges for Enforcement. In addition to any other amounts due or any other relief or remedy obtained against an Owner who is delinquent in the payment of any assessments, each Owner agrees to pay such additional costs, fees, charges and expenditures ("Additional Charges") as the Association may incur or levy in the process of collecting monies due and delinquent from the Owner. All additional charges shall be included in any judgment in any suit or action brought to enforce collection of delinquent assessments or may be levied against a Unit as a Reimbursement Assessment. Additional charges shall include but not be limited to the following:

7.5.7.1 Attorneys' Fees. Reasonable attorneys' fees and costs incurred in the event an attorney is employed to collect any assessment or other sum due, including the placement of the lien, or the filing of a suit or otherwise;

7.5.7.2 Late Charges. A late charge in an amount to be determined by the Board and set forth in its written collection policy, to compensate the Association for additional collection costs incurred in the event any assessment or other sum is not paid when due;

7.5.7.3 Costs of Suit. Costs of suit and court costs incurred as are allowed by the Court;

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7.5.7.4 Interest. Interest on all sums imposed in accordance with this Article 7 including the delinquent assessment(s), reasonable costs of collection, reasonable attorneys' fees and late charges, at an annual percentage rate to be established by the Board and set forth in its written collection policy, commencing thirty (30) days after the assessment becomes due; and

7.5.7.5 Other. Any such other additional costs that the Association may incur in the process of collecting delinquent assessments or sums, including, but not limited to, private investigator services to locate any Owner who has abandoned his/her Unit.

7.5.8 Application of Payments. All payments received by the Association shall first be applied to collection costs and attorney's fees, then to late charges, then to interest and then to delinquent assessments.

7.5.9 Release of Lien. Upon payment of a delinquent assessment or other satisfaction thereof, the Association shall record a release of any recorded assessment lien.

7.6 Subordination of Assessment Lien to Mortgages. Notwithstanding any provision to the contrary, the Assessment Lien created by this Declaration shall be subject to and subordinate to and shall not affect the holder of any First Mortgage or Deed of Trust made in good faith and for value. 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 fees and charges 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 Common Expense. Any Assessments, monetary penalties and other fees and charges against the Unit which accrue prior to such sale or transfer shall remain the obligation of the defaulting Unit Owner. After any foreclosure or any equivalent proceeding, there shall be a lien on the interest of the purchaser at the foreclosure sale to secure all assessments, whether regular or special, charged to such Unit after the date of such foreclosure sale, which lien shall have the same effect and shall be enforced in the same manner as provided herein. For purposes of this section, a mortgage may be given in good faith or for value even though the mortgagee has constructive or actual knowledge of the assessment lien provisions of this Declaration.

7.7 Certificate of Payment. The Association, on written request, shall furnish to a lienholder, Unit Owner or person designated by a Unit Owner, a recordable statement setting forth the amount of unpaid Assessments against his/her Unit. The statement shall

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be furnished within twenty (20) business days after receipt of the request and is binding on the Association, the Board of Directors, and every Unit Owner. The Association may charge a reasonable fee, in an amount established by the Board of Directors, for each such statement.

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

7.9 **Reserve Fund.**

7.9.1 **Requirement for Reserve Fund.** The Association shall maintain a reserve account with the funds therein being used for the periodic maintenance, repair and replacement of the Common Elements and other property, as required hereunder.

7.9.2 **Funding the Reserves.** This reserve fund shall be funded by a portion of the Annual Assessments of Owners rather than by Special Assessments; provided however, that this provision shall not be deemed to limit the power of the Association to levy any assessment or charge authorized by this Declaration.

7.9.3 **Management of Reserves.** The reserves which are collected as part of the Regular Assessments shall be deposited by the Association in a separate bank account to be held in trust for the purposes for which they are collected. Such reserves shall be deemed a contribution to the capital account of the Association by the Owners and, once paid, no Owner shall be entitled to any reimbursement of those funds. The Board is only responsible for providing for such reserves as the Board, in good faith, deems reasonable, and no Member of the Board is liable to any Owner or to the Association if the amount in the reserve account proves to be inadequate.

7.10 **Surplus Funds.** Unless otherwise provided by applicable law, 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 Assessments.

7.11 **Transfer Fee.** Each Purchaser of a Unit shall pay to the Association immediately upon becoming the Owner of the Unit a transfer fee in such amount as may be established from time to time by the Board of Directors.

