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CONDOMINIUM DECLARATION

FOR

TESORO AT GRAYHAWK CONDOMINIUM

**CONDOMINIUM DECLARATION
FOR
TESORO AT GRAYHAWK CONDOMINIUM**

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**CONDOMINIUM DECLARATION
FOR
TESORO AT GRAYHAWK CONDOMINIUM**

This Condominium Declaration for **TESORO AT GRAYHAWK CONDOMINIUM** is made this 20th day of February, 2002, by **CACHET-TESORO, LLC**, an Arizona limited liability company.

ARTICLE 1

DEFINITIONS

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

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

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

1.2.2 "Additional Property" means the real property located in Maricopa County, Arizona, which is described on Exhibit B attached to this Declaration together with all buildings and other Improvements located thereon and all easements, rights and appurtenances belonging thereto.

1.2.3 "Assessments" means the Common Expense Assessments and Special Assessments levied and assessed against each Unit pursuant to Article 7 of this Declaration and the Villas Utility Assessments levied and assessed against each Villa pursuant to Subsection 5.3.4 of this Declaration.

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

1.2.5 "Association" means Tesoro at Grayhawk Condominium Association, an Arizona nonprofit corporation, its successors and assigns.

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

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

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

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

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

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

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

1.2.13 **"Condominium"** means the real property located in Maricopa County, Arizona, which is described in Exhibit A attached to this Declaration, together with all Buildings and other Improvements located thereon, and any part of the Additional Property which is annexed by the Declarant pursuant to Section 2.9 of the Declaration, together with all Buildings and other Improvements located thereon.

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

1.2.15 **"Condominium Documents"** means this Declaration, the Articles, Bylaws and Rules, as they may be amended from time to time.

1.2.16 **"Declarant"** means Cachet-Tesoro, LLC, an Arizona limited liability company, and its successors and any person or entity to whom it may transfer any Special Declarant Right in accordance with the Condominium Act.

1.2.17 **"Declarant Party" or "Declarant Parties"** means collectively Declarant, its builders, general contractors or brokers, or their agents or employees.

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

1.2.19 **"Development Rights"** means any right or combination of rights reserved by or granted to the Declarant in this Declaration to do any of the following:

- (i) Add real estate to the Condominium;

(ii) Create easements, Units, Common Elements or Limited Common Elements within the Condominium;

(iii) Subdivide Units, convert Units into Common Elements or convert Common Elements into Units;

(iv) Withdraw real estate from the Condominium;

(v) Make the Condominium part of a larger condominium or planned community;

(vi) Amend the Declaration during the Period of Declarant Control to comply with the Condominium Act or any other applicable law, or to correct any error or inconsistency in the Declaration if the amendment does not adversely affect the rights of any Unit Owner; and

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

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

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

1.2.22 "First Mortgage" means any mortgage, deed of trust or contract for sale pursuant to the provisions of A.R.S. §33-741 *et seq.* on a Unit which has priority over all other mortgages, deeds of trust and contracts for sale on the same Unit.

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

1.2.24 "Golf Declaration" means the Declaration of Covenants, Conditions and Restrictions for Golf Course Land and Adjoining Property at Grayhawk (South Course) recorded on October 19, 1995 as Document No. 95-0641339, Official Records of Maricopa County Recorder, Maricopa County, Arizona, as may be amended from time to time.

1.2.25 "Golf Owner" means CT Golf Holdings L.L.C., an Arizona limited liability company, and the successors and assigns of the Golf Owner's rights and powers under the Golf Declaration.

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

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

1.2.28 "Master Association" means Grayhawk Community Association, an Arizona nonprofit corporation, its successors and assigns.

1.2.29 "Master Declarant" means Grayhawk Residential, Inc., an Arizona corporation, and the successors and assigns of the Master Declarant's rights and powers under the Master Declaration.

1.2.30 "Master Declaration" means the Declaration of Covenants, Conditions and Restrictions for Grayhawk recorded on May 26, 1995 in Document No. 95-0300516, and re-recorded on June 2, 1995 in Document No. 95-0317218, Official Records of Maricopa County Recorder, Maricopa County, Arizona, as amended heretofore, and as may be further amended from time to time.

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

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

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

1.2.34 "Phase" means a portion of the real property delineated on the Plat submitted or annexed to the Condominium from time to time, together with all Buildings and other Improvements located thereon.

1.2.35 "Plat" means the Plat of Tesoro at Grayhawk Condominium, which plat has been recorded in Book 585 of Maps, page 27, Official Records of the Maricopa County Recorder, Maricopa County, Arizona, and any amendments, supplements or corrections thereto.

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

1.2.37 "Reserve Contribution" means the sum deposited in the Reserve Account by each Person as set forth in Section 7.9 of this Declaration.

1.2.38 "Rules" means the rules and regulations adopted by the Association, as amended from time to time.

1.2.39 "Special Assessment" means any assessment levied and assessed pursuant to Section 7.3 of this Declaration.

1.2.40 "Special Declarant Rights" means any right or combination of rights reserved by or granted to the Declarant in this Declaration or by the Condominium Act to do any of the following:

- (i) Construct Improvements provided for in this Declaration or shown on the Plat;
- (ii) Exercise any Development Right;
- (iii) Maintain sales offices, management offices, models, and signs advertising the Condominium;
- (iv) Use easements through the Common Elements for the purpose of making Improvements within the Condominium or within the Additional Property; and
- (v) Appoint or remove any officer of the Association or any member of the Board of Directors during the Period of Declarant Control.

1.2.41 "Townhome" or "Townhomes" means a Unit or Units being a portion of a Building containing a total of three (3) Units.

1.2.42 "Tract Declaration" means the Tract Declaration and Declaration of Annexation for Parcel 3i at Grayhawk recorded on December 4, 2001, in Document No. 2001-1142949, Official Records of Maricopa County Recorder, Maricopa County, Arizona, as may be amended from time to time.

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

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

1.2.45 "Villa" or "Villas" means a Unit or Units being a portion of a Building containing a total of six (6) Units.

1.2.46 "Villas Utility Assessment" means any assessment levied and assessed pursuant to Subsection 5.3.4 of this Declaration.

ARTICLE 2

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

2.1 **Submission of Property.** Declarant is the owner of real property described on Exhibit A attached hereto, and Declarant hereby submits the real property described on Exhibit A attached to this Declaration, together with all Improvements situated thereon and all easements, rights and appurtenances thereto, to the provisions of the Condominium Act for the purpose of creating a condominium in accordance with the provisions of the Condominium Act and hereby declares that the real property described on Exhibit A attached to this Declaration, together with all Improvements situated thereon, and all easements, rights and appurtenances thereto, shall be held and conveyed subject to the terms, covenants, conditions and restrictions set forth in this Declaration.

2.2 **Name of Condominium.** The name of the Condominium created by this Declaration is Tesoro at Grayhawk Condominium.

2.3 **Name of Association.** The name of the Association is Tesoro at Grayhawk Condominium Association.

2.4 Identifying Numbers of Units. The identifying numbers of the Units are 1123, 1124, 1125, 2122, 2124 and 2126.

2.5 Unit Boundaries.

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

2.5.2 All spaces, interior partitions and other fixtures and Improvements within the boundaries of a Unit are part of the Unit.

2.5.3 In the event of any inconsistency or conflict between the provisions of this Section and the Plat, this Section shall control.

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

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

2.6 Allocation of Common Element Interest and Common Expense Liabilities. The undivided interests in the Common Elements and in the Common Expenses of the Association shall be allocated equally among the Units. Accordingly, the fraction of undivided interest in the Common Elements and in the Common Expenses of the Association for each Unit shall be 1/6. If any part of the Additional Property is annexed by the Declarant pursuant to Section 2.9 of this Declaration, the undivided interests in the Common Elements and in the Common Expenses of the Association shall be reallocated so that each Unit's fraction of undivided interests shall be the fraction the numerator of which is 1 and the denominator of which is the total number of Units then subject to this Declaration.

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

2.8 Allocation of Limited Common Elements.

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

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

(ii) If a chute, flue, pipe, duct, wire, conduit, bearing wall, bearing column or other fixtures (including, but not limited to, heating and air conditioning units and related equipment) lies partially within and partially outside the designated boundaries of a Unit, the portion serving only the Unit is a Limited Common Element allocated solely to the Unit, the use of which is limited to that Unit and any portion serving more than one Unit or a portion of the Common Elements is a part of the Common Elements;

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

(iv) Any entryways and stairways designed to serve less than all Units, located outside the boundaries of such Units, are Limited Common Elements allocated exclusively to the Units served;

(v) Each first floor Unit is allocated the patio or patios adjoining the Unit as shown on the Plat as a Limited Common Element;

(vi) Each second floor Unit is allocated the balcony or balconies adjoining the Unit as shown on the Plat as a Limited Common Element;

(vii) Each Unit is allocated the garage designated on the Plat by the letter "G" followed by the number of the Unit as a Limited Common Element;

(viii) Each Unit is allocated the driveway providing access to the garage allocated to the Unit as a Limited Common Element;

(ix) Any electric or other utility meter which serves less than all Units is allocated to the Unit or Units it serves as a Limited Common Element; and

(x) Each Townhome is allocated the rear yard (and side yard, if applicable) adjoining the Unit as shown on the Plat as a Limited Common Element.

2.8.2 A Limited Common Element may be reallocated by an amendment to this Declaration made in accordance with the provisions of A.R.S. §33-1218(B) of the Condominium Act.

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

2.8.4 The Declarant shall have the right, without a vote of the members, to allocate as a Limited Common Element any parking spaces which are part of the Common Elements and which have not previously been allocated as a Limited Common Element. Any such allocation shall be made by an amendment to this Declaration executed and recorded by the Declarant.

2.9 Expansion of the Condominium.

2.9.1 Declarant hereby expressly reserves the right, but not the obligation, to expand the Condominium created by this Declaration, without the consent of any other Unit Owner, by annexing and submitting to this Declaration all or any portion of the Additional Property. The Declarant shall exercise its right to expand the Condominium by executing and recording an amendment to this Declaration containing the following: (i) a legal description of the portion of the Additional Property being annexed; (ii) the number of Units being added by the annexation and the identifying number assigned to each new Unit; (iii) a description of the Common Elements and Limited Common Elements created and, in the case of Limited Common Elements, a designation of the Unit to which each Limited Common Element is allocated; (iv) a reallocation to each Unit of a fraction of undivided interests in the Common Elements and in the Common Expenses of the Association and in the votes in the Association; and (v) a description of any Development Rights reserved by the Declarant within the Additional Property being annexed. This option to expand shall expire seven (7) years from the date of the recording of this Declaration.

2.9.2 Unless otherwise provided in the amendment adding Additional Property, the effective date for reallocating to each Unit a fraction of undivided interests in the Common Elements and in the Common Expenses of the Association and in the votes in the Association shall be the date on which the amendment annexing such Additional Property is recorded in the Official Records of the Maricopa County Recorder, Maricopa County, Arizona. An amendment annexing all or any portion of the Additional Property may provide for different effective dates for each Phase.

2.9.3 The Additional Property may be added as a whole at one time or in one or more Phases at different times, or it may never be added, and there are no limitations upon the order of addition thereof, even though the Phases may be consecutively numbered. The property submitted to the Condominium need not be contiguous, and the exercise of the right to annex as to any portion of the Additional Property shall not bar the further exercise of the right to annex as to any other portions of the Additional Property. There are no limitations on the locations or dimensions of improvements to be located on the Additional Property. No

assurances are made as to what, if any, further Improvements will be made by Declarant on any portion of the Additional Property.

2.9.4 The Additional Property, when and if added to the Condominium, shall be subject to the use restrictions contained in this Declaration and shall be subject in all respect to the Condominium Documents.

2.9.5 Declarant makes no assurances as to the exact number of Units which shall be added to the Condominium by annexation of all or any portion of the Additional Property, but the number of Units added by any such annexation shall not exceed one hundred ninety-two (192), for a maximum of one hundred ninety-eight (198) Units within the Condominium.

2.9.6 All taxes and other assessments relating to all or any portion of the Additional Property annexed into the Condominium for any period prior to the time when such portion of the Additional Property is annexed in accordance with this Section shall be the responsibility of and shall be paid for by the Declarant.

ARTICLE 3

EASEMENTS

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

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

3.3 Unit Owners' Easements of Enjoyment.

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

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

(ii) The right of the Association to convey the Common Elements or subject the Common Elements to a mortgage, deed of trust, or other security interest, in the manner and subject to the limitations set forth in the Condominium Act;

(iii) All rights and easements set forth in this Declaration including, but not limited to, the rights and easements granted to the Declarant by Sections 3.4 and 3.5 of this Declaration; and

(iv) The right of the Association to suspend the right of a Unit Owner and any resident of such Unit Owner's Unit to use the Common Elements (other than the right of a Unit Owner and any resident to use the streets which are part of the Common Elements for ingress and egress to the Unit Owner's Unit) for any period during which the Unit Owner is in violation of any provision of the Condominium Documents.

3.3.2 If a Unit is leased or rented, the lessee and the members of his family residing with the lessee shall have the right to use the Common Elements during the term of the lease, and the Unit Owner shall have no right to use the Common Elements (other than the right of a Unit Owner to use the streets which are part of the Common Elements for ingress and egress to the Unit Owner's Unit) until the termination or expiration of the lease.

