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

***FOR***

***STONE CURVES CONDOMINIUM***

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
STONE CURVES CONDOMINIUM

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

ARTICLE 1.  
DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1.219 "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.

1.220 "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.

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

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

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

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

1.225 "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.

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

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

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

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

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

1.2.31 "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.

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

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

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

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

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

(b) Exercise any Development Right;

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

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

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

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

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

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

2.1 Submission of Property. Declarant hereby submits the Parcel to the provisions of the Condominium Act for the purpose of creating a condominium in accordance with the provisions of the Condominium Act and hereby declare that the Parcel shall be held and conveyed subject to the terms, covenants, conditions and restrictions set forth in this Declaration. By acceptance of a deed or by acquiring any ownership interest in any portion of the Condominium, each Person, for himself, his heirs, personal representatives, successors, transferees and assigns, binds himself, his heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, rules, and regulations now or hereafter imposed by the Condominium Documents and any amendments thereof. In addition, each such Person by so doing thereby acknowledges that the Condominium Documents set forth a general scheme for the improvement and development of the Condominium and hereby evidences his interest that all the restrictions, conditions, covenants, rules and regulations contained in the Condominium Documents shall run with the land and be binding on all subsequent and future Unit Owners, grantees, purchasers, assignees, and transferees thereof.

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Furthermore, each such Person fully understands and acknowledges that the Condominium Documents shall be mutually beneficial, prohibitive and enforceable by the Association and the various subsequent and future Unit Owners. Declarant and its respective successors, assigns and grantees, covenants and agrees that the Units and the membership in the Association and the other rights created by the Condominium Documents which are appurtenant to the Unit shall not be separated or separately conveyed, and each shall be deemed to be conveyed or encumbered with its respective Unit even though the description in the instrument of conveyance or encumbrance may refer only to the Unit.

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

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

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

2.5 Unit Boundaries.

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

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

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

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

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

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

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

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

A	1.625
B	1.325
C	1.60
D	3.17

E	2.09
F	2.46
G	2.56

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

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

2.8 Allocation of Limited Common Elements.

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

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

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

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

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

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

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

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

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

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

## 2.9 Withdrawal of Units from Condominium.

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

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

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

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

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

### ARTICLE 3. EASEMENTS AND DEVELOPMENT RIGHTS

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

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

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

3.3.1 Every Unit Owner, Lessee and Resident 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:

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

(b) 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;

(c) 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, 3.5 and 3.6 of this Declaration;

(d) The right of the Association to suspend the right of a Unit Owner, Lessee or Resident to use the Common Elements for any period during which the Unit Owner, Lessee or Resident is in violation of any provision of the Condominium Documents.

3.3.2 Notwithstanding the provisions of Section 3.3.1 above to the contrary, 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 until the termination or expiration of the lease.

3.3.3 The guests and invitees of any Unit Owner, Lessee or Resident entitled to use the Common Elements pursuant to this Section 3.3 may use the Common Elements provided they are accompanied by a Member, Lessee or Resident entitled to use the Common Elements pursuant to this Section 3.3. 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 The 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.

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

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

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

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

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

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

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

#### 3.5 Declarant's Development Rights and Easements.

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

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

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

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

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

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

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

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

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

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

### 3.8 Easement in Favor of the Association.

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

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

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

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

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

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

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

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

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

3.10.1 For inspection at reasonable times and upon reasonable notice to the Unit Owner of the Units and Limited Common Elements in order to verify the performance by Unit Owners of all items of maintenance and repair for which they are responsible;