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7.12 Accounts. Assessments and other funds collected by the Association shall be deposited into at least two (2) separate accounts with a federally-insured bank or savings and loan association, which accounts shall be clearly designated as (a) the current operating account, and (b) the reserve account(s). The Board shall deposit those portions of the assessments collected for current maintenance and operations into the current operating account and shall deposit those portions of the assessments collected as reserves for contingencies and for replacement and deferred maintenance of capital improvements into the reserve account(s).

7.13 Working Capital Fund. Upon the closing of the sale of each Unit by the Declarant, the Purchaser shall pay to the Association an amount equal to one-sixth (1/6) of the Common Expense Assessment for the Unit to establish a working capital fund. The purpose of the working capital fund is to meet unforeseen expenditures, to purchase any additional equipment or services by or for the Association, or, on a temporary basis, to pay Association expenses, such as insurance, as they become due in the ordinary course, in the event there are not sufficient funds in the Association's general accounts at the time of the due date to pay such expenses. However, the Board in its discretion shall reimburse the working capital fund for such expenses incurred from Annual Assessments as they are paid by Members. Amounts paid to the Association pursuant to this Section shall be non-refundable and shall not be considered as an advance payment of any Assessments levied by the Association pursuant to this Declaration.

ARTICLE 8. INSURANCE

8.1 Scope of Coverage.

8.1.2 The Board of Directors shall obtain and maintain at all times, to the extent reasonably available and reasonably priced, policies of insurance, written with financially responsible and able companies licensed to do business in Pima County, Arizona, covering the risks set forth below:

8.1.2.1 Property insurance on the Common Elements insuring against all risks of direct physical loss commonly insured against or, as determined by the board of directors, against fire and extended overage perils. The total amount of insurance after application of any deductibles shall be not less than in an amount equal to the full replacement value, without deduction for depreciation, of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations and other items normally excluded from property policies.

8.1.2.2 If the condominium is located in an area identified by the Secretary of Housing and Urban Development as an area having special flood hazards, and the sale of flood insurance has been made available under the National Flood Insurance Act

of 1968, a "blanket" policy of flood insurance on the condominium in an amount which is the lesser of the maximum amount of insurance available under the aforesaid Act or the aggregate of the unpaid principal balances of the first mortgages on the condominium units comprising the project.

8.1.2.3 Broad form comprehensive general liability insurance in such limits as the Board of Directors may from time to time determine, but not in an amount less than one million dollars (\$1,000,000) per occurrence. 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. Coverage shall include, without limitation, liability for personal injuries; operation of automobiles on behalf of the Association; any legal liability that results from lawsuits related to employment contracts in which the Association is a party; and activities in connection with the ownership, operation, maintenance and other use of the condominium. All liability insurance shall name the Association, the Board, the managing agent, first mortgagees, the Owners and the officers of the Association, as insureds thereunder.

8.1.2.4 Workmen's compensation and employer's liability insurance, and all other similar insurance with respect to any employees of the Association in the amounts and in the forms now or hereafter required by law.

8.1.2.5 Fidelity coverage against dishonesty of employees or any other person handling funds of the Association, destruction or disappearance of money or securities and forgery. Said policy also shall contain endorsements thereto, covering any persons who serve the Association without compensation.

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

8.1.2.7 The Association may obtain insurance against such other risks, of a similar or dissimilar nature, as it shall deem appropriate with respect to the Condominium, including plate or other glass insurance and any personal property of the Association located thereon.

8.1.2.8 "Agreed Amount" and "Inflation Guard" endorsements.

8.1.3 All policies of insurance, to the extent reasonably available, shall contain the following provisions:

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

8.1.3.2 There shall be no subrogation with respect to the Association, its agents, servants, and employees against Unit Owners and members of their household.

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

8.1.3.4 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.

8.1.3.5 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.

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

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

8.1.3.8 In the event that the insurance coverage provided for herein is not reasonably available to the Association, and the individual Owners are required to carry coverage on any of the Common Elements, the Association shall be named as an additional insured, and the Owner shall cause a Certificate of Insurance evidencing this to be provided to the Association by the Owner's insurance carrier.