3.3.3 The guests and invitees of any Unit Owner or other person entitled to use the Common Elements pursuant to Subsection 3.3.1 of this Declaration or of any lessee who is entitled to use the Common Elements pursuant to Subsection 3.3.2 of this Declaration may use the Common Elements provided they are accompanied by a Unit Owner, lessee or other person entitled to use the Common Elements pursuant to Subsection 3.3.1 or Subsection 3.3.2 of this Declaration. The Board of Directors shall have the right to limit the number of guests and invitees who may use the Common Elements at any one time and may restrict the use of the Common Elements by guests and invitees to certain specified times.

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

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

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

3.4.1 Declarant shall have the right and an easement to maintain sales or leasing offices, management offices, models and parking areas for the purpose of accommodating persons visiting such model homes and sales, leasing and management offices, throughout the Condominium and to maintain one or more marketing, directional or advertising signs on the Common Elements while the Declarant is selling and/or constructing Units in the Condominium. Declarant reserves the right to (i) place models, management offices and sales and leasing offices in any Units owned or leased by Declarant and on any portion of the Common Elements in such number, of such size and in such locations as Declarant deems appropriate, (ii) use any parking places not allocated as Limited Common Elements for the purpose of accommodating persons visiting such model homes and sales, leasing and management offices, and (iii) use any clubhouse and recreational facility within the Condominium for management and sales activities, including, without limitation, permitting the use of such facilities by prospective purchasers.

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

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

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

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

3.5 Declarant's Development Rights and Easements.

3.5.1 Declarant shall have the right and an easement on and over the Common Elements to construct the Common Elements and the Units shown on the Plat and all other Improvements the Declarant may deem necessary, and to use the Common Elements and any

Units owned by Declarant for construction or renovation related purposes, including the storage of tools, machinery, equipment, building materials, appliances, supplies and fixtures, and the performance of work in the Condominium or in any part of the Additional Property whether or not Additional Property has been subjected to this Declaration.

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

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

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

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

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

3.7 **Easement in Favor of the Association.**

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

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

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

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

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

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

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

3.8.5 For the performance of the Unit Owners' obligation to maintain, repair, replace and restore those portions of the Limited Common Elements that the Unit Owner is obligated to maintain under Section 5.3 of this Declaration.

3.9 Units and Limited Common Elements Easement in Favor of Association. The Units and the Limited Common Elements are hereby made subject to the following easements in favor of the Association and its directors, officers, agents, employees and independent contractors:

3.9.1 For inspection of the Units and Limited Common Elements in order to verify the performance by Unit Owners of all items of maintenance and repair for which they are responsible;

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

3.9.3 For correction of emergency conditions in one or more units or Limited Common Elements or casualties to the Common Elements, the Limited Common Elements or the Units;

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

3.9.5 For inspection, at reasonable times and upon reasonable notice to the Unit Owner, of the Units and the Limited Common Elements in order to verify that the provisions of the Condominium Documents are being complied with by the Unit Owners, their guests, tenants, invitees and the other residents of the Unit.

3.10 **Easement for Unintended Encroachments.** To the extent that any Unit or Common Element encroaches on any other Unit or Common Element as a result of original construction, shifting or settling, or alteration or restoration authorized by this Declaration or any reason other than the intentional encroachment on the Common Elements or any Unit by a Unit Owner, a valid easement for the encroachment, and for the maintenance thereof, exists.

ARTICLE 4

USE AND OCCUPANCY RESTRICTIONS

4.1 **Residential Use.** All Units shall be used, improved and devoted exclusively to residential use. No trade or business may be conducted on any Unit or in or from any Unit, except that a Unit Owner or other resident of a Unit may conduct a business activity within a Unit so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Unit; (ii) the business activity conforms to all applicable zoning ordinances or requirements for the Condominium; (iii) the business activity does not involve the door-to-door solicitation of Unit Owners or other residents in the Condominium; (iv) the use of the Unit for trade or business shall in no way destroy or be incompatible with the residential character of the Unit or the surrounding neighborhood; (v) the trade or business shall be conducted only inside the Unit, and shall not involve the viewing, purchase or taking delivery of goods or merchandise at, to, from or in any Unit; (vi) no more than twenty percent (20%) of the total floor area of the Unit shall be used for trade or business; (vii) the Unit used for trade or business shall not be used as a storage facility for a business conducted elsewhere; (viii) the volume of vehicular or pedestrian traffic or parking generated by such trade or business shall not result in congestion or be in excess of what is customary in a residential neighborhood; (ix) a trade or business shall not utilize flammable liquids or hazardous materials in quantities not customary to a residential use; and (x) a trade or business shall not utilize large vehicles not

customary to a residential use. The terms "business" and "trade" as used in this Section shall be construed to have ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to Persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether: (a) such activity is engaged in full or part time; (b) such activity is intended to or does generate a profit; or (c) a license is required for such activity. The leasing of a Unit by the Unit Owner thereof shall not be considered a trade or business within the meaning of this Section.

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

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

4.4 Improvements and Alterations. Any Unit Owner may make nonstructural additions, alterations and improvements within his Unit without the prior written approval of the Board of Directors, but such Unit Owner shall, to the extent permitted under Arizona law, be responsible for any damage to other Units and to Common Elements which results from any such alterations, additions or improvements. No Unit Owner shall make any structural additions, alterations or improvements within a Unit unless prior to the commencement of each addition, alteration or improvement, the Unit Owner receives the prior written approval of the Board of Directors and delivers to the Board of Directors a certification by an architect or engineer, licensed in Arizona, that such addition, alteration or improvement will not impair the structural integrity of the Building within which such addition, alteration or improvement is to be made. The Unit Owner shall, to the extent permitted by Arizona law, be responsible for any damage to other Units and to the Common Elements which results from any such additions, alterations or improvements. Notwithstanding the foregoing, no addition, alteration or improvement within a Unit or within any Limited Common Element allocated to the exclusive use of a Unit, whether structural or not, which would be visible from the exterior of the Building in which the Unit is located or from the exterior of the Limited Common Element (including, but not limited to, the enclosing of a patio or balcony), shall be made without the prior written approval of the Board of

Directors, which approval shall only be granted if the Board of Directors affirmatively finds that the proposed addition, alteration or improvement is aesthetically pleasing and in harmony with the surrounding Improvements. No Unit Owner shall make any addition, alteration or improvement to the Common Elements without the prior written approval of the Board of Directors. The approval required pursuant to this Section shall be in addition to the approvals required under the Master Declaration and the Golf Declaration, specifically including but not limited to, the approval of the Architectural Committee of the Master Association and the approval of the Golf Owner.

4.5 Trash Containers and Collection. No garbage or trash shall be placed or kept on the Condominium except in sanitary, covered containers of a type, size and style which are approved by the Board of Directors. In no event shall such containers be maintained so as to be visible from any neighboring property except to make the same available for collection and then only for the shortest time reasonably necessary to effect such collection. All rubbish, trash or garbage shall be removed from the Condominium and shall not be allowed to accumulate thereon. The Board of Directors shall have the right to subscribe to a trash service for the use and benefit of the Association and all Unit Owners, and to adopt and promulgate rules and regulations regarding garbage, trash, trash containers and collection. No incinerators shall be kept or maintained in any Unit or on any other portion of the Condominium.

4.6 Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated or maintained upon the Condominium except such machinery or equipment as is usual and customary in connection with the use, maintenance or construction of Buildings, Improvements or structures which are within the uses permitted by this Declaration, and except that which Declarant or the Association may require for the construction, operation and maintenance of the Common Elements.

4.7 Animals. No animals, fowl, poultry or livestock shall be maintained or kept in any Units or on any other portion of the Condominium, except that no more than two (2) Permitted Pets may be kept or maintained in a Unit. Permitted Pets may be kept or raised solely as domestic pets and not for commercial purposes. For purposes of this Section, a "Permitted Pet" shall mean a dog, cat, household bird or other generally recognized household pet. Notwithstanding the foregoing, the Board of Directors is authorized to determine, in its discretion and on a case-by-case basis, whether any particular animal or pet is to be considered as a "generally recognized household pet," and the Board of Directors may on a case-by-case basis allow one or more Unit Owners to keep more than two (2) Permitted Pets if in the sole discretion of the Board of Directors the increased number of Permitted Pets will not negatively impact other Unit Owners, taking into account the size and type of animal or pet, the total number of Permitted Pets of the Unit's Owner, the noise of the animal or pet and any other relevant considerations. The approval by the Board of Directors of an increased number of Permitted Pets by a Unit Owner shall not be construed as approval to any other Unit Owner. No Permitted Pet shall be allowed to make an unreasonable amount of noise, cause an odor, or to become a nuisance or annoyance to other Unit Owners or residents. All dogs shall be kept on a leash not to exceed six (6) feet in length when outside a Unit or any Limited Common Elements allocated to

the Unit, and all dogs shall be directly under the Unit Owner's control at all times. Any person bringing a dog onto the Common Elements shall immediately remove any feces deposited on the Common Elements by the dog. Any Unit or Limited Common Element where a Permitted Pet is kept or maintained shall at all times be kept in a neat and clean condition. No structure for the care, housing, confinement, or training of any animal or pet shall be maintained on any portion of the Common Elements or in any Unit so as to be visible from the exterior of the Building in which the Unit is located. Upon the written request of any Unit Owner, the Board of Directors shall determine whether, for the purposes of this Section, a Permitted Pet is a nuisance or is making an unreasonable amount of noise or causing an odor. The Board of Directors shall have the right to adopt, amend and repeal rules and regulations governing the keeping of Permitted Pets in the Condominium, and such rules and regulations may include limitations on the height and/or weight of Permitted Pets.

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

4.9 Clothes Drying Facilities. Outside clotheslines or other outside facilities for drying or airing clothes shall not be erected, placed or maintained on the Condominium.

4.10 Mineral Exploration. No portion of the Condominium shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth, or any earth substance of any kind.

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

4.12 Trucks, Trailers, Campers and Boats. No truck, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, recreational vehicle, boat, boat trailer, or other similar equipment or vehicle may be parked, maintained, constructed, reconstructed or repaired on any part of the Condominium except for: (a) temporary construction trailers or facilities maintained during, and used exclusively in connection with, construction of any Improvement approved by the Board of Directors, and (b) boats and vehicles parked in garages so long as such vehicles are in good operating condition and appearance and are not under repair.

4.13 Motor Vehicles. Except for emergency repairs and minor repairs or maintenance of vehicles parked in a garage assigned to a Unit as a Limited Common Element, no automobile, motorcycle, motorbike or other motor vehicle shall be constructed, reconstructed, serviced or repaired on any portion of the Condominium, and no inoperable vehicle may be stored

or parked on any portion of the Condominium. No Unit Owner or other resident or occupant of a Unit may park any automobile, motorcycle, motorbike or other motor vehicle upon any part of the Condominium except in garages assigned to the Unit as a Limited Common Element. Guests of a Unit Owner or other resident or occupant may park an automobile, motorcycle, motor bike or other motor vehicle not exceeding seven (7) feet in height and eighteen (18) feet in length owned or leased by such guest in driveways allocated to such Unit as a Limited Common Element, provided that no vehicle shall be parked on any portion of a sidewalk or other pedestrian walkway. Neither Unit Owners nor their family members nor any occupant of a Unit may park their vehicle in any guest parking areas which may be part of the Common Elements.

4.14 Towing of Vehicles. The Board of Directors shall have the right to have any truck, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, recreational vehicle, boat, boat trailer or similar equipment or vehicle or any automobile, motorcycle, motorbike, or other motor vehicle parked, kept, maintained, constructed, reconstructed or repaired in violation of the Condominium Documents towed away at the sole cost and expense of the owner of the vehicle or equipment. Any expense incurred by the Association in connection with the towing of any vehicle or equipment shall be paid to the Association upon demand by the owner of the vehicle or equipment. If the vehicle or equipment is owned by a Unit Owner, any amounts payable to the Association shall be secured by the Assessment Lien, and the Association may enforce collection of such amounts in the same manner provided for in this Declaration for the collection of Assessments.

4.15 Garages. Garage doors shall be kept closed at all times except when it is necessary to open the garage door to allow a vehicle to enter or exit the garage or for the placement or removal of personal items or for cleaning purposes. Garages shall be used only for the parking of motor vehicles and no garage shall be used or converted to use for living or recreational purposes. Garages may be used for the incidental storage of equipment or materials so long as the storage of such equipment or materials does not prevent the garage from being available for the parking of the number of motor vehicles for which the garage was designed.

4.16 Signs. No signs (including, but not limited to, "For Sale" or "For Rent" signs) shall be permitted on the exterior of any Unit, Building or in the interior of a Unit if the signs would be visible from the exterior of the Building in which the Unit is located, or on any other portion of the Condominium without the prior written approval of the Board of Directors, except signs required by legal proceedings. Notwithstanding the foregoing, for so long as the Declarant owns any Unit, all signs, except signs required by legal proceedings, are prohibited.

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

4.18 Nuisances and Offensive Activity. No nuisance shall be permitted to exist or operate upon the Condominium, and no activity shall be conducted upon the Condominium

which is detrimental to any portion of the Condominium or any Unit Owner or other occupant of the Condominium. No loud music or other loud noises or vibrations originating from inside or outside a Unit shall be allowed if such music, noise or vibration disturbs neighboring Unit Owners, and no exterior speakers, horns, whistles, bells or other sound devices, except security or other emergency devices used exclusively for security or emergency purposes, shall be located, used or placed on the Condominium without the prior written approval of the Board of Directors.

4.19 Window Coverings. No reflective materials, including, but without limitation, aluminum foil, reflective screens or glass, mirrors or similar items, shall be installed or placed upon the outside or inside of any windows of a Unit without the prior written approval of the Board of Directors. No enclosures, drapes, blinds, shades, screens or other items affecting the exterior appearance of a Unit or any Limited Common Elements allocated to the Unit shall be constructed or installed without the prior written consent of the Board of Directors.