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

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

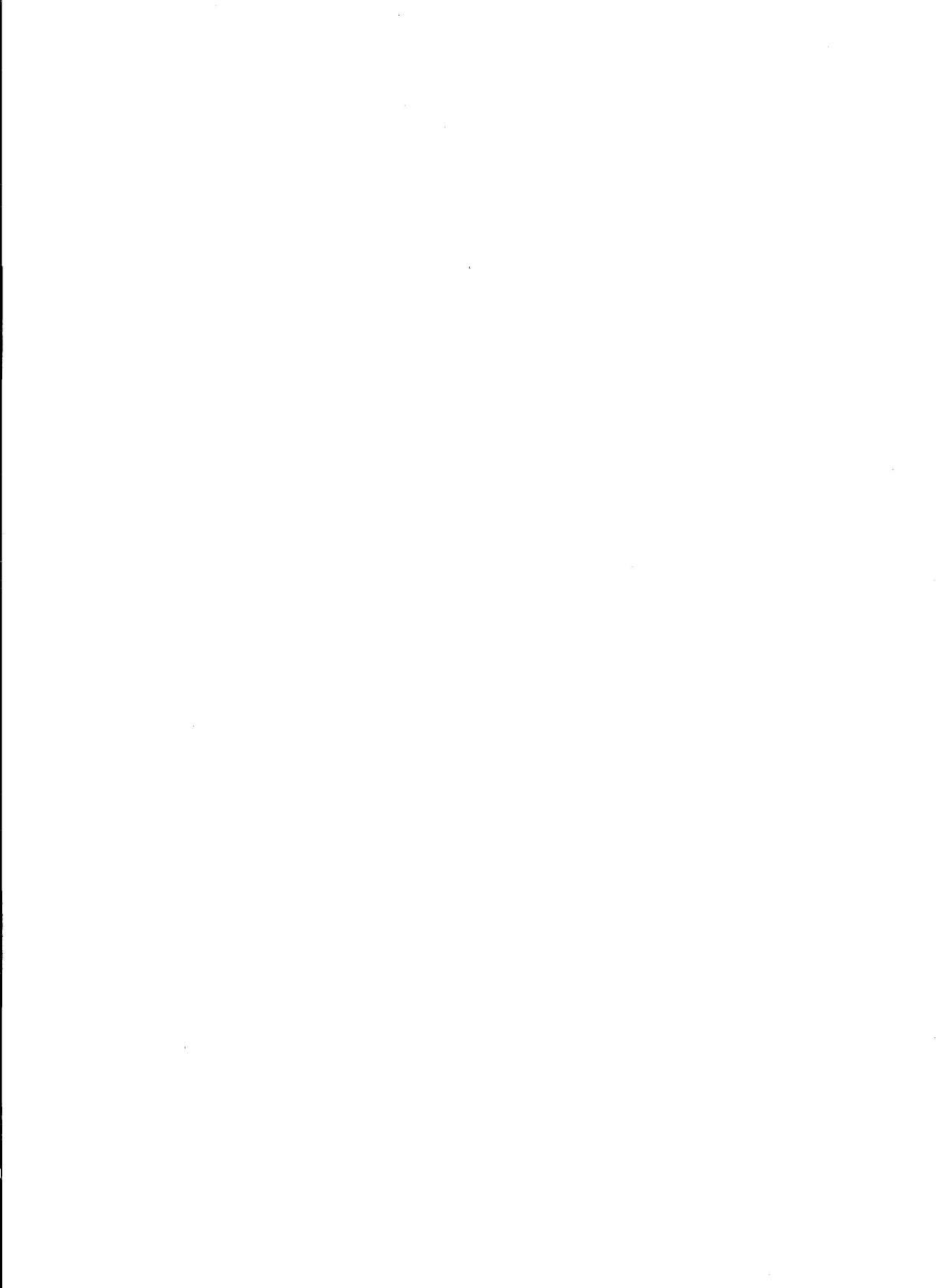
3.10.4 For the purpose of enabling the Association, the Board of Directors or any other committees appointed by the Board of Directors to exercise and discharge their respective rights, powers and duties under the Condominium Documents.

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

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

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

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

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

#### ARTICLE 4. USE AND OCCUPANCY RESTRICTIONS

##### 4.1 Residential Use.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4.7 **Animals.**

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

**4.17 Nuisances and Offensive Activity.** No nuisance shall be permitted to exist or operate upon the Condominium, and no activity shall be conducted upon the Condominium which is offensive or detrimental to any portion of the Condominium or any Unit Owner, Lessee or Resident or is an annoyance to any Unit Owner, Lessee or Resident. The Board of Directors shall have the discretion to determine whether an action or condition constitutes a "nuisance." No exterior speakers, horns, whistles, bells or other sound devices, except security or other emergency devices used exclusively for security or emergency purposes, shall be located, used or placed on the Condominium without the prior written approval of the Board of Directors.