8.1.4 Every three (3) years, prior to the placing or renewal of any policy of casualty insurance, the Board of Directors may obtain an appraisal from a duly qualified real estate or insurance appraiser, which appraiser shall reasonably estimate the full replacement value of the entire Condominium, without deduction for depreciation, for the purpose of determining the amount of the insurance to be effected pursuant to the provisions of this insurance section. In no event shall the insurance policy contain a co-insurance clause for less than eighty percent (80%) of the full replacement cost. Determination of maximum replacement value shall be made every three (3) years by one or more written appraisals to be furnished by a person knowledgeable of replacement costs, and each first mortgagee, if requested, shall be furnished with a copy thereof, within

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thirty (30) days after receipt of such written appraisals. Such amounts of insurance shall be adjusted, if necessary, in accordance with the determined maximum replacement value.

8.2 **Payment of Deductibles and Premiums.** Any applicable deductible shall be paid by the affected Unit Owner for any loss to his/her Unit or to the Common Elements caused by the Unit Owner's negligence. The Association shall pay the deductible for any loss to Common Elements. Premiums for all insurance obtained by the Association pursuant to this Article shall be Common Expenses and shall be paid for by the Association.

8.3 **Insurance Obtained by Unit Owners.** The issuance of insurance policies to the Association pursuant to this Article shall not prevent a Unit Owner from obtaining insurance for his/her own benefit and at his/her own expense covering any applicable deductible under the Association's policy, his/her Unit, his/her personal property and providing personal liability coverage.

8.4 **Payment of Insurance Proceeds.** Any loss covered by property insurance in accordance with this Article 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 lienholder as their interests may appear, and the proceeds shall be disbursed and applied as provided for in A.R.S. Section 33-1253.

8.5 **Certificate of Insurance.** An insurer that has issued an insurance policy pursuant to this Article 8 shall issue certificates or memoranda of insurance to the Association and, on written request, to any Unit Owner, mortgagee, or beneficiary under 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 non-renewal has been mailed to the Association, each Unit Owner, and each mortgagee or beneficiary under a Deed of Trust to whom a certificate or memorandum of insurance has been issued at their respective last known addresses. See Section 8.1.3.8 regarding the obligation of a Unit Owner to provide a Certificate of Insurance to the Association.

ARTICLE 9. DESTRUCTION OF IMPROVEMENTS

9.1 **Automatic Reconstruction.** Any portion of the Condominium for which insurance is maintained by the Association which is damaged or destroyed shall be repaired or replaced promptly by the Association unless (i) the Condominium is terminated, (ii) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (iii) eighty percent (80%) of the Unit Owners, including every Owner of a Unit or allocated Limited Common Element which will not be rebuilt,

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vote not to rebuild. The cost of repair or replacement of the damaged or destroyed portion of the Condominium in excess of insurance proceeds and reserves shall be a Common Expense and shall be assessed to the Members as a Special Assessment pursuant to Section 7.3 of this Declaration.

9.2 Determination Not to Reconstruct Without Termination. If eighty percent (80%) of the Unit Owners (including every Owner of a Unit or an allocated Limited Common Element which will not be rebuilt) vote not to rebuild, and the Condominium is not terminated in accordance with the Act, the insurance proceeds shall be distributed in proportion to their interests in the Common Elements to the Owners of those Units and the Owners to which those Limited Common Elements were allocated, or to lienholders as their interests may appear. The remainder of the proceeds shall be distributed to all Unit Owners or lienholders as their interests may appear in proportion to Common Element interests of all the Units. If the Unit Owners vote not to rebuild any Unit, that Unit's allocated interests in the Common Elements and in the Common Expenses shall be automatically reallocated as if the Unit had been condemned under A.R.S. § 22-1206A, and the Association shall prepare, execute and record an amendment to this Declaration reflecting the reallocation.

9.3 Distribution of Insurance Proceeds in the Event of Termination of the Condominium. Notwithstanding any provisions of this Article 9 to the contrary, the distribution of insurance proceeds resulting from the damage or destruction of all or any part of the Common Elements shall be distributed as provided in the Act in the event of a termination of the Condominium.

9.4 Negotiations with Insurer. The Association shall have full authority to negotiate in good faith with representatives of the insurer of any totally or partially destroyed building or any other portion of the Common Elements, and to make settlements with the insurer for less than full insurance coverage on the damage to such building or any other portion of the Common Elements. Any settlement made by the Association in good faith shall be binding upon all Owners and First Mortgagees. Insurance proceeds for any damage or destruction of any part of the Condominium covered by property insurance maintained by the Association shall be paid to the Association and not to any First Mortgagee or other lienholder. The Association shall hold any proceeds in trust for the Unit Owners and lienholders as their interests may appear. Except as otherwise provided in Sections 9.1 and 9.2 of this Declaration, all insurance proceeds shall be disbursed first for the repair or restoration of the damaged Common Elements, and Unit Owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the damaged or destroyed Common Elements have been completely repaired or restored or the Condominium is terminated.