4.20 Balconies. No furniture, umbrellas, equipment or other materials shall be kept or stored on any balcony allocated to the exclusive use of a Unit without the prior written approval of the Board of Directors. In addition, no astro turf, carpet or other floor covering shall be installed on any balcony without the prior written approval of the Board of Directors.

4.21 Restriction on Floor Coverings. Except for the kitchen, bathroom and laundry areas in the C-2 type Unit, as shown on sheet 10 of the Plat, hard floor coverings (e.g., ceramic tile, natural stone, vinyl, hardwood or laminated flooring) shall be prohibited in all other areas of the C-2 type Units. Carpet and pad shall be required all areas where hard floor coverings are prohibited, including, without limitation, the stairwell, to mitigate noise disturbance to first floor Units.

4.22 Basketball Goals and Backboards. No basketball goal, pole, backboard or other similar structure, whether portable or permanent, may be installed on any portion of the Condominium unless installed by the Declarant or Association as a component of the recreational facilities.

4.23 Natural Area Open Space. Any portion of the Condominium designated "NAOS" or "Natural Area Open Space" on the Plat or any other document recorded in the Official Records of the Maricopa County Recorder, Maricopa County, Arizona, shall be left undisturbed and shall be maintained by the Association or the Master Association, as more specifically provided in the Tract Declaration, in a natural state pursuant to the requirements of the City of Scottsdale, Arizona, unless otherwise provided in a Plat or other document recorded in the Official Records of the Maricopa County Recorder, Maricopa County, Arizona.

4.24 Limitation on Leasing of Units. No Unit Owner may lease less than the entire Unit. No Unit may be leased for a period of less than thirty (30) days. All leases shall be in writing and shall provide that the lease shall be subject in all respects to the provisions of the Condominium Documents, and any failure by the lessee to comply with the terms of the

Condominium Documents shall be a default under the lease. Upon leasing a Unit, a Unit Owner shall promptly notify the Association of the commencement date and termination date of the lease and the names of each lessee or other person who will be occupying the Unit during the term of the lease.

4.25 Variances. The Board of Directors may, at its option and in extenuating circumstances, grant variances from the restrictions set forth in this Article 4 if the Board of Directors determines in its discretion that: (a) a restriction would create an unreasonable hardship or burden on a Unit Owner or occupant or a change of circumstances since the recordation of this Declaration had rendered such restriction obsolete; and (b) the activity permitted under the variance will not have any substantial adverse effect on Unit Owners and occupants and is consistent with the high quality of life intended for residents of the Condominium.

4.26 Declarant Approval Required. After the expiration of the Period of Declarant Control and for so long as the Declarant owns any Unit, any action for which the consent or approval of the Board of Directors is required under this Declaration may be taken only if such action is also consented to or approved by the Declarant.

ARTICLE 5

MAINTENANCE AND REPAIR OF COMMON ELEMENTS AND UNITS

5.1 Duties of the Association. Except as otherwise provided for in the Tract Declaration and in Section 5.3 below, and as further provided in Section 5.2 below, the Association shall inspect, maintain, repair and replace all Common Elements and Limited Common Elements, whether located inside or outside the Units. The cost of all such inspection, maintenance, repairs and replacements shall be a Common Expense and shall be paid for by the Association; provided, that the Association may assess the cost of any maintenance, repair or replacement of a Limited Common Element that is allocated exclusively to the use of one Unit to the Unit Owner thereof.

5.2 Duty to Inspect. It shall be the duty of the Board of Directors to have the Common Elements inspected at least once each year or more often as set forth below.

5.2.1 Purpose of Inspection. The purpose of the inspection shall be to (i) determine whether the Common Elements are being maintained adequately in accordance with the standards for comparable condominiums in the Scottsdale, Arizona metropolitan area, (ii) identify the condition of the Common Elements, including the existence of any hazards or defects, and the need for performing additional maintenance, refurbishment, replacement or repair, and (iii) recommend preventive actions which may be taken to reduce potential maintenance costs to be incurred in the future.

5.2.2 Scope of Inspection. The Common Elements and Improvements thereon, including, but not limited to, the exterior and structural integrity of all Buildings, structures, gates, walls and walkways, the operation of all irrigation systems, fire sprinkler

systems and drainage systems and devices, and the appearance of all landscaping, but excluding any portion of the Common Elements for which access through the interior of Units or through walls is required (subject to the rights of inspection set forth in Subsection 3.7.1), shall be inspected at least once each year or in such frequencies recommended by manufacturers or other consultants.

5.2.3 Experts and Consultants. The Board of Directors may retain such experts and consultants as are necessary to perform the inspection and make the report required by this Section 5.2. Where mechanical and/or structural knowledge is necessary for adequate inspection of such Improvements, the Board of Directors shall retain Persons with appropriate credentials. Fire sprinkler systems and drainage systems and devices shall be inspected by individuals qualified to do so in their respective industries and in accordance with the manufacturers' recommendations.

5.2.4 Report to Unit Owners. The Board of Directors shall cause to be prepared a report of the results of the inspection of the Common Elements required by this Section 5.2. The report shall be furnished to Unit Owners along with the summary of the budget as set forth in Subsection 7.1.2 hereof. The report shall include at least the following:

(i) A description of the condition of the Common Elements, including a list of items inspected, and the status of maintenance, repair and need for replacement of all such items;

(ii) A description of all maintenance, repair and replacement planned for the ensuing fiscal year and included in the budget;

(iii) If any maintenance, repair or replacement is to be deferred, the reason for such deferral;

(iv) A summary of all reports of inspections performed by any expert or consultant employed by the Board of Directors to perform inspections;

(v) A report of the status of compliance with the maintenance, replacement and repair needs set forth in the inspection report for the preceding year; and

(vi) Such other matters as the Board of Directors deems appropriate.

5.3 Duties of Unit Owners.

5.3.1 Each Unit Owner shall maintain in good order and repair and replace, at his own expense, all portions of his Unit. In addition, each Unit Owner shall be responsible for (i) the maintenance and repair of the interior portion of the garage assigned to the Unit as a Limited Common Element, (ii) the repair of any mechanical portion of the garage door and the replacement of the garage door from time to time, if necessary as determined by the Board

of Directors, and (iii) the daily maintenance (i.e., sweeping and/or washing) of any patios, balconies, entryways and driveways allocated to the Unit as a Limited Common Element.

5.3.2 If the Board of Directors permits a Unit Owner of a Villa to enclose the patio allocated to a Unit as a Limited Common Element, then the Unit Owner shall be responsible for the maintenance and repair of the interior areas of the patio and the interior surfaces of the wall enclosing the patio. The Association shall be responsible for the maintenance of all other portions of the wall enclosing the patio and for the roof of the patio.

5.3.3 A Unit Owner of a Townhome shall be responsible for (i) the maintenance and repair of the enclosed rear yard assigned to the Unit as a Limited Common Element, (ii) the maintenance and repair (i.e., painting and/or washing) of the inside of the wall surrounding the rear yard of a Unit; provided that any structural repair of such walls or maintenance of wrought iron portions of such walls shall be the responsibility of the Association, and (iii) the cost of all domestic water used by the Unit Owner thereof and the cost of sewer service and trash collection for such Townhome.

5.3.4 A Unit Owner of a Villa shall be responsible for its prorata share of the cost of domestic water, sewer service and trash collection used for all Villas so that each Villa Unit Owner's fractional share of water, sewer and trash collection costs shall be the fraction the numerator of which is 1 and the denominator of which is the total number of Villas then subject to this Declaration (the "Villas Utility Assessment"). The Villas Utility Assessment shall be paid by each Villa Unit Owner at the same time and in the same manner as the Common Expense Assessment.

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

5.5 **Unit Owner's Failure to Maintain.** If a Unit Owner fails to maintain in good condition and repair his Unit or any Limited Common Element which he is obligated to maintain under this Declaration and the required maintenance, repair or replacement is not performed within fifteen (15) days after written notice has been given to the Unit Owner by the Association, the Association shall have the right, but not the obligation, to perform the required maintenance, repair or replacement. The cost of any such maintenance, repair or replacement shall be assessed against the nonperforming Unit Owner pursuant to Subsection 7.2.4 of this Declaration.

5.6 Fire Sprinkler System. In accordance with the requirements of the City of Scottsdale, Arizona, each Building will be equipped with a fire sprinkler system. The heads of the fire sprinkler system will intrude into the Unit. All pipes, heads and other parts of the fire sprinkler system (whether located within or outside of the Unit) shall be part of the Common Elements and shall be maintained, repaired and replaced by the Association. If a Unit Owner or another resident or occupant of a Unit or their guests or invitees causes the fire sprinkler system to be activated, except in the case of a fire, or damages or destroys any part of the fire sprinkler system, such Unit Owner shall be responsible for all expense, liability and damage resulting from such actions.

ARTICLE 6

THE ASSOCIATION; RIGHTS AND DUTIES, MEMBERSHIP

6.1 Rights, Powers and Duties of the Association. No later than the date on which the first Unit is conveyed to a Purchaser, the Association shall be organized as a nonprofit Arizona corporation. The Association shall be the entity through which the Unit Owners shall act. The Association shall have such rights, powers and duties as are prescribed by law and as are set forth in the Condominium Documents together with such rights, powers and duties as may be reasonably necessary in order to effectuate the objectives and purposes of the Association as set forth in this Declaration and the Condominium Act. The Association shall have the right to finance capital improvements in the Condominium by encumbering future Assessments if such action is approved by the written consent or affirmative vote of Unit Owners representing more than two-thirds (2/3) of the votes in the Association. Unless the Condominium Documents or the Condominium Act specifically require a vote of the Members, approvals or actions to be given or taken by the Association shall be valid if given or taken by the Board of Directors. Notwithstanding anything herein to the contrary, so long as the Declarant owns any Unit, the prior written consent of the Declarant shall be required to any decision by the Association to establish self-management when professional management previously had been in place. The Association has the specific duty to make available to the Declarant, Eligible Mortgage Holders, Unit Owners, and Eligible Insurers or Guarantors, current copies of the Declaration, Bylaws, Articles, Rules and other books, records and financial statements of the Association as may be requested from time to time by such parties. Such requests shall be in writing, and the Association shall have the right to charge for copying expenses.

6.2 Directors and Officers.

6.2.1 During the Period of Declarant Control, the Declarant shall have the right to appoint and remove the members of the Board of Directors and the officers of the Association, who do not have to be Unit Owners.

6.2.2 Upon the termination of the Period of Declarant Control, the Unit Owners shall elect the Board of Directors which must consist of at least three members, all of

whom must be Unit Owners. The Board of Directors elected by the Unit Owners shall then elect the officers of the Association.

6.2.3 The Declarant may voluntarily surrender his right to appoint and remove the members of the Board of Directors and the officers of the Association before termination of the Period of Declarant Control, and in that event 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.

6.3 **Rules.** The Board of Directors, from time to time and subject to the provisions of this Declaration, including, without limitation, Section 4.26, and the Condominium Act, may adopt, amend, and repeal rules and regulations. The Rules may, among other things, restrict and govern the use of any area by any Unit Owner, by the family of such Unit Owner, or by any invitee, licensee or lessee of such Unit Owner; provided, however, that the Rules may not unreasonably discriminate among Unit Owners and shall not be inconsistent with the Condominium Act, this Declaration, the Articles or Bylaws. A copy of the Rules as they may from time to time be adopted, amended or repealed, shall be mailed or otherwise delivered to each Unit Owner and may be recorded.

6.4 **Composition of Members.** Each Unit Owner shall be a Member of the Association. The membership of the Association at all times shall consist exclusively of all the Unit Owners. A Unit Owner (including Declarant) of a Unit shall automatically, upon becoming the Unit Owner thereof, be a Member of the Association and shall remain a Member of the Association until such time as such Unit Owner's ownership ceases for any reason, at which time, such Unit Owner's membership in the Association shall automatically cease.

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

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

6.7 **Voting Rights.** Subject to Section 6.8 below, each Unit Owner of a Unit, including Declarant, shall be entitled to cast one (1) vote for each Unit owned by such Unit

Owner, on any Association matter which is put to a vote of the membership in accordance with this Declaration, the Articles and/or Bylaws.

6.8 Voting Procedures. No change in the ownership of a Unit shall be effective for voting purposes unless and until the Board of Directors is given actual written notice of such change and is provided satisfactory proof thereof. The vote for each such Unit must be cast as a unit, and fractional votes shall not be allowed. In the event that a Unit is owned by more than one (1) Person and such Unit Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Member casts a vote representing a certain Unit, it will thereafter be conclusively presumed for all purposes that such Unit Owner was acting with the authority and consent of all other Unit Owners of the same Unit unless objection thereto is made at the time the vote is cast. In the event more than one (1) vote is cast by a Member for a particular Unit, none of the votes shall be counted and all of the votes shall be deemed void.

6.9 Transfer of Membership. The rights and obligations of any Member other than the Declarant shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership of a Unit Owner's Unit, and then only to the transferee of ownership to the Unit. A transfer of ownership to a Unit may be effected by deed, intestate succession, testamentary disposition, foreclosure of a mortgage of record, or such other legal process as now in effect or as may hereafter be established under or pursuant to the laws of the State of Arizona. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership to a Unit shall operate to transfer the membership appurtenant to said Unit to the new Unit Owner thereof. Each Person who purchases a Unit shall notify the Association of its purchase within ten (10) days after becoming the Unit Owner of a Unit.

