

BYLAWS
OF
TESORO AT GRAYHAWK CONDOMINIUM ASSOCIATION

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BYLAWS
OF
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ARTICLE 1

GENERAL PROVISIONS

1.1 **Known Place of Business.** The known place of business of this corporation shall be located at the place designated in the Articles of Incorporation or such other place as the Association may designate from time to time in accordance with the Arizona statutes governing nonprofit corporations, but meetings of Members and the Board of Directors may be held at such other place within the State of Arizona as may be designated by the Board of Directors.

1.2 **Defined Terms.** Capitalized terms used in these Bylaws without definition shall have the meanings specified for such terms in the Arizona Condominium Act, A.R.S. §33-1201, *et seq.*, and in the Condominium Declaration for Tesoro at Grayhawk Condominium, recorded at Recording No. 2002-0176932, Official Records of the Maricopa County Recorder, Maricopa County, Arizona, as such Declaration may be amended from time to time.

1.3 **Conflicting Provisions.** In the case of any conflict between the Articles and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

1.4 **Corporate Seal.** The Association may have a seal in a form approved by the Board of Directors.

1.5 **Designation of Fiscal Year.** The fiscal year of the Association shall begin on the 1st day of January and end of the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation of the Association.

1.6 **Records.** The Condominium Documents and all other books, records and papers of the Association, except those which by law may be withheld from disclosure, shall be available for inspection by any Member during reasonable business hours at the principal office of the Association where copies may be purchased at reasonable cost.

1.7 Amendment.

1.7.1 Except as provided for in Subsection 1.7.2 and Section 6.9 of these Bylaws, these Bylaws may only be amended, at a regular or special meeting of the Members, by a vote of the Members having more than fifty percent (50%) of the votes entitled to be cast by the Members present in person or by proxy and the written consent of the Master Declarant, so long as the Master Declarant owns any Lot or Parcel in the Project (as such terms are defined in the Master Declaration), or the board of directors of the Master Association, if at the time the Master Declarant no longer owns any Lot or Parcel in the Project

1.7.2 The Declarant, so long as the Declarant owns one or more Units, and thereafter the Board of Directors, without a vote of the Members and without the consent of any First Mortgagee, may amend these Bylaws in order to: (i) comply with the Condominium Act or any other applicable law if the amendment does not adversely affect the rights of any Unit Owner; (ii) correct any error or inconsistency in the Bylaws if the amendment does not adversely affect any Unit Owner; or (iii) conform the Bylaws to the requirements or guidelines in effect from time to time of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Veterans Administration or any federal, state or local governmental or quasi-governmental entity or federal corporation whose approval of the Condominium, the Plat or the Condominium Documents is required by law or requested by the Declarant or the Association.

1.7.3 So long as the Declarant owns one or more Units, any amendment must be approved in writing by the Declarant.

ARTICLE 2

MEETINGS OF MEMBERS

2.1 **Annual Meeting.** A meeting of the Members of the Association shall be held at least once each year at such date, time and place as is determined by the Board of Directors.

2.2 **Special Meetings.** Special meetings of the Members may be called at any time by the President or by a majority of the Board of Directors or by written demand signed by Unit Owners having at least twenty-five percent (25%) of the total authorized votes in the Association. The close of business on the thirtieth (30th) day before delivery of the demand or demands for a special meeting shall be the record date for the purpose of determining whether the demand for the special meeting has been signed by Members having at least twenty-five percent (25%) of the total authorized votes in the Association.

2.3 **Notice of Meetings.** Written notice of each meeting of the Members shall be given by, or at the direction of, the secretary or person authorized to call the meeting by mailing a copy of each notice, postage prepaid, at least ten (10) days but no more than fifty (50)

days before such meeting to each Member entitled to vote thereat addressed to the Member's address last appearing on the books of the Association or supplied by such Member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting. When a meeting is adjourned to another date, time or place, a notice of the new date, time or place is not required if the new date, time or place is announced at the meeting before adjournment. At the adjourned meeting, the Association may transact any business which might have been transacted at the original meeting. If a new record date for the adjourned meeting is or must be fixed under Subsection 2.8.2 below, the Association shall give notice of the adjourned meeting pursuant to this Section to persons who are Members as of the new record date. A Member's attendance at a meeting waives objection to the lack of notice or defective notice of the meeting, unless the Member at the beginning of the meeting objects to holding the meeting and transacting business in the meeting. In addition, a Member's attendance at a meeting waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the Member objects to considering the matter at the time it is presented.