**4.18 Window Coverings.** No reflective materials, including, but without limitation, aluminum foil, reflective screens or glass, mirrors or similar items, shall be installed or placed upon the outside or inside of any windows of a Unit without the prior written approval of the Board of Directors. No enclosures, drapes, blinds, shades, screens

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

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

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

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

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

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

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

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

## ARTICLE 6.

### THE ASSOCIATION; RIGHTS AND DUTIES; MEMBERSHIP

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

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

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

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

#### ARTICLE 7. ASSESSMENTS

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

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

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

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

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

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

7.1.3 No Waiver if Budget is Not Prepared Timely. The failure or delay of the Board of Directors to prepare or adopt a budget for any fiscal year shall not constitute a waiver or release in any manner of a Unit Owner's obligation to pay his/her allocable share of the Common Expenses as provided in Section 7.2 of this Declaration, and each Unit Owner shall continue to pay the Common Expense Assessment against his/her Unit as established for the previous fiscal year until notice of the Common Expense Assessment for the new fiscal year has been established by the Board of Directors.

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

7.1.5 Notice to Unit Owners. At least thirty (30) days prior to the annual meeting, the Board of Directors shall send to each Unit Owner a summary of the budget and a statement of the amount of the Common Expense Assessment assessed against the Unit of the Unit Owner in accordance with Section 7.2 of this Declaration.

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

## 7.2 Common Expense Assessment.

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

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

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

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

7.2.4 Judgments against the Condominium. Assessments to pay a judgment against the Association may be made only against the Units in the Condominium at the time the judgment was entered.

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

7.3 Special Assessments. In addition to Common Expense Assessments, the Association may levy, in any fiscal year, a special assessment applicable to that fiscal year for: (A) constructing capital improvements; (B) correcting an inadequacy in the current operating account; (C) defraying, in whole or in part, the cost of any construction, reconstruction, unexpected repair or replacement of improvements in the Unit(s) or Common Elements; or (D) paying for such other matters as the Board may deem appropriate for the Condominium. Special Assessments shall be levied in the same manner as Common Expense Assessments and must be approved by at least eighty percent (80%) of the Members present and voting in person or by proxy at a meeting duly called for such purpose, as authorized by the Bylaws. Unless otherwise specified by the Board of Directors, Special Assessments shall be due thirty (30) days after they are levied by the Association and notice of the Special Assessment is given to the Unit Owners.

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

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

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

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

7.5.3 Delinquency. Any Assessment, or any installment of an Assessment, which is not paid within fifteen (15) days after the Assessment first became due shall be deemed delinquent and shall bear interest from the date of delinquency at the rate of interest established from time to time by the Board of Directors.

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

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

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

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

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

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

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

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

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

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

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

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

7.6 Subordination of Assessment Lien to Mortgages. Notwithstanding any provision to the contrary, the Assessment Lien created by this Declaration shall be subject to and subordinate to and shall not affect the holder of any First Mortgage or Deed of Trust made in good faith and for value. Any First Mortgagee or any other party acquiring title or coming into possession of a Unit through foreclosure of a First Mortgage, purchase at a foreclosure sale or trustee sale, or through any equivalent proceedings, such as, but not limited to, the taking of a deed in lieu of foreclosure, shall acquire title free and clear of any claims for unpaid Assessments, monetary penalties and other fees and charges against the Unit which became payable prior to such sale or transfer. Any delinquent Assessments, monetary penalties and other fees and charges which are extinguished pursuant to this Section may be reallocated and assessed to all Units as Common Expense. Any Assessments, monetary penalties and other fees and charges against the Unit which accrue prior to such sale or transfer shall remain the obligation of the defaulting Unit Owner. After any foreclosure or any equivalent proceeding, there shall be a lien on the interest of the purchaser at the foreclosure sale to secure all assessments, whether regular or special, charged to such Unit after the date of such foreclosure sale, which lien shall have the same effect and shall be enforced in the same manner as provided herein. For purposes of this section, a mortgage may be given in good faith or for value even though the mortgagee has constructive or actual knowledge of the assessment lien provisions of this Declaration.

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

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

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

7.9 **Reserve Fund.**

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

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

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

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

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

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

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

## ARTICLE 8. INSURANCE

### 8.1 Scope of Coverage.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**8.5 Certificate of Insurance.** An insurer that has issued an insurance policy pursuant to this Article 8 shall issue certificates or memoranda of insurance to the Association and, on written request, to any Unit Owner, mortgagee, or beneficiary under a deed of trust. The insurer issuing the policy shall not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or non-renewal has been mailed to the Association, each Unit Owner, and each mortgagee or beneficiary under a Deed of Trust to whom a certificate or memorandum of insurance has been issued at their respective last known addresses. See Section 8.1.3.8 regarding the obligation of a Unit Owner to provide a Certificate of Insurance to the Association.