6.10 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.

6.11 Architectural Committee. The Board of Directors may establish an Architectural Committee consisting of not less than three (3) members appointed by the Board of Directors to regulate the external design, appearance, use and maintenance of the Condominium and to perform such other functions and duties as are imposed upon it by the Condominium Documents or by the Board of Directors.

6.12 Conveyance or Encumbrance of Common Elements. The Common Elements shall not be conveyed or subjected to a mortgage, deed of trust or security interest without the prior written consent or affirmative vote of Unit Owners representing at least eighty

percent (80%) of the votes allocated to Unit Owners other than the Declarant. In addition, any conveyance, encumbrance, judicial sale or other transfer (whether voluntary or involuntary) of an individual interest in the Common Elements shall be void unless the Unit to which that interest is allocated also is transferred.

ARTICLE 7

ASSESSMENTS

7.1 Preparation of Budget.

7.1.1 At least sixty (60) days before the beginning of each fiscal year of the Association commencing with the fiscal year in which the first Unit is conveyed to a Purchaser, the Board of Directors shall adopt a budget for the Association containing an estimate of the total amount of funds which the Board of Directors believes will be required during the ensuing fiscal year to pay all Common Expenses including, but not limited, to: (i) the amount required to pay the cost of inspection, maintenance, management, operation, repair and replacement of the Common Elements and Improvements thereon, including clustered mailboxes, private streets and driveways and entry gates, and those parts of the Units, if any, which the Association has the responsibility of inspecting, maintaining, repairing and replacing; (ii) the cost of any centrally metered utilities which serve all the Units and/or the Common Elements and the cost of trash removal for the Common Elements; (iii) the cost of insurance premiums for fire, liability, workers' compensation, errors and omissions and directors, officers and agents liability, and any other insurance that may be required for the Association or the Condominium or that the Board of Directors determines advisable to obtain, the cost of bonding the members of the Board of Directors, and the cost of compensation, wages, materials, services, supplies and other expenses required for the administration, operation, maintenance and repair of the Condominium, including landscape renovation and maintenance; (iv) the cost of rendering to the Unit Owners all services required to be rendered by the Association under the Condominium Documents; (v) such other funds in addition to the Reserve Contribution which may be necessary to provide general operating reserves and reserves for contingencies and replacements deemed appropriate by the Board of Directors; and (vi) the cost of any other item or items incurred by the Association, for any reason whatsoever in connection with the Condominium, for the common benefit of the Unit Owners. The budget shall separately reflect any Common Expenses to be assessed against less than all of the Units pursuant to Subsections 7.2.4 or 7.2.5 of this Declaration.

7.1.2 Within thirty (30) days after the adoption of a budget, 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. The failure or delay of the Board of Directors to prepare or adopt a budget for any fiscal year shall not constitute a waiver or release in any manner of a Unit Owner's obligation to pay his allocable share of the Common Expenses as provided in Section 7.2 of this Declaration, and each Unit Owner shall continue to pay the Common Expense Assessment against

his Unit as established for the previous fiscal year until notice of the Common Expense Assessment for the new fiscal year has been established by the Board of Directors.

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

7.2 Common Expense Assessment.

7.2.1 For each fiscal year of the Association commencing with the fiscal year in which the first Unit is conveyed to a Purchaser, the total amount of the estimated Common Expenses set forth in the budget adopted by the Board of Directors (except for the Common Expenses which are to be assessed against less than all of the Units pursuant to Subsections 7.2.4 and 7.2.5 of this Declaration) shall be assessed against each Unit in proportion to the Unit's Common Expense Liability as set forth in Section 2.6 of this Declaration. The amount of the Common Expense Assessment assessed pursuant to this Subsection 7.2.1 shall be in the sole discretion of the Board of Directors. If the Board of Directors determines during any fiscal year that its funds budgeted or available for that fiscal year are, or will, become inadequate to meet all Common Expenses for any reason, including, without limitation, nonpayment of Assessments by Members, it may increase the Common Expense Assessment for that fiscal year and the revised Common Expense Assessment shall commence on the date designated by the Board of Directors.

7.2.2 The Common Expense Assessments shall commence as to all Units on the first day of the month following the conveyance of the first Unit to a Purchaser. The first Common Expense Assessment shall be adjusted according to the number of months remaining in the fiscal year of the Association. The Board of Directors may require that the Common Expense Assessments or Special Assessments be paid in installments.

7.2.3 Except as otherwise expressly provided for in this Declaration, all Common Expenses including, but not limited to, Common Expenses associated with the maintenance, repair and replacement of a Limited Common Element, shall be assessed against all of the Units in accordance with Subsection 7.2.1 of this Declaration.

7.2.4 If any Common Expense is caused by the misconduct of any Unit Owner, the Association shall assess that Common Expense exclusively against his Unit.

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

7.2.6 The Common Expense Assessment for any Unit on which construction has not been substantially completed shall be an amount equal to twenty-five percent (25%) of the Common Expense Assessment for Units which have been substantially completed. So long as any Unit owned by the Declarant qualifies for the reduced Common Expense Assessment provided for in this Subsection, the Declarant shall be obligated to pay to the Association any

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

7.2.7 All Assessments, monetary penalties and other fees and charges levied against a Unit shall be in addition to any assessments levied by the Master Association pursuant to the Master Declaration and 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 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 of the Association, a Special Assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement of the Common Elements, including fixtures and personal property related thereto, or for any other lawful Association purpose, provided that any Special Assessment (other than a Special Assessment levied pursuant to Section 9.1 of this Declaration as a result of the damage or destruction of all or part of the Common Elements) shall have first been approved by Unit Owners representing two-thirds (2/3) of the votes in the Association who are voting in person or by proxy at a meeting duly called for such purpose. Unless otherwise specified by the Board of Directors, Special Assessments shall be due thirty (30) days after they are levied by the Association and notice of the Special Assessment is given to the Unit Owners.

7.4 Effect of Nonpayment of Assessments; Remedies of the Association.

7.4.1 Any Assessment, or any installment of an Assessment, which is not paid within five (5) 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.

7.4.2 All Assessments, monetary penalties and other fees and charges imposed or levied against any Unit or Unit Owner shall be secured by the Assessment Lien as provided for in the Condominium Act. The 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 are secured by the Assessment Lien.

7.4.3 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: (i) bringing an action at law against the Unit Owner personally obligated to pay the delinquent amounts and such action may be brought without waiving the Assessment Lien securing any such delinquent amounts; or (ii)

bringing an action to foreclose its Assessment Lien against the Unit in the manner provided by law for the foreclosure of a realty mortgage. The Association shall have the power to bid in at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any and all Units purchased at such sale.

7.5 Subordination of Assessment Lien to Mortgages. The Assessment Lien shall be subordinate to the lien of any First Mortgage. Any First Mortgagee or any other party acquiring title or coming into possession of a Unit through foreclosure of a First Mortgage, purchase at a foreclosure sale or trustee sale, or through any equivalent proceedings, such as, but not limited to, the taking of a deed in lieu of foreclosure, shall acquire title free and clear of any claims for unpaid Assessments, monetary penalties and other 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 a 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.

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

7.7 Certificate of Payment. The Association on written request shall furnish to a lienholder, Unit Owner or person designated by a Unit Owner a statement setting forth the amount of unpaid Assessments against his Unit. The statement shall be furnished within fifteen (15) business days after receipt of the request (or such shorter time period as may be required by applicable law) 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. To ensure that the Association shall have adequate funds reserved for repair and replacement of all or a portion of the Common Elements, each Person who purchases a Unit from the Declarant shall pay to the Association immediately upon becoming a Unit Owner a Reserve Contribution in the amount of Five Hundred Dollars (\$500.00). Funds paid to the Association pursuant to this Section shall be deposited in the Reserve Account established pursuant to Section 7.10. Payments made pursuant to this Section shall be nonrefundable and shall not be considered as an advance payment of any Assessments levied by the Association pursuant to this Declaration.

7.10 Reserves. Each budget adopted by the Board of Directors shall include reasonable amounts as determined by the Board of Directors to be collected as reserves for the future periodic maintenance, repair or replacement of all or a portion of the Common Elements. All amounts collected as reserves, whether pursuant to this Section or otherwise, shall be deposited by the Board of Directors in a separate bank account (the "Reserve Account") to be held for the purposes for which they are collected and are to be segregated from and not commingled with any other funds of the Association. Such reserves shall be deemed a contribution to the capital account of the Association by the Members. The Board of Directors shall not expend funds designated as reserve funds for any purpose other than those purposes for which they were collected. Withdrawal of funds from the Association's reserve account shall require the signatures of either (a) two (2) members of the Board of Directors, or (b) one (1) member of the Board of Directors and an officer of the Association who is not also a member of the Board of Directors. The Board of Directors shall obtain an initial reserve study and provide updates thereto at least once every three years, which study shall at a minimum include (a) identification of the major components of the Common Elements which the Association is obligated to repair, replace, restore or maintain which, as of the date of the study, have a remaining useful life of less than thirty (30) years, (b) identification of the probable remaining useful life of the identified major components as of the date of the study, (c) an estimate of the cost of repair, replacement, restoration or maintenance of the identified major components during and at the end of their useful life, and (d) an estimate of the total annual contribution necessary to defray the cost to repair, replace, restore or maintain the identified major components during and at the end of their useful life, after subtracting total reserve funds as of the date of the study. Provided that the Board of Directors acts in good faith in determining the amount to be collected as reserves, neither the Declarant nor any director or officer of the Association shall be liable to the Association or any Member if the amount collected as reserves proves to be inadequate to pay for all required periodic maintenance, repair and replacement which was intended to be funded from reserves.

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

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

7.13 Transfer Fee. Each Person who acquires a Unit shall pay to the Association immediately upon becoming the Unit Owner of the Unit a transfer fee in the amount set from time to time by the Board of Directors to compensate the Association for the administrative cost resulting from the transfer of a Lot. The transfer fee is not intended to compensate the Association for the costs incurred in the preparation of the statement that the Association is required to mail or deliver to a purchaser under A.R.S. §33-1260A and, therefore,

the transfer fee shall be in addition to the fee which the Association is entitled to charge pursuant to A.R.S. §33-1260C.

ARTICLE 8

INSURANCE

8.1 Scope of Coverage.

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

(i) Property insurance on the Common Elements and Units, exclusive of improvements and betterments installed in Units by Unit Owners and exclusive of the personal property of Unit Owners (including, however, to the extent financed by a FNMA mortgage, fixtures, equipment and other personal property inside individual Units, whether or not such property is part of the Common Elements), issued under a form which provides "All Risk of Direct Physical Loss" coverage, in an amount equal to the maximum insurable replacement value of the Common Elements and Units, as determined by the Board of Directors; provided, however that the total amount of insurance after application of any deductibles shall not be less than one hundred percent (100%) of the current replacement cost of the insured property, exclusive of land, excavations, foundations and other items normally excluded from a property insurance policy. The Association will not be obligated to obtain or maintain insurance coverage with respect to the contents of any Unit other than fixtures (i.e., non-fixed appliances, window coverings and wallcoverings other than paint will not be covered). All fixtures (i.e., carpet, sinks, tubs, shower enclosures, built-in mirrors, cabinets, lights and built-in kitchen equipment) shall be insured at a replacement cost equal to the base fixtures installed by Declarant; each Unit Owner shall be responsible for insuring additional replacement cost for upgrades.

(ii) Broad Form Commercial general liability insurance, for a limit to be determined by the Board of Directors, but not less than \$2,000,000.00 for any single 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. Such policy shall include (i) a cross liability clause to cover liabilities of the Unit Owners as a group to a Unit Owner, (ii) medical payments insurance, and (iii) contingent liability coverage for losses arising out of the use of hired and nonowned automobiles.

(iii) Coverage for any legal liability that results from lawsuits related to employment contracts in which the Association is a party if the Association has employees and if deemed appropriate by the Board of Directors.

(iv) Workmen's compensation insurance to the extent necessary to meet the requirements of the laws of Arizona.

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

(vi) Such other insurance as the Association shall determine from time to time to be appropriate to protect the Association, the members of the Board of Directors, the members of any committee or the Board of Directors or the Unit Owners.

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

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

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

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

(d) 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.

(e) 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.

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

(g) 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 thirty (30) days in advance of the effective date of any substantial change in coverage or cancellation of the policy.

(h) Any insurance trust agreement will be recognized by the insurer.

(viii) If there is a steam boiler used in connection with the Condominium, boiler explosion insurance evidenced by the standard form of boiler machinery

insurance policy and providing coverage in the minimum amount of \$50,000.00 per accident per location; or, if deemed appropriate by the Board of Directors, mechanical breakdown protection.

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

(x) "Agreed Amount" and "Inflation Guard" endorsements.

8.1.2 If, at the time of a loss insured under an insurance policy purchased by the Association, the loss is also insured under an insurance policy purchased by a Unit Owner, the Association's policy shall provide primary coverage.

8.2 Fidelity Bonds.

8.2.1 The Association shall maintain blanket fidelity bonds for all officers, directors, trustees and employees of the Association and all other persons handling or responsible for funds of or administered by the Association including, but without limitation, officers, directors and employees of any management agent of the Association, whether or not they receive compensation for their services. The total amount of the fidelity bonds maintained by the Association shall be based upon the best business judgment of the Board of Directors, and shall not be less than the greater of the estimated maximum funds, including reserve funds, in the custody of the Association or the management agent, as the case may be, at any given time during the term of each bond, or the sum equal to three months aggregate Common Expense Assessments on all Units plus reserve funds. Fidelity bonds obtained by the Association must also meet the following requirements:

(i) The fidelity bonds shall name the Association as an obligee;

(ii) The bonds shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expressions;

(iii) The bonds shall provide that they may not be canceled or substantially modified (including cancellation from nonpayment of premium) without at least ten (10) days prior written notice to the Association and each First Mortgagee.