2.4 Quorum. Except as otherwise provided in the Articles, the Declaration or these Bylaws, the presence in person or by proxy of Members entitled to cast one-tenth (1/10th) of the total authorized votes in the Association shall constitute a quorum at all meetings of the Members. If a quorum shall not be present at any meeting, the Members entitled to vote thereat shall have the power to adjourn the meeting from time to time until a quorum shall be present.

2.5 Multiple Owners. If only one of the multiple Unit Owners of a Unit is present at a meeting of the Association, he is entitled to cast all the votes allocated to that Unit. If more than one of the multiple Unit Owners are present, the votes allocated to that Unit may be cast only in accordance with the agreement of a majority in interest of the multiple Unit Owners unless the Declaration expressly provides otherwise. There is majority agreement if any one of the multiple Unit Owners casts the votes allocated to that Unit without protest being made promptly to the person presiding over the meeting by any of the other Unit Owners of the Unit.

2.6 Proxies. At all meetings of the Members a vote may be cast in person or by proxy. A Member may appoint a proxy to vote or otherwise act for the Member by signing an appointment form, either personally or by the Member's attorney-in-fact. A proxy is valid for one (1) year unless a shorter period is expressly provided in the appointment form. An appointment of a proxy is effective on receipt by the Secretary or other officer or agent authorized to tabulate votes. An appointment of a proxy is revocable unless the appointment form conspicuously states that it is irrevocable and the appointment is coupled with an interest. Appointment of a proxy is revoked by the person who appoints a proxy by either (1) attending any meeting and voting in person or (2) signing and delivering to the Secretary or other officer or agent authorized to tabulate proxy votes either a writing stating that the appointment of the proxy is revoked or a subsequent appointment form. The death or incapacity of the member who appoints a proxy shall not affect the right of the Association to accept the proxy's authority

unless the Secretary or other officer or agent authorized to tabulate votes receives written notice of the death or incapacity before the proxy exercises authority under the appointment.

2.7 Suspension of Voting Rights. If any Unit Owner fails to pay any Assessments or other amounts due to the Association under the Condominium Documents within fifteen (15) days after such payment is due or if any Unit Owner violates any other provision of the Condominium Documents and such violation is not cured within fifteen (15) days after the Association notifies the Unit Owner of the violation, the Board of Directors shall have the right to suspend such Unit Owner's right to vote until such time as all payments, including interest and attorneys' fees, are brought current, and until any other infractions or violations of the Condominium Documents are corrected.

2.8 Record Date.

2.8.1 For any meeting of the Members, the Board of Directors shall fix a date as the record date for determining the Members entitled to notice of the meeting. If the Board of Directors fails to fix a record date for any meeting of the Members, the record date for determining the Members entitled to notice of the meeting shall be the business day before the day on which the notice of the meeting is given. The Board of Directors shall also fix a date as the record date for determining the Members entitled to vote at a meeting of the Members. If the Board of Directors fails to fix such a record date, the Members on the date of the meeting who are otherwise eligible to vote are entitled to vote at the meeting.

2.8.2 A determination of Members entitled to notice of or to vote at a membership meeting is effective for any adjournment of the meeting, unless the Board of Directors fixes a new date for determining the right to notice or the right to vote. The Board of Directors shall fix a new date for determining the right to notice or the right to vote if the meeting is adjourned to a date that is more than seventy (70) days after the record date for determining Members entitled to notice of the original meeting.

2.8.3 The Board of Directors shall fix a date as the record date for the purpose of determining the Members entitled to exercise any rights in respect of any other lawful action of the Members. If a record date is not fixed by the Board of Directors, Members at the close of business on the day on which the Board of Directors adopts the resolution relating to that record date, or the sixtieth (60) day before the date of other action, whichever is later, are entitled to exercise those rights.

2.8.4 The record date fixed by the Board of Directors under this Section shall not be more than seventy (70) days before the meeting or action requiring a determination of Members.

2.9 Organization and Conduct of Meeting. All Members attending a meeting of the Members shall register with the Secretary (or such person or persons as may be designated by the Secretary) prior to commencement of the meeting, and all proxies must be filed

with the Secretary (or such person or persons as may be designated by the Secretary) prior to commencement of the meeting. After the meeting is called to order by the chair of the meeting, no further proxies or changes, substitutions or revocation of proxies shall be accepted. All meetings of the Members will be called to order and chaired by the President of the Association, or if there is no President or if the President is absent or so requests, then by the Vice President. If both the President and Vice President are not present at the meeting, any other officer of the Association or such member of the Association as is appointed by the Board of Directors may call the meeting to order and chair the meeting. The chair of the meeting may appoint any person (whether or not a Member of the Association) to act as Recording Secretary. The chair of the meeting shall have the authority to determine the order of business to be conducted at the meeting and to establish reasonable rules for expediting the business of the meeting.