9.5 Repair of Units. Installation of improvements to, and repair of any damage to, the interior of a Unit not covered by property insurance maintained by the Association

shall be made by and at the individual expense of the Owner of that Unit and shall be completed as promptly as practicable and in a lawful and workmanlike manner.

9.6 **Priority.** Nothing contained in this Article shall entitle an Owner to priority over any lender under a lien encumbering his Unit as to any portion of insurance proceeds allocated to such Unit.

ARTICLE 10. EMINENT DOMAIN

10.1 **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 purpose 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, that 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.

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

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

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

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

ARTICLE 11. RIGHTS OF FIRST MORTGAGEES

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

11.1.1 Any condemnation loss or any casualty loss which affects a material portion of the Condominium or any Unit on which there is a First Mortgage held, insured or guaranteed by such Eligible Mortgage Holder or Eligible Insurer Or Guarantor;

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

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

11.2 **Right of Inspection of Records.** Any First Mortgagee or Eligible Insurer Or Guarantor will, upon written request, be entitled to: (A) inspect the current copies of the Condominium Documents and the books, records and financial statements of the Association during normal business hours; (B) receive within ninety (90) days following the end of any fiscal year of the Association, a current financial statement of the Association for the immediately preceding fiscal year of the Association, free of charge to the requesting party; and (C) receive written notice of all meetings of the Members of the Association and be permitted to designate a representative to attend all such meetings.

11.3 **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.

11.4 **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.

11.5 **Limitation on Partition and Subdivision.** No Unit shall be partitioned or subdivided without the prior written approval of the Holder of any First Mortgage on such Unit.

11.6 **Conflicting Provisions.** In the event of any conflict or inconsistency between the provisions of this Article and any other provision of the Condominium Documents, the provisions of this Article shall prevail.

ARTICLE 12 ENFORCEMENT & ALTERNATIVE DISPUTE RESOLUTION

12.1 **Right of Association to Enforce.** The Association or any Member, has 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 this Declaration. This shall include enforcement of Rules and Regulations promulgated by the Association to carry out its purposes and duties under this Declaration. The prevailing party in any Court action shall be awarded reasonable attorneys' fees and costs. Attorney fees for lien enforcement or assessment collection shall be in accordance with Section 7.5.7.1.

12.1.1 **Waiver.** No delay or omission on the part of the Association in exercising its right to enforcement of this Declaration hereunder shall be construed as a waiver of any breach of any of the restrictions and covenants contained herein or acquiescence in any breach hereof and no right of action shall accrue against the Board of Directors, the Association or any member for their neglect or refusal to exercise such right of enforcement.

12.1.2 **Protection of Mortgagee.** No breach of the foregoing provisions, conditions, restrictions or covenants shall defeat or render invalid the lien of any mortgage or deed of trust made in good faith for value as to any portion of the Properties. Such provisions, conditions, restrictions and covenants shall be enforceable against any portion of the Properties acquired by any person through foreclosure for any breach occurring after such acquisition.

12.2 **Fines and Penalties.** If any Owner, his/her family, or any licensee, invitee, tenant or lessee violates the Condominium Documents, the Board may levy a fine upon the Owner of the Dwelling Unit for each violation and/or may suspend the right of such person to use the Common Elements, under such conditions as the Board may specify.

However, for each day a violation continues after written notice to cease has been mailed, it shall be considered a separate violation and subject to the imposition of the fine. The Board shall establish a procedure by which it imposes such fines, including the right to a hearing if requested by the Owner. Any fines which remain unpaid for a period of ten (10) days after notice to pay, shall become a lien on the Owner's Unit. Any fine which is not timely paid will be collected in the same manner as delinquent assessments, including the imposition of late fees and interest.

12.3 Enforcement Procedures. Before a fine or penalty is levied, the following enforcement procedure will be followed:

12.3.1 Demand. Written demand to cease and desist from an alleged violation shall be served upon the alleged violator specifying: (A) the alleged violation; (B) the action required to abate the violation and, (C) if the violation is a continuing one, a time period of not less than ten (10) days, unless the violation constitutes a safety or health hazard, or if the violation is not a continuing one, a statement that any further violation of the same rule may result in the imposition of sanctions after notice and hearing.