## ARTICLE 9. DESTRUCTION OF IMPROVEMENTS

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

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

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

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

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

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



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

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

## ARTICLE 10. EMINENT DOMAIN

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

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

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

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

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

**ARTICLE 11.  
RIGHTS OF FIRST MORTGAGEES**

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

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

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

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

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

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

11.4 **Condemnation or Insurance Proceeds.** No Unit Owner, or any other party, shall have priority over any rights of any First Mortgagee of the Unit pursuant to its mortgage in the case of a distribution to such Unit Owner of insurance proceeds or condemnation awards for losses to or a taking of Units and/or Common Elements.

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

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

## ARTICLE 12 ENFORCEMENT & ALTERNATIVE DISPUTE RESOLUTION

12.1 **Right of Association to Enforce.** The Association or any Member, has the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens or charges now or hereafter imposed by the provisions of this Declaration. This shall include enforcement of Rules and Regulations promulgated by the Association to carry out its purposes and duties under this Declaration. The prevailing party in any Court action shall be awarded reasonable attorneys' fees and costs. Attorney fees for lien enforcement or assessment collection shall be in accordance with Section 7.5.7.1.

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

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

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

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

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

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

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

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

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

**12.4 Notice of Violation.** The Association shall have the right to record a written notice of a violation by any Unit Owner of any restriction or provision of the Condominium Documents. The notice shall be executed and acknowledged by an officer or agent of the Association and shall contain substantially the following information: (A) the name of the Unit Owner; (B) the legal description of the Unit against which the notice is being recorded; (C) a brief description of the nature of the violation; (D) a statement that the notice is being recorded by the Association pursuant to this Declaration; and (E) a statement of the specific steps which must be taken by the Unit Owner to cure the violation. Recordation of a notice of violation shall serve as a notice to the Unit Owner and to any subsequent purchaser of the Unit that there is a violation of the provisions of the Condominium Documents. If, after the recordation of such notice, it is determined by the Association that the violation referred to in the notice does not exist or that the actual violation referred to in the notice has been cured, the Association shall record a notice of compliance which shall state the legal description of the Unit against which the notice of violation was recorded, the recording data of the notice of violation, and shall state that the violation referred to in the notice of violation has been cured, or if such be the case, that it did not exist.

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

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

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

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

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

ARTICLE 13.  
GENERAL PROVISIONS

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

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

13.3 **Amendment.**

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

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

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

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

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13.4 Notices. All notices, demands, statements or other communications required to be given to or served on a Unit Owner under this Declaration shall be in writing and shall be deemed to have been duly given and served if delivered personally or sent by United States mail, postage prepaid, return receipt requested, addressed to the Unit Owner, at the address which the Unit Owner shall designate in writing and file with the Association or, if no such address is designated, at the address of the Unit of such Unit Owner. A Unit Owner may change his/her address on file with the Association for receipt of notices by delivering a written notice of change of address to the Association pursuant to this Section. A notice given by mail, whether regular, certified, or registered, shall be deemed to have been received by the person to whom the notice was addressed on the earlier of the date the notice is actually received or three days after the notice is mailed. If a Unit is owned by more than one person, notice to one of the Unit Owners shall constitute notice to all Unit Owners of the same Unit. Each Unit Owner shall file his/her correct mailing address with the Association, and shall promptly notify the Association in writing of any subsequent change of address.

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

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

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

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

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

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

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

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

#### ARTICLE 14

#### RESOLUTION OF DISPUTES WITH BOUND PARTIES

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

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

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

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engineer, consultant or other Person who performs or furnishes the design, specifications, surveying, planning, supervision, testing, construction or observation of construction of the Common Elements or any Unit and who agrees in writing to be bound by this Article.

14.1.3 "Claim" means: (i) any claim or cause of action arising out of or related in any way to the planning, design, engineering, grading, construction or development of the Common Elements or the Units or any other part of the Condominium, including, without limitation, any claim or cause of action that the Common Elements or the Units are defective or that the Declarant or a Designated Builder or their agents, contractors, employees, subcontractors, architects, engineers or consultants were negligent in the planning, design, engineering, grading, construction or development thereof; or (ii) any claim or cause of action against the Declarant or a Designated Builder or any employee, agent, director, member or officer of Declarant or a Designated Builder arising out of or in any way related to the development of the Condominium or the management or operation of the Association, including, without limitation, any claim for negligence, fraud, intentional misconduct or breach of fiduciary duty.