2.10 Action by Written Ballot. Any action that the Association may take at any annual, regular or special meeting of the Members may be taken without a meeting if the Association delivers a written ballot to every Member entitled to vote on the matter. The written ballot shall set forth each proposed action and provide an opportunity to vote for or against each proposed action. All solicitations for votes by written ballot shall: (1) indicate the number of responses needed to meet the quorum requirements; (2) state the percentage of approvals necessary to approve each matter other than election of directors; and (3) specify the time by which a ballot must be delivered to the Association in order to be counted, which time shall not be less than three (3) days after the date that the Association delivers the ballot. Once a written ballot has been received by the Association, the ballot may not be revoked. Approval by written ballot pursuant to this Section is valid only if both the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action and the number of approvals equals or exceeds the number of votes which would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

2.11 Action by Written Consent.

2.11.1 The Members may approve any action required or permitted by law that requires the Members' approval without a meeting of the Members if the action is approved by Members holding at least a majority of the voting power in the Association, unless the Declaration, Articles, these Bylaws or applicable law require a different amount of voting power. The action shall be evidenced by one or more written consents describing the action taken, signed by those Members representing at least the requisite amount of the voting power, and delivered to the Association for inclusion in the minutes or filing with the corporate records of the Association.

2.11.2 If not otherwise fixed by the Board of Directors pursuant to Section 2.8 above, the record date for determining Members entitled to take action without a meeting is the date the first Member signs the consent to the action. A consent signed under this Section has the effect of a meeting vote and may be described as such in any document. Written notice

of Member approval pursuant to this Section shall be given to all Members who have not signed the written consent. Unless otherwise specified in the consent or consents, the action is effective on the date that the consent or consents are signed by the last Member whose signature results in the requisite amount of the voting power. Any Member may revoke the Member's consent by delivering a signed revocation of the consent to the President or Secretary before the date that the consent or consents are signed by the last Member whose signature results in the requisite amount of the voting power.

2.12 Voting Requirements. Unless otherwise provided in the Condominium Documents, if a quorum is present at a meeting of the Members, the affirmative vote of a majority of the votes represented and voting is the act of the Members.

ARTICLE 3

BOARD OF DIRECTORS

3.1 Number. The affairs of this Association shall be managed by a board of directors consisting of a minimum of three (3) and a maximum of nine (9) directors. Until the termination of the Period of Declarant Control, the Board of Directors shall consist of three (3) directors. Upon termination of the Period of Declarant Control, the number of directors may be changed from time to time by the Board of Directors but the number of directors may not be less than three (3) or more than nine (9) and must always be an odd number.

3.2 Appointment and Election. During the Period of Declarant Control, the Declarant shall have the right to appoint and remove the members of the Board of Directors who do not have to be Unit Owners. Upon the termination of the Period of Declarant Control, the Unit Owners shall elect the Board of Directors at an annual meeting or special meeting of the Members called for that purpose, all of whom must be Unit Owners. The Declarant may voluntarily surrender his right to appoint and remove the members of the Board of Directors before termination of the Period of Declarant Control, and in that event the Declarant may require, for the duration of the Period of Declarant Control, that specified actions of the Association or the Board of Directors, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

3.3 Term of Office. Members of the Board of Directors appointed by the Declarant shall hold office until their successors are elected and qualify. In the first election of directors by the Members, the directors shall be divided into two or more classes with staggered terms of office for a term of one, two or three years. The directors elected by the Members in the first election of directors shall be assigned to one of the classes of directors based on the total number of votes each director receives with the directors receiving the highest total number of votes being assigned to the class with the longest term. In the case of a tie in the number of votes received by candidates, election and assignment of the term of the director shall be decided by lot. In each election of directors thereafter, directors shall be elected for a term of two years, except as otherwise provided in these Bylaws. If the number of directors is increased by the

Board of Directors, the Board of Directors shall assign each of the newly created directorships to one of the classes of directors.

3.4 Resignation of Directors. A director may resign at any time by delivering written notice to the Board of Directors, its presiding officer or the Association. A resignation is effective when the notice is delivered unless the notice specifies a later effective date or event. If a resignation is made effective at a later date, the Board of Directors may fill the pending vacancy before the effective date if the Board of Directors provides that the successor does not take office until the effective date.

3.5 Removal. Except for directors appointed by the Declarant, any one or more of the members of the Board of Directors may be removed from the Board of Directors, with or without cause, by Members having more than two-thirds (2/3) of the votes entitled to be cast by the Members present in person or by proxy at a meeting of the Members called for such purpose, and a successor may then and there be elected to fill the vacancy thereby created.