8.2.2 The Association shall require any management agent of the Association to maintain its own fidelity bond in an amount equal to or greater than the amount of the fidelity bond to be maintained by the Association pursuant to Subsection 8.2.1 of this Declaration. The fidelity bond maintained by the management agent shall cover funds of the

- (i) Voting rights;
- (ii) Assessments, assessment liens or subordination of assessment liens;
- (iii) Reserves for maintenance, repair and replacement of Common Elements;
- (iv) Insurance or fidelity bonds;
- (v) Responsibility for maintenance and repairs;
- (vi) Expansion or contraction of the Condominium, or the addition, annexation or withdrawal of property to or from the Condominium;
- (vii) Boundaries of any Unit;
- (viii) Reallocation of interests in the Common Elements or Limited Common Elements or rights to their use;
- (ix) Convertibility of Units into Common Elements or of Common Elements into Units;
- (x) Leasing of Units;
- (xi) Imposition of any restrictions on a Unit Owner's right to sell or transfer his Unit;
- (xii) A decision by the Association to establish self-management when professional management had been required previously by an Eligible Mortgage Holder;
- (xiii) Restoration or repair of the Condominium (after a hazard damage or partial condemnation) in a manner other than that specified in the Condominium Documents;
- (xiv) Any action to terminate the legal status of the Condominium after substantial destruction or condemnation occurs;
- (xv) Any provisions which expressly benefit First Mortgagees, Eligible Mortgage Holders or Eligible Insurers or Guarantors.

11.2.2 Any action to terminate the legal status of the Condominium for reasons other than substantial destruction or condemnation of the Condominium must be approved by Eligible Mortgage Holders holding First Mortgages on Units the Unit Owners of which have at least sixty-seven percent (67%) of the votes in the Association allocated to Unit Owners of all Units subject to First Mortgages held by Eligible Mortgage Holders.

Association maintained in bank accounts of the management agent as approved by the Association and shall name the Association as an obligee.

8.3 Payment of Premiums. Premiums for all insurance obtained by the Association pursuant to this Article shall be Common Expenses and shall be paid for by the Association.

8.4 Annual Insurance Review. The Board of Directors shall annually determine whether the amounts and types of insurance it has obtained provide adequate coverage for the Condominium in light of increased construction costs, inflation, practice in the area of which the Condominium is located or any other factor which tends to indicate that either additional insurance policies or increased coverage under existing policies are necessary or desirable to protect the interest of the Unit Owners and of the Association. If the Board of Directors determines that increased coverage or additional insurance is appropriate, it shall obtain the same.

8.5 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 own benefit and at his own expense covering his Unit, his personal property and providing personal liability coverage. If any insurer of liability or the Common Elements of the Association shall require that each Unit Owner obtain and carry its own property and liability insurance coverage for personal property, then each Unit Owner shall comply with said requirements. The expenses of any alternative accommodations for a Unit Owner and any lessee of such Unit Owner's Unit following any damage to or destruction of the Unit, and during any period of repair, reconstruction, restoration or replacement of such Unit will be the responsibility of that Unit Owner or lessee (or both), and not of the Association or any other Unit Owner, nor will those expenses be covered by insurance obtained by the Association. Any Unit Owner or lessee may, at such Unit Owner's or lessee's sole expense, obtain separate insurance, if available, covering such alternative accommodation expenses.

8.6 Payment of Insurance Proceeds. Any loss covered by property insurance obtained by the Association 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 lienholders as their interests may appear, and the proceeds shall be disbursed and applied as provided for in A.R.S. §33-1253.

8.7 Certificate of Insurance. An insurer that has issued an insurance policy pursuant to this Article shall issue certificates or memoranda of insurance to the Association and, on written request, to any Unit Owner or First Mortgagee. The insurer issuing the policy shall not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or nonrenewal has been mailed to the Association, each Unit Owner, and each First Mortgagee to whom a certificate or memorandum of insurance has been issued at their respective last known addresses.

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

9.2 Determination Not to Reconstruct Without Termination. If eighty percent (80%) of the Unit Owners (including every Unit 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 Unit Owners of those Units and the Unit 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 Unit 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 Unit 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 a Unit 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 Unit Owner with a remnant which may not be practically or lawfully used for any purpose permitted by this Declaration, the award must compensate the Unit 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 Unit 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 Unit 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.

10.5 Priority and Power of Attorney. Nothing contained in this Article shall entitle a Unit 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 Unit 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 a Unit 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;

11.1.4 Any proposed action which requires the consent of a specified percentage of Eligible Mortgage Holders as set forth in Section 11.2 of this Declaration.

11.2 Approval Required for Amendment to Declaration, Articles or Bylaws.

11.2.1 The approval of Eligible Mortgage Holders holding First Mortgages on Units the Unit Owners of which have at least fifty-one percent (51%) of the votes in the Association allocated to Unit Owners of all Units subject to First Mortgages held by Eligible Mortgage Holders shall be required to add or amend any material provisions of the Declaration, Articles or Bylaws which establish, provide for, govern or regulate any of the following:

11.2.3 Any First Mortgagee who receives a written request to approve additions or amendments to the Declaration, Articles or Bylaws, which additions or amendments are not material, who does not deliver or mail to the requesting party a negative response within thirty (30) days shall be deemed to have approved such request. Any addition or amendment to the Declaration, Articles or Bylaws shall not be considered material if it is for the purpose of correcting technical errors or for clarification only.

11.2.4 The approvals required by this Section shall not apply to amendments that may be executed by the Declarant in the exercise of its Development Rights.

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

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

11.5 **Prior Written Approval of First Mortgagees.** Except as provided by statute in case of condemnation or substantial loss to the Units or the Common Elements, unless at least two-thirds (2/3) of all First Mortgagees (based upon one vote for each First Mortgage owned) or Unit Owners (other than the Declarant or other sponsor, developer or builder of the Condominium) of the Units have given their prior written approval, the Association shall not be entitled to:

11.5.1 By act or omission, seek to abandon or terminate this Declaration or the Condominium;

11.5.2 Change the pro rata interest or obligations of any individual Unit for the purpose of: (i) levying Assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or (ii) determining the pro rata share of ownership of each Unit in the Common Elements;

11.5.3 Partition or subdivide any Unit;

11.5.4 By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Elements. The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements shall not be deemed a transfer within the meaning of this Subsection;

11.5.5 Use Hazard insurance proceeds for losses to any Units or the Common Elements for any purpose other than the repair, replacement or reconstruction of such Units or the Common Elements.

Nothing contained in this Section or any other provisions of this Declaration shall be deemed to grant the Association the right to partition any Unit without the consent of the Unit Owners thereof. Any partition of a Unit shall be subject to such limitations and prohibitions as may be set forth elsewhere in this Declaration or as provided under Arizona law.

11.6 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.

11.7 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.

11.8 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.

11.9 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; provided, however, that in the event of any conflict or inconsistency between the different Sections of this Article or between the provisions of this Article and any other provision of the Condominium Documents with respect to the number or percentage of Unit Owners, First Mortgagees, Eligible Mortgage Holders or Eligible Insurers or Guarantors that must consent to (i) an amendment of the Declaration, Articles or Bylaws, (ii) a termination of the Condominium, or (iii) certain actions of the Association as specified in Sections 11.2 and 11.5 of this Declaration, the provision requiring the consent of the greatest number or percentage of Unit Owners, First Mortgagees, Eligible Mortgage Holders or Eligible Insurers or Guarantors shall prevail; provided, however, that the Declarant, without the consent of any Unit Owner being required, shall have the right to amend this Declaration, the Articles or the Bylaws during the Period of Declarant Control 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 Declaration, the Articles or the Bylaws if the amendment does not adversely affect the rights of any Unit Owner, (iii) comply with the requirements 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 FNMA, the FHLMC, the FHA, the VA, or (iv) the rules or requirements of any federal, state or local governmental entity or agency whose approval of the Condominium, the Plat or the Condominium Documents is required by law or requested by Declarant.

ARTICLE 12
RESERVATION OF DEVELOPMENT AND
SPECIAL DECLARANT RIGHTS

Pursuant to the Condominium Act, Declarant reserves all of the development and special declarant rights in the Condominium afforded under A.R.S. §§33-1202(14) and (21), respectively, subject to the expiration deadlines set forth below. Specifically, but without limitation, Declarant reserves the following rights:

12.1 Development Rights. Declarant hereby reserves, for a period of seven (7) years following the recordation of this Declaration (or any lesser period specified by law with respect to any particular Development Right), all Development Rights under A.R.S. §33-1202(14).

12.2 Right to Complete Improvements and Construction Easement. Declarant hereby reserves the right to complete the construction of Improvements on the Condominium, and an easement over the Condominium for the purpose of doing so.

12.3 Exercise of Development Rights. Declarant reserves the right to exercise all Development Rights reserved pursuant to Section 12.1 above for a period of seven (7) years from the date of recordation of this Declaration, or any lesser period specified by law with respect to any particular Development Right.

12.4 Offices, Model Homes and Promotional Signs. Declarant reserves the right to maintain offices for sales and management and models as provided in Section 3.4 above, and to maintain signs on the Common Elements for so long as Declarant owns any portion of the Condominium.

12.5 Use of Easements. Declarant reserves the right to use easements through the Common Elements for the purpose of making Improvements within the Condominium.

12.6 Master Association. Declarant reserves the right to make the common-interest community subject to any additional master homeowners association.

12.7 Merger or Consolidation. Declarant reserves the right to merge or consolidate the Association with another common-interest community of the same form of ownership.

12.8 Appointment and Removal of Directors and Officers. Declarant reserves the right to appoint and remove any officer of the Association or any member of the Board of Directors as set forth in Section 6.2 above, for the time period set forth therein.

ARTICLE 13

GENERAL PROVISIONS

13.1 Enforcement. The Association, or any Unit Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of the Condominium Documents. Failure by the Association or by any Unit Owner to enforce any covenant or restriction contained in the Condominium Documents shall in no event be deemed a waiver of the right to do so thereafter. The Master Association shall have no duty or obligation to enforce this Declaration.

13.2 Severability. Invalidation of any one of the terms, covenants, conditions or restrictions shall in no way affect any other provisions herein, which shall remain in full force and effect. However, if any term, covenant, condition or restriction is deemed unenforceable to its full extent, then such term, covenant, condition or restriction shall be enforced to the maximum extent permitted by law and may be modified by the trier of law to enable it to be enforced to the fullest extent permitted at law.

13.3 Duration. The covenants and restrictions of this Declaration, as amended from time to time, shall run with and bind the Condominium in perpetuity unless the Condominium is terminated as provided in Section 13.4 of this Declaration.

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

13.5 Amendment.

13.5.1 Except as provided in Subsection 13.28.8 of this Declaration, and except in cases of amendments that may be executed by a Declarant in the exercise of its Development Rights or under A.R.S. §33-1220 or pursuant to Subsection 2.8.4 of this Declaration, by the Association under A.R.S. §§33-1206 or 33-1216(D), or by certain Unit Owners under A.R.S. §§ 33-1218(B), 33-1222, 33-1223 or 33-1228(B), the Declaration, including the Plat, may be amended only by a vote of the Unit Owners to which at least sixty-seven percent (67%) of the votes in the Association are allocated and the written consent of the Architectural Committee of the Master Association as required by Section 3.21 of the Master Declaration.

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

13.5.3 An amendment to the Declaration shall not terminate or decrease any unexpired Development Right, Special Declarant Right or Period of Declarant Control unless

the Declarant approves the amendment in writing. The consent of Declarant shall be required to any amendment during the Period of Declarant Control.

13.5.4 During the Period of Declarant Control, the Declarant shall have the right to amend the Declaration, including the Plat, 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 Declaration if the amendment does not adversely affect the rights of any Unit Owner, (iii) 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 VA, the FHA, the FNMA or the FHLMC, or (iv) the rules or requirements of any federal, state or local governmental entity or agency whose approval of the Condominium, the Plat or the Condominium Documents is required by law or requested by Declarant.

13.5.5 Any amendment adopted by the Unit Owners pursuant to Subsection 13.5.1 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. Any amendment made by the Declarant pursuant to Subsections 2.8.4 or 13.5.4 of this Declaration or the Condominium Act shall be executed by the Declarant and shall be recorded with the County Recorder of each County in which any portion of the Condominium is located.

13.6 Remedies Cumulative. Each remedy provided herein is cumulative and not exclusive.

13.7 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 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 (3) days after the notice is mailed. If a Unit is owned by more than one person, notice to one of the Unit Owners shall constitute notice to all Unit Owners of the same Unit. Each Unit Owner shall file his correct mailing address with the Association, and shall promptly notify the Association in writing of any subsequent change of address.

13.8 Binding Effect. By acceptance of a deed or by acquiring any ownership interest in any portion of the Condominium, each Person, for himself, his heirs, personal representatives, successors, transferees and assigns, binds himself, his heirs, personal

representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, rules, and regulations now or hereafter imposed by the Condominium Documents and any amendments thereof. In addition, each such person by so doing thereby acknowledges that the Condominium Documents set forth a general scheme for the improvement and development of the real property covered thereby and hereby evidences his interest that all the restrictions, conditions, covenants, 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. Declarant, its successors, assigns and grantees, covenants and agrees that the Units and the membership in the Association and the other rights created by the Condominium Documents shall not be separated or separately conveyed, and each shall be deemed to be conveyed or encumbered with its respective Unit even though the description in the instrument of conveyance or encumbrance may refer only to the Unit.