14.2 **Agreement to Resolve Certain Disputes Without Litigation.** All Bound Parties agree that all Claims shall be resolved exclusively in accordance with the dispute resolution procedures set forth in this Article 14.

#### 14.3 **Notice of Claim.**

14.3.1 Notice to Respondent(s): Any Bound Party having or alleging to have a Claim (a "Claimant") against any other Bound Party (a "Respondent") shall notify each Respondent in writing of the Claim (the "Claim Notice"), stating plainly and concisely: (a) the nature of Claim (including, date, time, location, Persons involved, and Respondent's role in the Claim); (b) the factual and legal basis of the Claim; and (c) what Claimant wants Respondent to do or not do to resolve the Claim.

14.3.2 Notice to Association Members. In the event the Claimant is the Association, the Association must provide written notice to all Members prior to delivering a Claim Notice or commencing any legal action, cause of action, proceeding, reference or arbitration against a Declarant or a Designated Builder, which notice shall (at a minimum) include: (a) a description of the Claim, (b) a description of the attempts of any Declarant or the Designated Builder to correct such Alleged Defect and the opportunities provided to Declarant or the Designated Builder to correct such Alleged Defect, (c) the estimated cost to repair such Alleged Defect, (d) the name and professional background of the attorney retained by the Association to pursue the claim against a Declarant or a Designated Builder and a description of the relationship between such attorney and member(s) of the Board (if any), (e) a description of the fee arrangement between such attorney and the Association, (f) the estimated attorneys' fees and expert fees and costs necessary to pursue the claim against the Declarant or a Designated Builder and the source of the funds which will be used to pay such fees and expenses, (g) the estimated time necessary to conclude the action against the Declarant or a Designated Builder, (h) a description of the manner

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in which the action will be funded and a description of any demands, notices, offers to settle or responses to offers to settle made either by the Association or a Bound Party, and (i) an affirmative statement from the Board that the action is in the best interests of the Association and its Members. If the Alleged Defect is alleged to be the result of an act or omission of a person licensed by the State of Arizona under Title 20 or Title 32 of the Arizona Revised Statutes (a "Licensed Professional"), then the notice from the Association must be accompanied by an affidavit from a Licensed Professional in the same discipline as the Licensed Professional alleged to be responsible for the Alleged Defect. The affidavit must contain the information required to be contained in a preliminary expert opinion affidavit submitted pursuant to Section 12-2602(B) of the Arizona Revised Statutes.

**14.4 Mediation** If the Parties do not resolve the Claim through negotiation within thirty (30) days after the date of the Claim Notice or within such longer period as may be agreed upon by the Parties ("Termination of Negotiations"), Claimant shall have thirty (30) additional days within which to submit the Claim to mediation by the American Arbitration Association ("AAA") or such other independent mediation service agreed to by the Claimant and Respondent.

If Claimant does not submit the Claim to mediation within thirty (30) days after Termination of Negotiations, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim.

If the Parties do not settle the Claim within thirty (30) days after submission of the matter to the mediation process, or within such time as determined reasonable or appropriate by the mediator, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation Notice"). The Termination of Mediation Notice shall set forth when and where the Parties met, that the Parties are at an impasse, and the date that mediation was terminated.

**14.5 Binding Arbitration.** In the event a Claim is not resolved by Mediation, the Claimant shall have fifteen (15) days after the date of the Termination of Mediation Notice to submit the Claim to binding arbitration in accordance with this Section. If the Claimant fails to timely submit the Claim to arbitration, then the Claim shall be deemed waived and abandoned and the Respondent shall be relieved of any and all liability to Claimant arising out of the Claim. If the Claimant submits the Claim to binding arbitration in accordance with this Section, the arbitration shall be conducted in accordance with the following:

**14.5.1 Initiation of Arbitration.** The arbitration shall be initiated by either party delivering to the other a Notice of Intention to Arbitrate, as provided for in the AAA Commercial Arbitration Rules, or such other AAA rules as the AAA determines to be applicable (the "AAA Rules"). A Respondent may join as a party to the arbitration any Bound Party who may be liable to the Respondent or the Claimant with respect to the Claim.