3.6 Compensation. No director shall receive compensation for any service he may render to the Association, unless such compensation is approved by Members having more than fifty percent (50%) of the votes entitled to be cast by the Members present in person or by proxy at a meeting of the Members. However, any director may be reimbursed for his actual expenses incurred in the performance of his duties.

3.7 Action Taken Without a Meeting. The directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written consent of all the directors. Any such written consent shall be filed with the minutes of the proceedings of the Board of Directors.

3.8 Vacancies. Except for vacancies on the Board of Directors appointed by the Declarant and vacancies caused by the removal of a director by a vote of the Unit Owners as set forth in Section 3.5 of these Bylaws, any vacancy occurring in the Board of Directors may be filled by the affirmative vote of a majority of the remaining directors though less than a quorum or by a sole remaining director, and any director so chosen shall hold office for the unexpired portion of term of the director being replaced. Any newly created directorship shall be deemed a vacancy and the Board of Directors may fill the vacancy for the term assigned to the directorship pursuant to Section 3.3 of these Bylaws. When one or more directors resigns from the Board of Directors, effective at a future time, a majority of the directors then in office, including those who have so resigned, may fill such vacancy, the vote on the vacancy to take effect when such resignation becomes effective. If by reason of death, resignation or otherwise, the Association has no directors in office, any officer or Member may call a special meeting of the Members for the purpose of electing the Board of Directors.

3.9 Meetings.

3.9.1 If the time and place of a meeting of the Board of Directors is fixed by the Board of Directors, the meeting is a regular meeting. All other meetings of the Board of Directors are special meetings. Regular meetings of the Board of Directors may be held with or without notice to the directors of the date, time, place or purpose of the meeting.

3.9.2 Special meetings of the Board of Directors may be called by the President on two (2) business days notice to each director, given in writing, by hand delivery, mail or telegraph, which notice shall state the time, place and purpose of the meeting. Special meetings of the Board of Directors shall be called by the President or Secretary in like manner and on like notice on the written request of at least two (2) directors.

3.9.3 A director's attendance at or participation in a meeting waives any required notice to the director of the meeting unless the director at the beginning of the meeting or promptly on the director's arrival at the meeting objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

3.9.4 A director may participate in a regular or special meeting of the Board of Directors through the use of any means of communication by which all directors participating may simultaneously hear each other during the meeting, and a director participating in a meeting by such means is deemed to be present in person at the meeting.

3.9.5 Notice of meetings of the Board of Directors shall be given to the Members of the Association within such time and in such manner as is required by law.

3.10 Quorum. A majority of the prescribed number of directors shall constitute a quorum for the transaction of business. If a quorum is present when a meeting is convened, the quorum shall be deemed to exist until the meeting is adjourned, notwithstanding the departure of one or more directors. If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the Board of Directors unless the Condominium Act, Articles or Bylaws require the vote of a greater number of directors. A director who is present at a meeting of the Board of Directors when corporate action is taken is deemed to have assented to the action taken unless either: (1) the director objects at the beginning of the meeting or promptly on the director's arrival to holding it or transacting business at the meeting; (2) the director's dissent or abstention from the action taken is entered in the minutes of the meeting; or (3) the director delivers written notice of the director's dissent or abstention to the presiding officer of the meeting before its adjournment or to the Association before 5:00 P.M. on the next business day after the meeting. The right of dissent or abstention is not available to a director who votes in favor of the action taken. A director may vote in person or by proxy. A director may appoint a proxy to vote or otherwise act for the director by signing an appointment form, either personally or by the director's attorney-in-fact. The appointment does not relieve the director of liability for acts or omissions imposed by law on directors. An appointment of a proxy is effective when received by the Secretary. An appointment is valid for one (1) month unless a

different period is expressly provided in the appointment form. An appointment of a proxy is revocable by the director. The death or incapacity of a director appointing a proxy shall not affect the right of the Association to accept the proxy's authority unless written notice of death or incapacity is received by the Secretary before the proxy exercises its authority under the appointment. Subject to any express limitation on the proxy's authority appearing on the face of the appointment form, the Association is entitled to accept the proxy's vote or other action as the vote of the director making the appointment.