13.9 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.

13.10 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.

13.11 Survival of Liability. The termination of membership in the Association shall not relieve or release any such former Unit 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 Unit Owner or Member arising out of, or in any way connected with, such ownership or membership and the covenants and obligations incident thereto.

13.12 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.

13.13 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.

13.14 Guests and Tenants. Each Unit Owner shall be responsible for compliance by his agents, tenants, guests, invitees, licensees and their respective servants, agents, and employees with the provisions of the Condominium Documents. A Unit Owner's 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.

13.15 Attorneys' Fees. In the event the Declarant, the Association or any Unit Owner employs an attorney or attorneys to enforce a lien or to collect any amounts due from a Unit Owner or to enforce compliance with or recover damages for any violation or noncompliance with the condominium documents, the prevailing party in any such action shall be entitled to recover from the other party his reasonable attorneys' fees incurred in the action.

13.16 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 next day shall be deemed to be the next day which is not a Saturday, Sunday or holiday.

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

13.18 Notice of Violation. The Association shall have the right to record a written notice of a violation by any Unit Owner of any restriction or provision of the Condominium Documents. The notice shall be executed and acknowledged by an officer of the Association and shall contain substantially the following information: (i) the name of the Unit Owner; (ii) the legal description of the Unit against which the notice is being recorded; (iii) a brief description of the nature of the violation; (iv) a statement that the notice is being recorded by the Association pursuant to this Declaration; and (v) a statement of the specific steps which must be taken by the Unit Owner to cure the violation. Recordation of a Notice of Violation shall serve as a notice to the Unit Owner and to any subsequent purchaser of the Unit that there is a violation of the provisions of the Condominium Documents. If, after the recordation of such notice, it is determined by the Association that the violation referred to in the notice 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.

13.19 Master Association. The Condominium is part of a master planned community known as Grayhawk and is subject to the terms and conditions of (i) the Master

Declaration and the articles of incorporation, bylaws, association rules and architectural committee rules of the Master Association, as such documents may from time to time be amended (collectively, the "Master Association Documents"), (ii) the Golf Declaration and any Adjoining Property Guidelines, as such term is defined therein (collectively, the "Golf Documents"), and (iii) the Tract Declaration. The Master Association Documents, the Golf Documents and the Tract Declaration are sometimes collectively referred to in this section as the "Grayhawk Documents." The Unit Owners and residents of Units subject to this Declaration must comply with the Grayhawk Documents, as well as comply with all covenants, conditions and restrictions set forth in this Declaration. All assessments and amounts payable to the Master Association pursuant to the Master Declaration shall be in addition to any Assessments or other amounts due to the Association pursuant to this Declaration. Each Unit Owner of a Unit subject to this Declaration and the Association acknowledge and agree that neither the Master Association nor the Golf Owner shall be responsible for the maintenance, repair or replacement of the Common Elements, except as specifically set forth in the Grayhawk Documents, as they may be amended from time to time, or as specifically set forth in any other recorded document executed by the Master Declarant, the Golf Owner or the Master Association. Any action that requires the consent of the Master Association shall be deemed approved or consented to if approved in writing by the board of directors of the Master Association.

13.20 Release of Claims; Gated Entrances, Sound Issues.

13.20.1 The Declarant intends to construct code activated access gates at the entrances to the Condominium in order to limit vehicular access and provide some privacy for the Unit Owners and the other occupants of the Units. The access gates shall be part of the Common Elements and shall be maintained, repaired and replaced by the Association. The Association shall have the right, but not the obligation, to provide guard service for the Condominium at such times and upon such terms as are approved by the Board of Directors. Each Unit Owner and occupant of a Unit, for itself and its family, invitees and licensees, acknowledges and agrees as follows:

(i) Declarant makes no representations or warranties that the access gates nor any guard service that may be provided by the Association will provide safety or security of the Unit Owners and other occupants of the Condominium or their guests or that no unauthorized person will gain access to the Condominium.

(ii) The gated entrance may restrict or delay entry into the Condominium by the police, fire department, ambulances and other emergency vehicles or personnel.

Each Unit Owner and occupant of a Unit, for itself and its family, invitees and licensees, assumes the risk that the gated entrance may not provide security and safety and may restrict or delay entry to the Condominium by the police, fire department, ambulances and other emergency vehicles and personnel. Neither the Declarant Parties, the Association nor any director, officer, agent or employee of the Association shall be liable to any Unit Owner, occupant of a Unit or its

family, invitees or licensees for any claims or damages resulting, directly or indirectly, from the construction, operation, existence or maintenance of the gated entrance. Each Unit Owner and occupant of a Unit hereby releases the Declarant Parties and the Association from any and all claims, actions, suits, demands, causes of action, losses, damages or liabilities (including, without limitation, strict liability) related to or arising in connection with any nuisance, inconvenience, disturbance, injury or damage resulting from the gated entrance.

13.20.2 Each Unit Owner and occupant of a Unit has read and understands Section 4.18 of this Declaration and acknowledges that the Units are attached residential Units with common walls. Each Unit Owner and occupant of a Unit may hear loud noises and feel vibrations from activities in adjoining Units. Each Unit Owner and occupant of a Unit, for itself and its family, invitees and licensees, acknowledges and agrees as follows:

(i) Declarant makes no representations or warranties with respect to the level of noise or vibrations that may be heard or felt from Unit to Unit at any point in time;

(ii) Compliance with Section 4.18 of this Declaration is necessary to attempt to reduce the noise and vibration levels heard and felt within adjacent Units.

Each Unit Owner and occupant of a Unit, on behalf of itself and its family, invitees and licensees, assumes the risk that, because the Units are attached residential Units, certain noise and vibrations from other Units may be heard within the Unit and acknowledges that the foregoing was considered in the Unit Owner's decision to purchase a Unit. Further, each Unit Owner and occupant of a Unit agrees to accept the determination of the Board of Directors as to whether any noise and vibration levels are excessive if a dispute arises with respect to the enforcement of Section 4.18 of this Declaration. Neither the Declarant Parties, the Association nor any director, officer, agent or employee of the Association shall be liable to any Unit Owner, occupant of a Unit or its family, invitees or licensees for any claims or damages resulting, directly or indirectly, from any noise or vibrations emanating from one Unit to another. Each Unit Owner and occupant of a Unit hereby releases the Declarant Parties and the Association from any and all claims, actions, suits, demands, causes of action, losses, damages or liabilities (including, without limitation, strict liability) related to or arising in connection with any nuisance, inconvenience, distress, disturbance, injury or damage resulting from noises or vibrations.

13.21 Views Not Guaranteed. Although certain Units in the Condominium at any point in time may have particular views, no express or implied easements exist for views or for the passage of light and air to any Unit. Neither Declarant nor Association make any representation or warranty whatsoever, express or implied, concerning the view which any Unit will have whether at the date this Declaration is recorded or thereafter. Further, the payment of any premium for any Unit does not constitute a guarantee of any view the Unit may have now or in the future. Any view which exists at any point in time for a Unit may be impaired or obstructed by further construction within the Condominium, including, without limitation, by construction of improvements (including, without limitation, landscaping) by Declarant,

construction by third parties and by the natural growth of landscaping. No third party, including, without limitation, any broker or salesperson, has any right to bind Declarant or the Association with respect to the preservation of any view from any Unit or any view of a Unit from any other property.

13.22 Proximity to Airport. Each Unit Owner, by accepting a deed to a Unit or by otherwise acquiring title to a Unit acknowledges (for such Unit Owner and such Unit Owner's family members, other residents, successors and assigns) that: (a) the Condominium is in close proximity to the Scottsdale Airport (the "Airport"), which is currently located generally between Frank Lloyd Wright Boulevard on the north, Pima Road on the east, Thunderbird Road on the south and Scottsdale Road on the west; (b) as of the date hereof the Airport is operated as a general aviation reliever/commercial service airport for Scottsdale and North Phoenix, used generally for single engine and twin engine airplanes, corporate jets, helicopters and scheduled service turbo prop and jet aircraft; (c) aircraft taking off from and landing at the Airport may fly over the Condominium and adjacent properties at altitudes which will vary with meteorological conditions, aircraft type, aircraft performance and pilot proficiency; (d) at the date hereof the majority of aircraft takeoffs and landings occur daily between 6:00 a.m. and 11:00 p.m., but the Airport is open twenty-four (24) hours each day, so takeoffs and landings may occur at any hour of the day or night; (e) the number of takeoffs and landings at the Airport will vary and may increase with time, particularly if the Airport is expanded or if the nature of its operations changes; (f) flights over the Condominium or adjacent properties by aircraft taking off from or landing at the Airport may generate significant noise, the volume, pitch, amount and frequency of occurrence of which will vary depending on a number of factors, including, without limitation, the altitudes at which the aircraft fly, wind direction and other meteorological conditions and aircraft number and type, and may be affected by future changes in Airport size, usage and configuration (which may include, without limitation, expansion of the Airport); (g) as of the date hereof management of the Airport has policies in place intended to help limit or control aircraft noise and its impact on owners and occupants of properties in the vicinity of the Airport, but those policies may change over time and, in addition, other aspects of such policies (including, without limitation, those intended to promote safety) may be given preference over policies relating to limiting noise; and (h) such Unit Owner (for such Unit Owner and such Unit Owner's family members, other residents, successors and assigns) hereby accepts and assumes any and all risks, burdens and inconvenience caused by or associated with the Airport and its operations (including, without limitation, noise caused by or associated with aircraft flying over the Condominium and adjacent properties), and agrees not to assert or make any claim against the Declarant Parties or the Association, or any director, officer, employee, agent, representative or contractor of the Association.

13.23 Disclaimer Regarding Golf Courses. All Persons, including, without limitation, all Unit Owners, are hereby advised that no representations, warranties or commitments have been or are made by the Declarant Parties or any other Person with regard to the present or future development, ownership, operation or configuration of, or right to use, any golf course or related facilities within, near or adjacent to the Condominium, whether or not depicted on any land use plan, sales brochure or other marketing display or plat. No purported

representation, warranty or commitment, written or oral, in such regard shall ever be effective without an amendment hereto executed by the Declarant. Further, the ownership, operation or configuration of, or rights to use, any such golf course or related facilities may change at any time and from time to time for reasons including, but not limited to: (a) the transfer of ownership or operation of any such golf course or related facilities; (b) the conversion of any such golf course or related facilities to an equity club or similar arrangement whereby members of such golf course or an entity owned or controlled thereby become the owner(s) and/or operator(s) of such golf course or related facilities (and, perhaps, such members become the only Persons entitled to use such golf course or related facilities); or (c) the conveyance of any such golf course or related facilities, or portion thereof, to the Master Association or to one or more village associations or neighborhood associations, as such terms are defined in the Master Declaration. As to any of the foregoing or any other alternative, no consent of the Association, the Master Association, any village association, any neighborhood association or any Unit Owner shall be required to effectuate such transfer (except for the consent of the Association in the event of a transfer to the Association, the Master Association in the event of a transfer to the Master Association or of the applicable village association or neighborhood association in the event of a transfer to such village association or neighborhood association). No Unit Owner or resident shall have any ownership interest in, or right to use, any such golf course or related facilities solely by virtue of: (i) his, her or its membership in the Association or the Master Association; or (ii) his, her or its ownership, occupancy of any Unit.

13.24 Golf Balls, Disturbances and Nuisances. Each Unit Owner understands and agrees that his, her or its Unit is or may be adjacent to or near one or more golf courses and related facilities and that golf course-related activities, including, without limitation, regular course play and tournaments, may be held within or adjacent to the Condominium. Each Unit Owner acknowledges that the location of his, her or its Unit within the Condominium may result in nuisances or hazards to persons and property on such Unit as a result of normal golf course operations or as a result of such other golf course-related activities. Each Unit Owner covenants for itself, its successors and assigns, and for such Unit Owner's residents and family members, that it and they assume all risks associated with such location, including but not limited to, the risk of property damage or personal injury arising from stray golf balls or actions incidental to such golf course-related activities and shall indemnify and hold harmless the Association and the Declarant Parties for, from and against any liability, claims or expenses, including attorneys' fees and court costs, arising from such property damage or personal injury.

13.25 Operation of the Golf Course. Each Unit Owner acknowledges that the operation and maintenance of any golf course within, near or adjacent to the Condominium may require that maintenance personnel and other workers will perform work relating to the operation and maintenance of such golf course as early as 4:00 a.m. and as late as 9:00 p.m. on a daily basis, and, in certain circumstances (including, without limitation, during tournaments), at any time(s) of the day or night. In connection therewith, each Unit Owner and resident agrees that the Declarant Parties shall not be responsible or accountable for, and shall be held harmless from, any claims, causes of action, loss or liability arising in connection with or associated with any noise or inconvenience normally associated with such operation and maintenance activities.