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14.5.2 Governing Procedures. The arbitration shall be conducted in accordance with the AAA Rules and A.R.S. § 12-1501, *et seq.* In the event of a conflict between the AAA Rules and this Section 14.5, the provisions of this Section 14.5 shall govern.

14.5.3 Appointment of Arbitrator. The parties shall appoint a single Arbitrator by mutual agreement. If the parties have not agreed within ten (10) days of the date of the Notice of Intention to Arbitrate on the selection of an arbitrator willing to serve, the AAA shall appoint a qualified Arbitrator to serve. Any arbitrator chosen in accordance with this Subsection is referred to in this Section 14.5 as the "Arbitrator".

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

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

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

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

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

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

14.5.10 Hearings. Hearings may be held at any place within the State of Arizona designated by the Arbitrator and, in the case of particular witnesses not subject to subpoena at the usual hearing site, at a place where such witnesses can be compelled to attend.

14.5.11 Final Award. The Arbitrator shall promptly (within sixty (60) days of the conclusion of the proceedings or such longer period as the parties mutually agree) determine the claims of the parties and render a final award in writing. The Arbitrator may award the prevailing party in the proceeding all or a part of such party's reasonable attorneys' fees and expert witness fees, taking into account the final result of arbitration, the conduct of the parties and their counsel in the course of the arbitration, and other relevant factors. The Arbitrator shall not award any punitive damages. The Arbitrator shall not award indirect, consequential or special damages regardless of whether the possibility of such damage or loss was disclosed to, or reasonably foreseen by the party against whom the claim is made; provided, however, that such damages may be deemed by the Arbitrator to be direct damages in an award reimbursing payments made by a party therefor to a third party. The Arbitrator shall assess the costs of the proceedings (including, without limitation, the fees of the Arbitrator) against the non-prevailing party.

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

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

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in connection with the sale of the Lots and/or the Improvements constructed thereon. The right of the Declarant and the Designated Builders to enter, inspect, test, repair and/or replace reserved hereby shall be irrevocable and may not be waived or otherwise terminated except by a writing, in recordable form, executed and Recorded by the Declarant or a Designated Builder. In no event shall any statutes of limitations be tolled during the period in which the Declarant or a Designated Builder conducts any inspection or testing of any Alleged Defects.

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

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

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

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

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

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

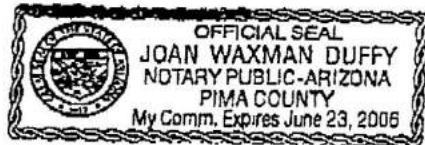
STONE CURVES DEVELOPMENTS, L.L.C.  
an Arizona limited liability company

By: [Signature]  
Its: Authorized Member

STATE OF ARIZONA        )  
  : ss.  
County of Pima         )

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

[Signature]  
Notary Public



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EXHIBIT A

LEGAL DESCRIPTION OF  
PROPERTY SUBMITTED TO CONDOMINIUM

2025-08-14 10:00:00

CERTIFICATE OF FIRST AMENDMENT TO  
DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS  
FOR  
STONE CURVES CONDOMINIUM

WHEREAS, the Declaration of Covenants, Conditions and Restrictions for Stone Curves Condominium (the "Declaration") was recorded on Aug 7, 2003, in Docket 57 at page 48 et seq, office of the Pima County Recorder; and

WHEREAS, Section 13.3.4 of the Declaration provides that the Declarant may amend the Declaration to comply with applicable law and the Condominium Act; and

WHEREAS, the Declarant has approved the following amendments to the Declaration.

NOW, THEREFORE, the Declaration hereby is amended as follows, to comport with requirements of the City of Tucson and other applicable law:

ADD: Section 5.5. Maintenance of Drainage Structures and Detention Basins. The Association shall be solely responsible for operation, maintenance, and liability for drainage structures and detention basins. The Association shall have an Arizona Registered Professional Civil Engineer prepare a certified inspection report for the drainage and detention/retention facilities at least once each year, and these regular inspection reports will be on file at the Association's place of business for review by City staff, upon written request. City staff may periodically inspect the drainage and detention/retention facilities to verify that scheduled and unscheduled maintenance activities are being performed adequately. The Association shall reimburse the City for any and all costs associated with maintaining the drainage and detention/retention facilities, should the City find the Association deficient in its obligation to adequately operate and maintain these facilities.