3.11 Powers and Duties. The Board of Directors shall have all of the powers and duties necessary for the administration of the affairs of the Association and may exercise all corporate powers of the Association, subject to any limitation set forth in the Condominium Act or the Condominium Documents. In addition to the duties imposed by these Bylaws or by any resolution of the Members that may hereafter be adopted, the Board of Directors shall have the following powers and duties:

(i) Open bank accounts on behalf of the Association and designate the signatories thereon;

(ii) Make, or contract for the making, of repairs, additions to, improvements to or alterations of the Condominium and repairs to the Common Elements, in accordance with the Condominium Documents, after damage or destruction by fire or other casualty, or as a result of condemnation or eminent domain proceedings;

(iii) In the exercise of its discretion, enforce by legal means the provisions of the Condominium Documents;

(iv) Designate, hire and dismiss the personnel necessary for the maintenance, operation, repair, replacement of the Common Elements and provide services for the Condominium, and, where appropriate, provide for the compensation of such personnel and for the purchase of equipment, supplies and material to be used by such personnel in the performance of their duties;

(v) Provide for the operation, care, upkeep and maintenance of all of the Common Elements and services of the Condominium and borrow money on behalf of the Association when required in connection with any one instance relating to the operation, upkeep and maintenance for the Common Elements; provided, however, the consent of Members having at least two-thirds (2/3) of the total votes in the Association shall be obtained either in writing or at a meeting called and held for such purpose in accordance with the provisions of these Bylaws in order for the Association to borrow in excess of \$10,000;

(vi) Prepare and adopt an annual budget for the Association prior to the commencement of each fiscal year;

(vii) Adopt and publish rules and regulations governing the use of the Common Elements and facilities and the personal conduct of the Members and their guests, lessees, invitees and family members thereon and establish penalties for the infraction thereof;

(viii) In accordance with these Bylaws, suspend the voting rights and the right to use of the Common Elements of a Member;

(ix) Exercise for the Association all powers, duties and authority vested in or delegated to the Association and not reserved to the membership by other provisions of the Condominium Documents;

(x) Except to members of the Board of Directors appointed by the Declarant, declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors;

(xi) Employ, hire and dismiss such employees as they deem necessary and to prescribe their duties and their compensation;

(xii) Cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Members at the annual meeting of the Members, or at any special meeting when such statement is requested in writing by any Member entitled to vote;

(xiii) Supervise all officers, agents and employees of the Association and see that their duties are properly performed;

(xiv) Levy, collect and enforce the payment of Assessments in accordance with the provisions of the Declaration;

(xv) As required by the Declaration, issue, or cause an appropriate officer to issue upon demand to any person, a certificate setting forth whether or not any Assessment has been paid. A reasonable charge may be made by the Board of Directors for the issuance of these certificates. If a certificate states an Assessment has been paid, such certificate shall be conclusive evidence of such payment.

(xvi) Procure and maintain adequate property, liability and other insurance as required by the Declaration;

(xvii) Cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate;

(xviii) Cause the Common Elements to be maintained, as more fully set forth in the Declaration; and

3.12 Managing Agent. The Board of Directors may employ for the Association a "Managing Agent" at a compensation established by the Board of Directors. The Managing Agent shall perform such duties and services as the Board of Directors shall authorize, including, but not limited to, all of the duties listed in the Condominium Act, the Declaration and these Bylaws except for such duties and services that under the Condominium Act or the Declaration may not be delegated to the Managing Agent. The Board of Directors may delegate to the Managing Agent all of the powers granted to the Board of Directors or the officers of the Association by the Condominium Act, the Declaration and these Bylaws other than the following powers:

- (i) To adopt the annual budget, any amendment thereto or to levy Assessments;
- (ii) To adopt, repeal or amend Rules;
- (iii) To designate signatories on Association bank accounts;
- (iv) To borrow money on behalf of the Association;
- (v) To acquire and mortgage Units and other real property;
- (vi) To allocate Limited Common Elements.

So long as the Declarant owns any Unit, any change in the Managing Agent must be approved in writing by the Declarant. Any contract with the Managing Agent must provide that it may be terminated with or without cause and without payment of any penalty or termination fee on no more than thirty (30) days' written notice. The term of any such contract may not exceed three (3) years.

ARTICLE 4

OFFICERS AND THEIR DUTIES

4.1 Enumeration of Officers. The principal officers of the Association shall be the president, vice president, the secretary, and the treasurer. During the Period of Declarant Control, all officers of the Association shall be appointed and removed by the Declarant. After the termination of the Period of Declarant Control, all officers shall be elected by the Board of Directors. The President must be a member of the Board of Directors. Any other officers may, but need not, be members of the Board of Directors.

4.2 Election of Officers. The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the Members.

4.3 **Term.** After the termination of the Period of Declarant Control, the officers of the Association shall be elected annually by the Board of Directors and each shall hold office for one (1) year unless he shall sooner resign, or shall be removed, or otherwise disqualified to serve.

4.4 **Special Appointments.** The Board of Directors may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board of Directors may, from time to time, determine.