13.26 Other Golf Course Related Agreements. No Unit Owner or resident, and no guest, invitee, employee, agent or contractor of any Unit Owner or resident, shall at any time enter upon any golf course (or related facilities) within, adjacent to or near the Condominium for any purpose (other than to engage in golf play or as a spectator or guest of the golf course, in each and every case subject to all rules and regulations of such golf course including, without limitation, all requirements relating to membership, fees, reservation of tee times and similar matters), and each Unit Owner and resident shall keep his, her or its pets and other animals off any golf course (and out of any related facilities) at all times. No Unit Owner shall (or permit his, her or its residents, guests, invitees, employees, agents or contractors) to interfere in any way with play on the golf course (whether in the form of physical interference, noise, harassment of players or spectators, or otherwise). Each Unit Owner (for such Unit Owner and its residents, guests and invitees) recognizes, agrees and accepts that: (a) operation of a golf course and related facilities will often involve parties and other gatherings (whether or not related to golf, and including, without limitation, weddings and other social functions) at or on the golf course and related facilities, tournaments, loud music, use of public address systems and similar situations, occasional supplemental lighting and other similar or dissimilar activities throughout the day, from early in the morning until late at night; (b) by their very nature, golf courses present certain potentially hazardous conditions, which may include, without limitation, lakes or other bodies of water and man-made or naturally occurring topographical features such as washes, gullies, canyons, uneven surfaces and similar topographical conditions; (c) irrigation of landscaping on a golf course or related facilities may result in water spraying, drifting or blowing onto adjacent or nearby Units; and (d) neither such Unit Owner nor its residents, guests and invitees shall make any claim against the Declarant Parties, the Association or any committee of the Association (or any affiliate, agent, employee or representative of the Association) in connection with the matters described or referenced in (a), (b) and (c) above, whether in the nature of a claim for damages relating to personal injury or property damage, or otherwise.

13.27 High Power Transmission Lines. Each Unit Owner, by accepting a deed to a Unit, or by otherwise acquiring title to a Unit, acknowledges that: (a) the Condominium is in the vicinity of property which is subject to easements for high power transmission lines and related towers, systems and other equipment (some of which may be on or over property owned by the Master Association and/or other open space or recreational areas); (b) some studies have suggested links between such high power transmission lines, or similar systems or equipment, and increased incidences of various illnesses in persons residing nearby (including, without limitation, some forms of cancer); (c) the Declarant Parties have made no representations, warranties or statements regarding such easements or such high power transmission lines or related towers, systems or equipment (except to note their existence), or any health or other risks related (or potentially related) thereto; and (d) such Unit Owner (for such Unit Owner and its family members, other residents, successors and assigns) hereby accepts and assumes any and all health and other risks as may now or hereafter be or become associated with such high power transmission lines, or similar systems or equipment, or any new or replacement equipment or systems, and agrees not to assert or make any claim against the Declarant Parties or the Association, or any director, officer, employee, agent, representative or contractor of the Association.

13.28 Construction Defect Dispute Notification and Resolution Procedure.

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 Section 13.28. Declarant and each Unit Owner acknowledge that the provisions set forth in this Section 13.28 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 this Declaration 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.

13.28.1 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").

13.28.2 Right to Inspect and Right to Corrective Action. Within a reasonable period after receipt of the Claim Notice, which period shall not exceed sixty (60) days, Declarant and the claimant shall meet at a mutually acceptable place within the Condominium to discuss the claim. At such meeting or at such other mutually agreeable time, Declarant and the Declarant's representatives shall have full access to the property that is the subject of the claim and shall have the right to conduct inspections, testing and/or destructive or invasive testing in a manner deemed appropriate by Declarant (provided Declarant shall repair or replace any property damaged or destroyed during such inspection or testing), which rights shall continue until such time as the Dispute is resolved as provided in this Subsection 13.28.2. The parties shall negotiate in good faith in an attempt to resolve the claim. If the Declarant elects to take any corrective action, Declarant and Declarant's representatives and agents shall be provided full access to the Condominium and the property which is the subject of the claim to take and complete corrective action.

13.28.3 No Additional Obligations; Irrevocability and Waiver of Right. Nothing set forth in Subsection 13.28.2 shall be construed to impose any obligation on Declarant to inspect, test, repair or replace any item of the Condominium for which Declarant is not otherwise obligated under applicable law or any limited warranty provided by Declarant to a Unit Owner in connection with the sale of the Condominium and/or the Improvements constructed thereon. The right of Declarant to enter, inspect, test, repair and/or replace reserved hereby shall be irrevocable and may not be waived or otherwise terminated except by a writing executed and recorded by Declarant in the Official Records of Maricopa County, Arizona.

13.28.4 Mediation. If the parties to the Dispute cannot resolve the claim pursuant to the procedures described in Subsection 13.28.2 above, the matter shall be submitted to mediation pursuant to the mediation procedures adopted by the American Arbitration Association (except as such procedures are modified by the provisions of this Subsection 13.28.4) or any successor thereto or to any other entity offering mediation services that is acceptable to the parties. No person shall serve as a mediator in any dispute in which the person has any financial or personal interest in the result of the mediation, except by the written consent of all parties. Prior to accepting any appointment, the prospective mediator shall disclose any circumstances likely to create a presumption of bias or to prevent a prompt commencement of the mediation process. No litigation or other action shall be commenced against Declarant or any Declarant Party without complying with the procedures described in this Subsection 13.28.4.

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

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

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

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

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

13.28.5 Arbitration. Should mediation pursuant to Subsection 13.28.4 above not be successful in resolving any Dispute, such claim or dispute shall be resolved by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association as modified or as otherwise provided in this Subsection 13.28.5. The parties shall cooperate in good faith to attempt to cause all necessary and appropriate parties to be included in the arbitration proceeding. Subcontractors, material suppliers and other parties whose participation is reasonably necessary to afford complete relief in arbitration or who are involved in common questions of law or fact shall be included as parties in the arbitration. Subject to the limitations imposed in this Subsection 13.28.5, the arbitrator shall have the authority to try all issues, whether of fact or law.

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

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

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

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

(v) Discovery. The parties shall be entitled only to limited discovery, consisting of the exchange between the parties of only the following matters: (i) witness lists; (ii) expert witness designations; (iii) expert witness reports; (iv) exhibits; (v) reports of testing or inspections of the property subject to the Dispute, including but not limited to, destructive or invasive testing; and (vi) hearing briefs. The parties shall also be entitled to conduct further tests and inspections as provided in Subsection 13.28.2 above. Any other discovery shall be permitted by the arbitrator upon a showing of good cause or based on the mutual agreement of the parties. The arbitrator shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge.

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

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

13.28.6 WAIVERS.

NOTICE: BY ACCEPTANCE OF A DEED OR BY ACQUIRING ANY OWNERSHIP INTEREST IN ANY PORTION OF THE CONDOMINIUM, EACH PERSON, FOR HIMSELF, HIS HEIRS, PERSONAL REPRESENTATIVES, SUCCESSORS, TRANSFEREES AND ASSIGNS, AGREES TO HAVE ANY DISPUTE RESOLVED ACCORDING TO THE PROVISIONS OF THIS SECTION 13.28 AND WAIVES THE RIGHT TO PURSUE ANY DISPUTE IN ANY MANNER OTHER THAN AS PROVIDED IN THIS SECTION 13.28. THE ASSOCIATION, EACH UNIT OWNER AND DECLARANT ACKNOWLEDGE THAT BY AGREEING TO RESOLVE ALL DISPUTES AS PROVIDED IN THIS SECTION 13.28, 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.

13.28.7 Statutes of Limitation. Nothing in this Section 13.28 shall be considered to toll, stay, reduce or extend any applicable statute of limitations.

13.28.8 Required Consent of Declarant to Modify. Neither this Section 13.28 nor Section 13.29 below may be amended except in accordance with Subsection 13.5.1 of this Declaration and with the express written consent of the Declarant.

13.29 Required Consent of Unit Owners for Legal Action. Any action or claim instituted by the Association (which action or claim shall be subject to the terms of Section 13.28) 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, 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.

13.29.1 Notice of Unit Owners.

(i) Prior to obtaining the consent of the Unit Owners in accordance with Section 13.29, 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.

13.29.2 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 Subsection 13.29.1.

13.30 Effect of Declaration. Declarant makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of this Declaration, or as to the compliance of any of these provisions with public laws, ordinances and regulations applicable thereto.

13.31 No Representations or Warranties. No representations or warranties of any kind, express or implied, have been given or made by Declarant or its agents, consultants or employees in connection with the Condominium, or any portion thereof, its physical condition, zoning, compliance with applicable laws, fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, costs of maintenance, taxes or regulation thereof, except as specifically and expressly set forth in this Declaration.

13.32 Right to Configure Project. To the extent permitted by law, the Declarant shall have the right, at any time, to change the design, size and configuration, or make any other changes as it deems appropriate, of the Condominium. There is no guarantee that the Condominium will be developed as originally planned.

CACHET-TESORO, LLC, an Arizona limited liability company

By: STEP, Inc., an Arizona corporation, its Manager

By: *Matthew H. Cody*
Matthew H. Cody
Its President

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 20th day of February, 2002, by Matthew H. Cody, President of STEP, Inc., an Arizona corporation, Manager of CACHET-TESORO, LLC, an Arizona limited liability company, on behalf of the company.

Susan D. Goodrich
Notary Public

My commission expires: 3/9/03

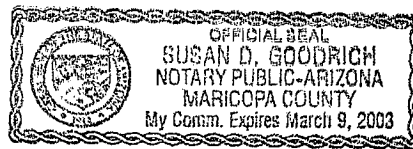


EXHIBIT A

Legal Description of Property Submitted to Condominium

Phase 1 of TESORO AT GRAYHAWK CONDOMINIUM, according to the plat recorded in Book 585 of Maps, page 27, Official Records of the Maricopa County Recorder, Maricopa County, Arizona.

(Phase 1 contains Building 31. The identifying numbers for Units within Building 31 are 1123, 1124, 1125, 2122, 2124 and 2126.)

EXHIBIT B

Additional Property

Phase 2 of TESORO AT GRAYHAWK CONDOMINIUM according to the plat recorded in Book 585 of Maps, page 27, Official Records of the Maricopa County Recorder, Maricopa County, Arizona.

(Phase 2 contains Building 1, and the identifying numbers for Units within Building 1 are 1001, 1002, 1003, 2000, 2002 and 2004.)

Phase 3 of TESORO AT GRAYHAWK CONDOMINIUM according to the plat recorded in Book 585 of Maps, page 27, Official Records of the Maricopa County Recorder, Maricopa County, Arizona.

(Phase 3 contains Building 2, and the identifying numbers for Units within Building 2 are 1006, 1007, 1008, 2005, 2007 and 2009.)

Phase 4 of TESORO AT GRAYHAWK CONDOMINIUM according to the plat recorded in Book 585 of Maps, page 27, Official Records of the Maricopa County Recorder, Maricopa County, Arizona.

(Phase 4 contains Building 3, and the identifying numbers for Units within Building 3 are 1011, 1012, 1013, 2010, 2012 and 2014.)

Phase 5 of TESORO AT GRAYHAWK CONDOMINIUM according to the plat recorded in Book 585 of Maps, page 27, Official Records of the Maricopa County Recorder, Maricopa County, Arizona.

(Phase 5 contains Building 6, and the identifying numbers for Units within Building 6 are 1023, 1024 and 1025.)

Phase 6 of TESORO AT GRAYHAWK CONDOMINIUM according to the plat recorded in Book 585 of Maps, page 27, Official Records of the Maricopa County Recorder, Maricopa County, Arizona.

(Phase 6 contains Building 7, and the identifying numbers for Units within Building 7 are 1026, 1027 and 1028.)

EXHIBIT B

ADDITIONAL PROPERTY

(Page 2)

Phase 7 of TESORO AT GRAYHAWK CONDOMINIUM according to the plat recorded in Book 585 of Maps, page 27, Official Records of the Maricopa County Recorder, Maricopa County, Arizona.

(Phase 7 contains Building 8, and the identifying numbers for Units within Building 8 are 1029, 1030 and 1031.)

Phase 8 of TESORO AT GRAYHAWK CONDOMINIUM according to the plat recorded in Book 585 of Maps, page 27, Official Records of the Maricopa County Recorder, Maricopa County, Arizona.

(Phase 8 contains Building 9, and the identifying numbers for Units within Building 9 are 1032, 1033 and 1034.)

Phase 9 of TESORO AT GRAYHAWK CONDOMINIUM according to the plat recorded in Book 585 of Maps, page 27, Official Records of the Maricopa County Recorder, Maricopa County, Arizona.

(Phase 9 contains Building 10, and the identifying numbers for Units within Building 10 are 1035, 1036 and 1037.)

Phase 10 of TESORO AT GRAYHAWK CONDOMINIUM according to the plat recorded in Book 585 of Maps, page 27, Official Records of the Maricopa County Recorder, Maricopa County, Arizona.

(Phase 10 contains Building 11, and the identifying numbers for Units within Building 11 are 1038, 1039 and 1040.)

Phase 11 of TESORO AT GRAYHAWK CONDOMINIUM according to the plat recorded in Book 585 of Maps, page 27, Official Records of the Maricopa County Recorder, Maricopa County, Arizona.

(Phase 11 contains Building 12, and the identifying numbers for Units within Building 12 are 1041, 1042 and 1043.)

EXHIBIT B

ADDITIONAL PROPERTY

(Page 3)

Phase 12 of TESORO AT GRAYHAWK CONDOMINIUM according to the plat recorded in Book 585 of Maps, page 27, Official Records of the Maricopa County Recorder, Maricopa County, Arizona.

(Phase 12 contains Building 13, and the identifying numbers for Units within Building 13 are 1044, 1045 and 1046.)

Phase 13 of TESORO AT GRAYHAWK CONDOMINIUM according to the plat recorded in Book 585 of Maps, page 27, Official Records of the Maricopa County Recorder, Maricopa County, Arizona.

(Phase 13 contains Building 14, and the identifying numbers for Units within Building 14 are 1047, 1048 and 1049.)