12.3.2 Continuing Violations. For the purposes of this Section, each day a violation continues after notice to cease has been given by the Board to the Owner shall constitute a separate violation.

12.3.3 Notice. Within one (1) month of such notice, if the violations continue past the period allowed in the notice for abatement without penalty, or if the same rule is subsequently violated, the Board shall serve the violator with written notice of a hearing to be held by the Board in executive session. Service may be made personally or by first class mail to the violator's address of record. The notice shall contain: (a) the nature of the alleged violation; (b) the time and place of the hearing, which time shall be not less than ten (10) days from the giving of notice; (c) an invitation to attend the hearing and produce any statement, evidence and witnesses on his or her behalf; and (d) the proposed sanctions to be imposed, which may include the imposition of a fine of not more than One Hundred and Fifty and no/100 Dollars (\$150.00) for any one violation. Any fine or penalty imposed hereunder shall be collectible like an assessment, pursuant to Article V of this Declaration.

12.3.4 Hearing. The hearing shall be held in executive session of the Board of Directors, pursuant to the aforesaid notice, thereby affording the Member a reasonable opportunity to be heard. Protocol of the hearing will be set by the Board of Directors. Prior to the effectiveness of any sanction hereunder, proof of notice and the invitation to be heard shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice together with a statement of the date and manner of delivery is entered into the minutes by the officer or director who delivered such notice. If the Member does not appear at the hearing, the Board will presume the validity of the Notice of violation and levy a fine or penalty.

12.4 **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 or agent of the Association and shall contain substantially the following information: (A) the name of the Unit Owner; (B) the legal description of the Unit against which the notice is being recorded; (C) a brief description of the nature of the violation; (D) a statement that the notice is being recorded by the Association pursuant to this Declaration; and (E) 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 does not exist or that the actual 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.

12.5 **No Obligation to Enforce.** The Association is not obligated to take any enforcement action if the Board determines, in its sole discretion, that because of considerations pertaining to the Association's finances, 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, enforcement action would not be appropriate or in the best interests of the Association. The failure of the Association or an Owner to take enforcement action with respect to a violation of the Condominium Documents shall not constitute or be deemed a waiver of the right of the Association or any Owner to enforce the Condominium Documents in the future.

12.6 **Cumulative Rights and Remedies.** All rights and remedies of the Association under the Condominium Documents or at law or in equity are cumulative; and the exercise of one right or remedy shall not waive the Association's right to exercise another right or remedy.

12.7 **Violation of Law.** Each and every provision of this Declaration, as amended from time to time, is subject to any and all applicable federal, state and local governmental rules and regulations, ordinances and subdivision regulations. Any violation of any federal, state, municipal or local law, ordinance or regulation pertaining to the ownership, occupation or use of any property within the subdivision is declared to be a violation of the Condominium Documents and subject to any and all enforcement procedures set forth in such Condominium Documents.

12.8 **Alternative Dispute Resolution.** The Board of Directors may adopt policies and procedures pertaining to mandatory alternative dispute resolution for disputes

between residents and between Members and the Association. "Alternative dispute resolution" means dispute resolution by means other than litigation in court.

ARTICLE 13. GENERAL PROVISIONS

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 **Termination of Condominium.** The Condominium may be terminated only in the manner provided for in the Condominium Act.

13.3 **Amendment.**

13.3.1 Except in cases of amendments that may be executed by the Association under Section 33-1206 or 33-1216(D) of the Condominium Act, or by certain Unit Owners under Section 33-1218(B), Section 33-1222, Section 33-1223 or Section 33-1228(B) of the Condominium Act, the Declaration, including the Plat, may be amended only by a vote of the Unit Owners to which at least eighty percent (80%) of the votes in the Association are allocated.

13.3.2 Except to the extent expressly permitted or required by the Condominium Act, an amendment to the Declaration shall not increase the number of Units or change the boundaries of any Unit, or the allocated interest of a Unit, in the absence of unanimous consent of the Unit Owners.

13.3.3 Any amendment adopted by the Unit Owners pursuant to Subsection 13.3 of this Declaration shall be signed by the President or Vice President of the Association and shall be recorded with the County Recorder of each County in which any portion of the Condominium is located. Any such amendment shall certify that the amendment has been approved as required by this Section.