4.5 **Resignation and Removal.** Except for officers appointed by the Declarant, any officer may be removed from office with or without cause by the Board of Directors. Any officer may resign at any time by giving written notice to the Association. A resignation is effective when the notice is delivered unless the notice specifies a later date or event. The acceptance of a resignation shall not be necessary to make it effective. If a resignation is made effective at a later date or event and the Board of Directors accepts the later effective date, the Board of Directors may fill the pending vacancy before the effective date if the Board of Directors provides that the successor shall not take office until the effective date.

4.6 **Vacancies.** Except for officers appointed by the Declarant, a vacancy in any office may be filled by appointment by the Board of Directors. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

4.7 **Multiple Offices.** The same individual may simultaneously hold more than one office in the Association.

4.8 **Powers and Duties.** The powers and duties of the officers shall be as follows:

4.8.1 **President.** The president shall be the chief executive officer of the Association; shall preside at all meetings of the Board of Directors or the Members; shall see that orders and resolutions of the Board of Directors are carried into effect; and have general and active management of the business of the Association.

4.8.2 **Vice-President.** The Vice-President shall act in the place and stead of the president in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board of Directors.

4.8.3 **Secretary.** The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board of Directors and of the Members; keep the corporate seal of the Association and affix it on all papers requiring said seal; serve notice of meetings of the Board of Directors and of the Members; keep appropriate current records showing the Members of the Association together with their addresses, and shall perform such other duties as required by the Board of Directors.

4.8.4 **Treasurer.** The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds for appropriate Association purposes as set forth in the Condominium Documents; keep proper books of account; and shall prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular annual meeting, and deliver a copy of each to the Members; and, in general, perform all the duties incident to the office of treasurer.

4.9 **Officers Authorized to Execute Amendments to Declaration.** Any amendments to the Declaration or the Plat which are required by the Condominium Act or the Declaration to be executed by the Association may be executed by either the President or Vice-President of the Association.

ARTICLE 5

MONETARY PENALTIES

5.1 **Power of Board of Directors to Impose Monetary Penalties.** In accordance with the procedures set forth in this Article, the Board of Directors shall have the right to impose reasonable monetary penalties against any Unit Owner who violates any provisions of the Condominium Documents. Any monetary penalty imposed by the Board of Directors shall be imposed only after the procedures set forth in this Article have been complied with.

5.2 **Notice of Violation.** If the Board of Directors becomes aware of a violation of the Condominium Documents and desires to impose a monetary penalty against the Unit Owner who violated the Condominium Documents, the Board of Directors shall serve the Unit Owner with written notice of the violation. The notice shall contain the following:

- (i) The nature of the alleged violation;
- (ii) The time and place of the hearing to be held by the Board of Directors on the violation, which time shall not be less than ten (10) days from the giving of the notice;
- (iii) An invitation to the Unit Owner to attend the hearing and produce statements, evidence and witnesses on his behalf;
- (iv) The proposed monetary penalty to be imposed by the Board of Directors.

5.3 **Hearing.** The hearing on any alleged violation of the Condominium Documents shall be held at the time and at the place designated in the notice served pursuant to Section 5.2 of these Bylaws. Proof of service of the notice as required by Section 5.2 of these Bylaws 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 by the officer, director or agent who served the notice. The notice requirement shall be deemed satisfied if the alleged violator appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the monetary penalty, if any, imposed by the Board of Directors.

ARTICLE 6

CONSTRUCTION DEFECT

DISPUTE NOTIFICATION AND RESOLUTION PROCEDURE

6.1 **Obligation of Association and Unit Owners.** All actions or claims (i) by the Association against any one or more of the Declarant Parties, (ii) by any Unit Owner(s) against any one or more of the Declarant Parties, or (iii) by both the Association and any Unit Owner(s) against any one or more of the Declarant Parties, relating to or arising out of the Condominium, including but not limited to, 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, fraud, misrepresentation, breach of contract or breach of implied or express warranties as to the condition of the Condominium or any Improvements (collectively, "Dispute(s)") shall be subject to the provisions of this Article 6. Declarant and each Unit Owner acknowledge that the provisions set forth in this Article 6 shall be binding upon current and future Unit Owners of the Condominium and upon the Association, whether acting for itself or on behalf of any Unit Owner(s). Nothing in these Bylaws or in any other Condominium Document is intended to limit, expand or otherwise modify the terms of any limited warranty provided by Declarant to a Unit Owner pursuant to a purchase agreement.

6.2 **Notice.** Any Person (including, without limitation, the Association) with a Dispute claim shall notify the Declarant in writing of the claim, which writing shall describe the nature of the claim and any proposed remedy (the "Claim Notice").