Phase 14 of TESORO AT GRAYHAWK CONDOMINIUM according to the plat recorded in Book 585 of Maps, page 27, Official Records of the Maricopa County Recorder, Maricopa County, Arizona.

(Phase 14 contains Building 15, and the identifying numbers for Units within Building 15 are 1050, 1051 and 1052.)

Phase 15 of TESORO AT GRAYHAWK CONDOMINIUM according to the plat recorded in Book 585 of Maps, page 27, Official Records of the Maricopa County Recorder, Maricopa County, Arizona.

(Phase 15 contains Building 16, and the identifying numbers for Units within Building 16 are 1053, 1054 and 1055.)

Phase 16 of TESORO AT GRAYHAWK CONDOMINIUM according to the plat recorded in Book 585 of Maps, page 27, Official Records of the Maricopa County Recorder, Maricopa County, Arizona.

(Phase 16 contains Building 17, and the identifying numbers for Units within Building 17 are 1056, 1057 and 1058.)

EXHIBIT B

ADDITIONAL PROPERTY

(Page 4)

Phase 17 of TESORO AT GRAYHAWK CONDOMINIUM according to the plat recorded in Book 585 of Maps, page 27, Official Records of the Maricopa County Recorder, Maricopa County, Arizona.

(Phase 17 contains Building 18, and the identifying numbers for Units within Building 18 are 1059, 1060 and 1061.)

Phase 18 of TESORO AT GRAYHAWK CONDOMINIUM according to the plat recorded in Book 585 of Maps, page 27, Official Records of the Maricopa County Recorder, Maricopa County, Arizona.

(Phase 18 contains Building 19, and the identifying numbers for Units within Building 19 are 1063, 1064, 1065, 2062, 2064 and 2066.)

Phase 19 of TESORO AT GRAYHAWK CONDOMINIUM according to the plat recorded in Book 585 of Maps, page 27, Official Records of the Maricopa County Recorder, Maricopa County, Arizona.

(Phase 19 contains Building 20, and the identifying numbers for Units within Building 20 are 1068, 1069, 1070, 2067, 2069 and 2071.)

Phase 20 of TESORO AT GRAYHAWK CONDOMINIUM according to the plat recorded in Book 585 of Maps, page 27, Official Records of the Maricopa County Recorder, Maricopa County, Arizona.

(Phase 20 contains Building 21, and the identifying numbers for Units within Building 21 are 1073, 1074, 1075, 2072, 2074 and 2076.)

Phase 21 of TESORO AT GRAYHAWK CONDOMINIUM according to the plat recorded in Book 585 of Maps, page 27, Official Records of the Maricopa County Recorder, Maricopa County, Arizona.

(Phase 21 contains Building 22, and the identifying numbers for Units within Building 22 are 1078, 1079, 1080, 2077, 2079 and 2081.)

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Phase 22 of TESORO AT GRAYHAWK CONDOMINIUM according to the plat recorded in Book 585 of Maps, page 27, Official Records of the Maricopa County Recorder, Maricopa County, Arizona.

(Phase 22 contains Building 23, and the identifying numbers for Units within Building 23 are 1083, 1084, 1085, 2082, 2084 and 2086.)

Phase 23 of TESORO AT GRAYHAWK CONDOMINIUM according to the plat recorded in Book 585 of Maps, page 27, Official Records of the Maricopa County Recorder, Maricopa County, Arizona.

(Phase 23 contains Building 24, and the identifying numbers for Units within Building 24 are 1088, 1089, 1090, 2087, 2089 and 2091.)

Phase 24 of TESORO AT GRAYHAWK CONDOMINIUM according to the plat recorded in Book 585 of Maps, page 27, Official Records of the Maricopa County Recorder, Maricopa County, Arizona.

(Phase 24 contains Building 25, and the identifying numbers for Units within Building 25 are 1093, 1094, 1095, 2092, 2094 and 2096.)

Phase 25 of TESORO AT GRAYHAWK CONDOMINIUM according to the plat recorded in Book 585 of Maps, page 27, Official Records of the Maricopa County Recorder, Maricopa County, Arizona.

(Phase 25 contains Building 26, and the identifying numbers for Units within Building 26 are 1098, 1099, 1100, 2097, 2099 and 2101.)

Phase 26 of TESORO AT GRAYHAWK CONDOMINIUM according to the plat recorded in Book 585 of Maps, page 27, Official Records of the Maricopa County Recorder, Maricopa County, Arizona.

(Phase 26 contains Building 27, and the identifying numbers for Units within Building 27 are 1103, 1104, 1105, 2102, 2104 and 2106.)

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Phase 27 of TESORO AT GRAYHAWK CONDOMINIUM according to the plat recorded in Book 585 of Maps, page 27, Official Records of the Maricopa County Recorder, Maricopa County, Arizona.

(Phase 27 contains Building 28, and the identifying numbers for Units within Building 28 are 1108, 1109, 1110, 2107, 2109 and 2111.)

Phase 28 of TESORO AT GRAYHAWK CONDOMINIUM according to the plat recorded in Book 585 of Maps, page 27, Official Records of the Maricopa County Recorder, Maricopa County, Arizona.

(Phase 28 contains Building 29, and the identifying numbers for Units within Building 29 are 1113, 1114, 1115, 2112, 2114 and 2116.)

Phase 29 of TESORO AT GRAYHAWK CONDOMINIUM according to the plat recorded in Book 585 of Maps, page 27, Official Records of the Maricopa County Recorder, Maricopa County, Arizona.

(Phase 29 contains Building 30 and the identifying numbers for Units within Building 30 are 1118, 1119, 1120, 2117, 2119 and 2121.)

Phase 30 of TESORO AT GRAYHAWK CONDOMINIUM according to the plat recorded in Book 585 of Maps, page 27, Official Records of the Maricopa County Recorder, Maricopa County, Arizona.

(Phase 30 contains Building 32, and the identifying numbers for Units within Building 32 are 1128, 1129, 1130, 2127, 2129 and 2131.)

Phase 31 of TESORO AT GRAYHAWK CONDOMINIUM according to the plat recorded in Book 585 of Maps, page 27, Official Records of the Maricopa County Recorder, Maricopa County, Arizona.

(Phase 31 contains Building 33, and the identifying numbers for Units within Building 33 are 1133, 1134, 1135, 2132, 2134 and 2136.)

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Phase 32 of TESORO AT GRAYHAWK CONDOMINIUM according to the plat recorded in Book 585 of Maps, page 27, Official Records of the Maricopa County Recorder, Maricopa County, Arizona.

(Phase 32 contains Building 34, and the identifying numbers for Units within Building 34 are 1138, 1139, 1140, 2137, 2139 and 2141.)

Phase 33 of TESORO AT GRAYHAWK CONDOMINIUM according to the plat recorded in Book 585 of Maps, page 27, Official Records of the Maricopa County Recorder, Maricopa County, Arizona.

(Phase 33 contains Building 35, and the identifying numbers for Units within Building 35 are 1143, 1144, 1145, 2142, 2144 and 2146.)

Phase 34 of TESORO AT GRAYHAWK CONDOMINIUM according to the plat recorded in Book 585 of Maps, page 27, Official Records of the Maricopa County Recorder, Maricopa County, Arizona.

(Phase 34 contains Building 36, and the identifying numbers for Units within Building 36 are 1148, 1149, 1150, 2147, 2149 and 2151.)

Phase 35 of TESORO AT GRAYHAWK CONDOMINIUM according to the plat recorded in Book 585 of Maps, page 27, Official Records of the Maricopa County Recorder, Maricopa County, Arizona.

(Phase 35 contains Building 37, and the identifying numbers for Units within Building 37 are 1153, 1154, 1155, 2152, 2154 and 2156.)

Phase 36 of TESORO AT GRAYHAWK CONDOMINIUM according to the plat recorded in Book 585 of Maps, page 27, Official Records of the Maricopa County Recorder, Maricopa County, Arizona.

(Phase 36 contains Building 38, and the identifying numbers for Units within Building 38 are 1158, 1159, 1160, 2157, 2159 and 2161.)

LENDER CONSENT

The undersigned Beneficiary ("Lender") of that certain Deed of Trust and Assignment of Rents recorded on December 4, 2001, as Document No. 2001-1142958, Official Records of the Maricopa County Recorder, Maricopa County, Arizona ("Deed of Trust"), hereby approves the foregoing Condominium Declaration for Tesoro at Grayhawk Condominium (the "Declaration"). Lender hereby agrees that the Declaration shall not be modified, disturbed or extinguished by any judicial or statutory foreclosure of the Deed of Trust, or deed in lieu thereof, and that any purchaser or taker under the Deed of Trust, by foreclosure or otherwise, shall take title to the real property encumbered by the Deed of Trust subject to the Declaration.

Dated this 19 day of February, 2002

GRAYHAWK RESIDENTIAL, INC., an Arizona corporation

By: Brian Baehr

Its: VP

STATE OF ARIZONA)
)ss.
County of Maricopa)

On this day personally appeared before me Brian Baehr, to me known to be the Vice President of GRAYHAWK RESIDENTIAL, INC., an Arizona corporation, the corporation that executed the foregoing instrument, and acknowledged such instrument to be the free and voluntary act and deed of such corporation, for the uses and purposes therein mentioned, and on oath stated that [he/she] was duly authorized to execute such instrument.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this 19th day of February 2002.

Pamela R. Brown
Notary Public

My commission expires: March 19, 2002

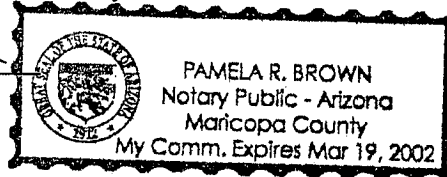


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Phase 37 of TESORO AT GRAYHAWK CONDOMINIUM according to the plat recorded in Book 585 of Maps, page 27, Official Records of the Maricopa County Recorder, Maricopa County, Arizona.

(Phase 37 contains Building 39, and the identifying numbers for Units within Building 39 are 1163, 1164, 1165, 2162, 2164 and 2166.)

Phase 38 of TESORO AT GRAYHAWK CONDOMINIUM according to the plat recorded in Book 585 of Maps, page 27, Official Records of the Maricopa County Recorder, Maricopa County, Arizona.

(Phase 38 contains Building 40, and the identifying numbers for Units within Building 40 are 1168, 1169, 1170, 2167, 2169 and 2171.)

Phase 39 of TESORO AT GRAYHAWK CONDOMINIUM according to the plat recorded in Book 585 of Maps, page 27, Official Records of the Maricopa County Recorder, Maricopa County, Arizona.

(Phase 39 contains Building 4, and the identifying numbers for Units within Building 4 are 1016, 1017, 1018, 2015, 2017 and 2019.)

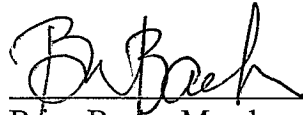
Phase 40 of TESORO AT GRAYHAWK CONDOMINIUM according to the plat recorded in Book 585 of Maps, page 27, Official Records of the Maricopa County Recorder, Maricopa County, Arizona.

(Phase 40 contains Building 5, and the identifying numbers for Units within Building 5 are 1020, 1021 and 1022.)

**CONSENT OF ARCHITECTURAL COMMITTEE
OF MASTER ASSOCIATION**

The undersigned hereby certifies that the Architectural Committee of the Master Association has approved the foregoing Condominium Declaration for Tesoro at Grayhawk Condominium in accordance with the provisions of Subsection 3.21.2 of the Master Declaration.

Dated this 19 day of February 2002.



Brian Baehr, Member
Architectural Committee

STATE OF ARIZONA)
)ss.
County of Maricopa)

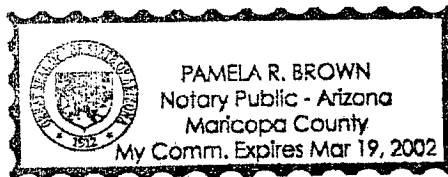
The foregoing instrument was acknowledged before me this 19~~th~~ day of February 2002, by Brian Baehr, a member of the Architectural Committee of the Grayhawk Community Association, an Arizona non-profit corporation, on behalf of the Association.



Notary Public

My Commission Expires:

March 19, 2002



LENDER CONSENT

The undersigned Beneficiary ("Lender") of that certain Deed of Trust and Fixture Filing recorded on December 4, 2001, as Document No. 2001-1142957, Official Records of the Maricopa County Recorder, Maricopa County, Arizona ("Deed of Trust"), hereby approves the foregoing Condominium Declaration for Tesoro at Grayhawk Condominium (the "Declaration"). Lender hereby agrees that the Declaration shall not be modified, disturbed or extinguished by any judicial or statutory foreclosure of the Deed of Trust, or deed in lieu thereof, and that any purchaser or taker under the Deed of Trust, by foreclosure or otherwise, shall take title to the real property encumbered by the Deed of Trust subject to the Declaration.

Dated this 14th day of February, 2002

NATIONAL BANK OF ARIZONA, a national banking association

By: *[Signature]*

Its: Vice President

STATE OF ARIZONA)
)ss.
County of Maricopa)

On this day personally appeared before me Marshall D. Wong, to me known to be the Vice President NATIONAL BANK OF ARIZONA, a national banking association, the national banking association that executed the foregoing instrument, and acknowledged such instrument to be the free and voluntary act and deed of such national banking association, for the uses and purposes therein mentioned, and on oath stated that [he/she] was duly authorized to execute such instrument.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this 14th day of Feb., 2002.

Vicki Haack-Varoclas
Notary Public

My commission expires: August 18, 2004