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

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13.4 Notices. All notices, demands, statements or other communications required to be given to or served on a Unit Owner under this Declaration shall be in writing and shall be deemed to have been duly given and served if delivered personally or sent by United States mail, postage prepaid, return receipt requested, addressed to the Unit Owner, at the address which the Unit Owner shall designate in writing and file with the Association or, if no such address is designated, at the address of the Unit of such Unit Owner. A Unit Owner may change his/her 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/her correct mailing address with the Association, and shall promptly notify the Association in writing of any subsequent change of address.

13.5 Binding Effect. By acceptance of a deed or by acquiring any ownership interest in any portion of the Condominium, each person, for himself, his/her heirs, personal representatives, successors, transferees and assigns, binds himself, his/her 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 real property covered thereby and hereby evidences his/her 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. 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. Each Unit Owner, his/her heirs, successors and assigns, 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.

13.6 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 either to corporations or individuals, or men or women, shall in all cases be assumed as though in each case fully expressed.

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13.7 **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.

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

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

13.10 **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.

13.11 **Guests and Tenants.** Each Unit Owner shall be responsible for compliance by his/her agents, tenants, guests, invitees, licensees and their respective servants, agents, and employees with the provisions of the Condominium Documents. A Unit Owners' failure to insure compliance by such Persons shall be grounds for the same action available to the Association or any other Unit Owner by reason of such Unit Owner's own noncompliance.

13.12 **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.

ARTICLE 14.

RESOLUTION OF DISPUTES WITH BOUND PARTIES

14.1 **Defined Terms.** As used in this Article 14, the following terms shall have the meaning set forth:

14.1.1 "Alleged Defect" means any alleged defect or deficiency in the planning, design, engineering, grading, construction or development of the Common Elements or any Unit.

14.1.2 "Bound Parties" means: (i) the Declarant; (ii) a Designated Builder; (iii) all Unit Owners, Lessees and Residents; and (iv) any contractor or subcontractor, architect,

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14.5.2 Governing Procedures. 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 14.5, the provisions of this Section 14.5 shall govern.

14.5.3 Appointment of Arbitrator. The parties shall appoint a single Arbitrator by mutual agreement. 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 willing to serve, the AAA shall appoint a qualified Arbitrator to serve. Any arbitrator chosen in accordance with this Subsection is referred to in this Section 14.5 as the "Arbitrator".

14.5.4 Qualifications of Arbitrator. The Arbitrator shall be neutral and impartial. The Arbitrator shall be fully active in such Arbitrator's occupation or profession, knowledgeable as to the subject matter involved in the dispute, and experienced in arbitration proceedings. The foregoing shall not preclude otherwise qualified retired lawyers or judges.

14.5.5 Disclosure. Any candidate for the role of Arbitrator shall promptly disclose to the parties all actual or perceived conflicts of interest involving the dispute or the parties. No Arbitrator may serve if such person has a conflict of interest involving the subject matter of the dispute or the parties. If an Arbitrator resigns or becomes unwilling to continue to serve as an Arbitrator, a replacement shall be selected in accordance with the procedure set forth in Subsection (c) above.

14.5.6 Compensation. The Arbitrator shall be fully compensated for all time spent in connection with the arbitration proceedings in accordance with the Arbitrator's usual hourly rate, unless otherwise agreed to by the parties, for all time spent by the Arbitrator in connection with the arbitration proceeding. Pending the final award, the Arbitrator's compensation and expenses shall be advanced equally by the parties.

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

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14.5.8 Management of the Arbitration. The Arbitrator shall actively manage the proceedings as the Arbitrator deems best so as to make the proceedings expeditious, economical and less burdensome than litigation.

14.5.9 Confidentiality. All papers, documents, briefs, written communication, testimony and transcripts as well as any and all arbitration decisions shall be confidential and not disclosed to anyone other than the Arbitrator, the parties or the parties' attorneys and expert witnesses (where applicable to their testimony), except that upon prior written consent of all parties, such information may be divulged to additional third parties. All third parties shall agree in writing to keep such information confidential.

14.5.10 Hearings. Hearings may be held at any place within the State of Arizona designated by the Arbitrator 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.

14.5.11 Final Award. 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 may award the prevailing party in the proceeding all or a part of such party's reasonable attorneys' fees and expert witness fees, taking into account the final result of arbitration, the conduct of the parties and their counsel in the course of the arbitration, and other relevant factors. The Arbitrator shall not award any punitive damages. The Arbitrator shall not award indirect, consequential or special damages regardless of whether the possibility of such damage 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.