6.3 **Right to Inspect and Right to Corrective Action.** Within a reasonable period after receipt of the Claim Notice, which period shall not exceed sixty (60) days, Declarant and the claimant shall meet at a mutually acceptable place within the Condominium to discuss the claim. At such meeting or at such other mutually agreeable time, Declarant and the Declarant's representatives shall have full access to the property that is the subject of the claim and shall have the right to conduct inspections, testing and/or destructive or invasive testing in a manner deemed appropriate by Declarant, provided Declarant shall repair or replace any property damaged or destroyed during such inspection or testing, which rights shall continue until such time as the Dispute is resolved as provided in this Section 6.3. The parties shall negotiate in good faith in an attempt to resolve the claim. If the Declarant elects to take any corrective action,

Declarant and Declarant's representatives and agents shall be provided full access to the Condominium and the property which is the subject of the claim to take and complete corrective action.

6.4 No Additional Obligations; Irrevocability and Waiver of Right.

Nothing set forth in Section 6.3 shall be construed to impose any obligation on Declarant to inspect, test, repair or replace any item of the Condominium for which Declarant is not otherwise obligated under applicable law or any limited warranty provided by Declarant to a Unit Owner in connection with the sale of the Condominium and/or the Improvements constructed thereon. The right of Declarant to enter, inspect, test, repair and/or replace reserved hereby shall be irrevocable and may not be waived or otherwise terminated except by a writing executed and Recorded by Declarant.

6.5 Mediation. If the parties to the Dispute cannot resolve the claim pursuant to the procedures described in Section 6.3 above, the matter shall be submitted to mediation pursuant to the mediation procedures adopted by the American Arbitration Association (except as such procedures are modified by the provisions of this Section 6.5) or any successor thereto or to any other entity offering mediation services that is acceptable to the parties. No person shall serve as a mediator in any dispute in which the person has any financial or personal interest in the result of the mediation, except by the written consent of all parties. Prior to accepting any appointment, the prospective mediator shall disclose any circumstances likely to create a presumption of bias or to prevent a prompt commencement of the mediation process. No litigation or other action shall be commenced against Declarant or any Declarant Party without complying with the procedures described in this Section 6.5.

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

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

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

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

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

6.6 Arbitration. Should mediation pursuant to Section 6.5 above not be successful in resolving any Dispute, such claim or dispute shall be resolved by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association as modified or as otherwise provided in this Section 6.6. The parties shall cooperate in good faith to attempt to cause all necessary and appropriate parties to be included in the arbitration proceeding. Subcontractors, material suppliers and other parties whose participation is reasonably necessary to afford complete relief in arbitration or who are involved in common questions of law or fact shall be included as parties in the arbitration. Subject to the limitations imposed in this Section 6.6, the arbitrator shall have the authority to try all issues, whether of fact or law.

6.6.1 Place. The proceedings shall be heard in the county in which the Condominium is located.

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

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

6.6.4 Pre-hearing Conferences. The arbitrator may require one or more pre-hearing conferences.

6.6.5 Discovery. The parties shall be entitled only to limited discovery, consisting of the exchange between the parties of only the following matters: (i) witness lists; (ii) expert witness designations; (iii) expert witness reports; (iv) exhibits; (v) reports of testing or inspections of the property subject to the Dispute, including but not limited to, destructive or invasive testing; and (vi) hearing briefs. The parties shall also be entitled to conduct further tests and inspections as provided in Section 6.3 above. Any other discovery shall be permitted by the arbitrator upon a showing of good cause or based on the mutual agreement of the parties. The arbitrator shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge.

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

6.6.7 Arbitration Award. The arbitrator's award may be enforced as provided for in the Uniform Arbitration Act, A.R.S. § 12-1501, et seq., or such similar law governing enforcement of awards in a trial court as is applicable in the jurisdiction in which the arbitration is held, or as applicable, pursuant to the Federal Arbitration Act (Title 9 of the United States Code).

6.7 WAIVERS.

NOTICE: BY ACCEPTANCE OF A DEED OR BY ACQUIRING ANY OWNERSHIP INTEREST IN ANY PORTION OF THE CONDOMINIUM, EACH PERSON, FOR HIMSELF, HIS HEIRS, PERSONAL REPRESENTATIVES, SUCCESSORS, TRANSFEREES AND ASSIGNS, AGREES TO HAVE ANY DISPUTE RESOLVED ACCORDING TO THE PROVISIONS OF THIS ARTICLE 6 AND WAIVES THE RIGHT TO PURSUE ANY DISPUTE IN ANY MANNER OTHER THAN AS PROVIDED IN THIS ARTICLE 6. THE ASSOCIATION, EACH UNIT OWNER AND DECLARANT ACKNOWLEDGE THAT BY AGREEING TO RESOLVE ALL DISPUTES AS PROVIDED IN THIS ARTICLE 6, THEY ARE GIVING UP THEIR RESPECTIVE RIGHTS TO HAVE SUCH DISPUTES TRIED BEFORE A JURY. THE ASSOCIATION, EACH UNIT OWNER AND DECLARANT FURTHER WAIVE THEIR RESPECTIVE RIGHTS TO AN AWARD OF PUNITIVE AND CONSEQUENTIAL DAMAGES RELATING TO A DISPUTE. BY