14.6 Right to Enter, Inspect, Repair and/or Replace. Within a reasonable time after the receipt by the Declarant or a Designated Builder of a Claim Notice, the Declarant or a Designated Builder shall have the right, upon reasonable notice to Claimant and during normal business hours, to enter onto or into, as applicable, the Common Area, any Lot, including any Residence constructed thereon, and/or any Improvements for the purposes of inspecting and/or conducting testing to determine the validity of the Claim and, if deemed necessary by the Declarant or Builder, to correct, repair and/or replace any Alleged Defect. In conducting such inspection, testing, repairs and/or replacement, Declarant or a Designated Builder shall be entitled to take any actions as it shall deem reasonable and necessary under the circumstances.

Nothing set forth in this Section shall be construed to impose any obligation on the Declarant or a Designated Builder to inspect, test, repair, or replace any item or Alleged Defect for which the Declarant or a Designated Builder is not otherwise obligated under applicable law or any limited warranty provided by the Declarant or a Designated Builder

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in connection with the sale of the Lots and/or the Improvements constructed thereon. The right of the Declarant and the Designated Builders 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 the Declarant or a Designated Builder. In no event shall any statutes of limitations be tolled during the period in which the Declarant or a Designated Builder conducts any inspection or testing of any Alleged Defects.

14.7 Use of Funds. In the event the Association recovers any funds from a Declarant, a Designated Builder or any other Person as a result of a claim involving an Alleged Defect, the funds shall first be used to correct and or repair the Alleged Defect or to reimburse the Claimant for any costs actually incurred by such Claimant in correcting and/or repairing the Alleged Defect, and any excess funds shall be paid into the Association's reserve fund.

14.8 Approval of Litigation. The Association shall not deliver a Claim Notice to any Bound Party, commence any legal action or arbitration proceeding against any Bound Party or incur any expenses (including, without limitation, attorneys' fees) in connection with any Claim without the written approval of Owners entitled to cast more than eighty percent (80%) of the total votes in the Association, excluding the votes of any Owner who would be a defendant in such proceedings. The Association must pay for any such legal action or arbitration proceeding with monies that are specifically collected for such purposes and may not borrow money or use reserve funds or other monies collected for specific Association obligations other than legal fees. In the event that the Association commences any legal action or arbitration proceeding involving a Claim, all Owners must notify prospective purchasers of such legal action or arbitration proceeding and must provide such prospective purchasers with a copy of the notice received from the Association in accordance with Section 14.3.

14.9 Notification to Prospective Purchasers. In the event that the Association commences any action or claim, all Unit Owners must notify prospective purchasers of such action or claim and must provide such prospective purchasers with a copy of the notice received from the Association in accordance with Section 14.3.2.

14.10 Required Consent of Unit Owners for Legal Action. Notwithstanding anything to the contrary contained in this Declaration, any action or claim instituted by the Association against any one or more of Declarant, its builders; general contractors or brokers or their agents, employees or representatives (collectively, the "Declarant Parties"), relating to or arising out of the Condominium, the Declaration or any other Condominium documents, the use or condition of the Condominium or the design or construction of or any condition on or affecting the Condominium, including, but not limited to, construction defects, surveys, soils conditions, grading, specifications, installation of improvements (including, but not limited to, Units) or disputes which allege negligence or other tortious conduct, breach of contract or breach of implied or express warranties as to the condition of the Condominium or any improvements, shall have first been approved by Unit Owners

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representing eighty percent (80%) of the votes in the Association who are voting in person; or by proxy at a meeting duly called for such purpose, excluding votes held by Declarant.

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

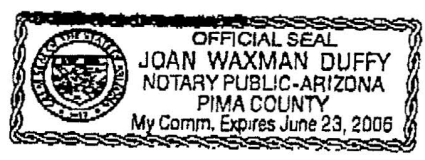
STONE CURVES DEVELOPMENTS, L.L.C.
an Arizona limited liability company

By: [Signature]
Its: Authorized Member

STATE OF ARIZONA)
 : ss.
County of Pima)

Acknowledged before me this 9th day of July, 2003, by JAMES L. HAMILTON, as authorized Member of Stone Curves Developments, L.L.C., an Arizona limited liability company.

[Signature]
Notary Public



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