ACCEPTANCE OF A DEED OR BY ACQUIRING ANY OWNERSHIP INTEREST IN ANY PORTION OF THE CONDOMINIUM, EACH UNIT OWNER HAS VOLUNTARILY ACKNOWLEDGED THAT HE IS GIVING UP ANY RIGHTS HE MAY POSSESS TO PUNITIVE AND CONSEQUENTIAL DAMAGES OR THE RIGHT TO A TRIAL BEFORE A JURY RELATING TO A DISPUTE.

6.8 **Statutes of Limitation.** Nothing in this Article 6 shall be considered to toll, stay, reduce or extend any applicable statute of limitations.

6.9 **Required Consent of Declarant to Modify.** This Article 6 may be amended only in accordance with Section 1.7 of these Bylaws and with the express written consent of the Declarant.

6.10 **Required Consent of Unit Owners for Legal Action.** Any action or claim instituted by the Association (which action or claim shall be subject to the terms of this Article 6) against any one or more of the Declarant Parties, relating to or arising out of the Condominium, including, but not limited to the Declaration, these Bylaws 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, fraud, misrepresentation, breach of contract or breach of implied or express warranties as to the condition of the Condominium or any Improvements, shall have first been approved by Unit Owners representing seventy-five percent (75%) of the votes in the Association who are voting in person or by proxy at a meeting duly called for such purpose.

6.10.1 **Notice of Unit Owners.**

(i) Prior to obtaining the consent of the Unit Owners in accordance with Section 6.10, the Association must provide written notice to all Unit Owners which notice shall (at a minimum) include (1) a description of the nature of any action or claim (the "Claim"), (2) a description of the attempts of Declarant to correct such Claim and the opportunities provided to Declarant to correct such Claim, (3) a certification from an engineer licensed in the State of Arizona that such Claim is valid along with a description of the scope of work necessary to cure such Claim and a resume of such engineer, (4) the estimated cost to repair such Claim, (5) the name and professional background of the attorney proposed to be retained by the Association to pursue the Claim against Declarant and a description of the relationship between such attorney and member(s) of the Board of Directors (if any), (6) a description of the fee arrangement between such attorney and the Association, (7) the estimated attorneys' fees and expert fees and costs necessary to pursue the Claim against Declarant and the source of the funds which will be used to pay such fees and expenses, (8) the estimated time necessary to conclude

the action against Declarant, and (9) an affirmative statement from the Board of Directors that the action is in the best interest of the Association and its Members.

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

6.10.2 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 6.10.

ARTICLE 7

COMMITTEES OF THE BOARD OF DIRECTORS

7.1 Appointment of Committees. The Board of Directors may create one or more committees and appoint Members, members of the Board of Directors and any other person to serve on them. Except as otherwise provided in the Condominium Documents, each committee shall have one or more members, and each member of a committee shall serve at the pleasure of the Board of Directors. The creation of a committee and appointment of members to the committee must be approved by the greater of: (1) a majority of all the directors in office when the action is taken; or (2) the number of directors required by Section 3.10 above to take action.

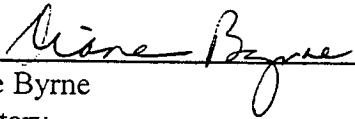
7.2 Proceedings of Committees. The provisions of these Bylaws governing meetings, action without meetings and notice, waiver of notice, quorum and voting requirements of the Board of Directors shall also apply to committees and their members.

7.3 Authority of Committees. Each committee of the Board of Directors may exercise the authority of the Board of Directors to the extent specified by the Board of Directors, except that a committee shall not take any of the following actions: (1) authorize distributions; (2) approve or recommend to the Members any action that requires the Members' approval under the Condominium Documents or by law; (3) fill vacancies on the Board of Directors or on any of its committees; (4) adopt, amend or repeal these Bylaws; and (5) fix the compensation of directors for serving on the Board of Directors or any committee of the Board of Directors.

7.4 Alternate Members. The Board of Directors may designate one or more directors as alternate members of any committee who may replace any absent member at any meeting of the committee.

CERTIFICATION

I hereby certify that the foregoing Bylaws were duly adopted by the Board of Directors of the Association on the 22nd day of February, 2002.



Diane Byrne
Secretary