ADD: At the end of Section 2.6. Allocation of Common Element Interest and Common Expense Liabilities. Until all 48 Units are built and sold by the Declarant, the undivided interest in the Common Elements and in the Common Expenses of the



Association for each Unit shall be reallocated in the same proportions shown in this Section 2.6, but based on the total square footage of Units that are obligated to pay Assessments.

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

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

By: [Signature]  
Its: Authorized Member

STATE OF ARIZONA         )  
                                      : ss.  
County of Pima             )

Acknowledged before me this 20<sup>th</sup> day of June, 2003, by James L. Hamilton, as authorized Member of Stone Curves Developments, L.L.C., an Arizona limited liability company.



[Signature]  
Notary Public

1-2-03-561-15

**CERTIFICATE OF THIRD AMENDMENT TO  
DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR  
STONE CURVES CONDOMINIUM**

WHEREAS, the Declaration of Covenants, Conditions and Restrictions for Stone Curves Condominium (the "Declaration") was recorded on August 7, 2003, in Docket 12109 at page 260 *et seq.*, office of the Pima County Recorder; and

WHEREAS, Section 13.3.1 of the Declaration provides that the Declaration may be amended by a vote of the Unit Owners to which at least eighty percent (80%) of the votes in the Association are allocated; and

WHEREAS, the following amendment to the Declaration has been approved by the requisite number of Unit Owners.

NOW, THEREFORE, the Declaration hereby is amended as follows:

**ADD:**

**Section 5.5. Use of Licensed Contractors.** The Association shall use only licensed, bonded and insured contractors for all improvements to and repair of the Common Elements, unless a license is not required pursuant to Arizona law.<sup>1</sup> In addition, a Unit Owner shall use only licensed, bonded and insured contractors for all improvements to and repair of any Limited Common Elements that he/she is required to maintain under the terms of this Declaration.

**CHANGE:**

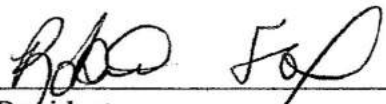
**Section 5.3. Repair or Restoration Necessitated by Owner,** is deleted in its entirety and replaced with the following:

"Each Unit Owner shall be liable to the Association for any damage to the Common Elements, the Limited Common Elements, or the Improvements, landscaping or equipment thereon, which results from the negligence or willful misconduct of the

Unit Owner, his/her tenant, lessee, family, guest, agent, or invitee. The cost to the Association of any such repair, maintenance or replacement(s) required by such act 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."

IN WITNESS WHEREOF, the President of STONE CURVES CONDOMINIUM OWNERS ASSOCIATION, an Arizona non-profit corporation, certifies that this Third Amendment to the Declaration of Covenants, Conditions and Restrictions for Stone Curves Condominium was approved by Unit Owners to which at least eighty percent (80%) of the votes in the Association are allocated.

STONE CURVES CONDOMINIUM OWNERS ASSOCIATION, an Arizona non-profit corporation

By:   
Its: President

ATTEST:



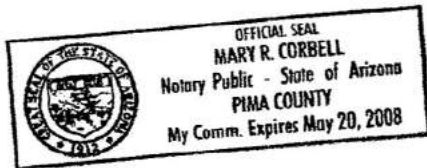
Secretary

STATE OF ARIZONA )

: ss.

County of Pima )

This instrument was acknowledged before this 18 day of June, 2005, by \_\_\_\_\_, President of STONE CURVES CONDOMINIUM OWNERS ASSOCIATION, an Arizona non-profit corporation.



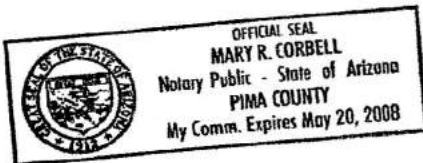
*Mary R. Corbell*  
\_\_\_\_\_  
Notary Public

STATE OF ARIZONA )

: ss.

County of Pima )

This instrument was acknowledged before this 18 day of June, 2005, by \_\_\_\_\_, Secretary of STONE CURVES CONDOMINIUM OWNERS ASSOCIATION, an Arizona non-profit corporation.



*Mary R. Corbell*  
\_\_\_\_\_  
Notary Public

**CERTIFICATE OF FOURTH AMENDMENT TO  
DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR  
STONE CURVES CONDOMINIUM**

WHEREAS, the Declaration of Covenants, Conditions and Restrictions for Stone Curves Condominium (the "Declaration") was recorded on August 7, 2003, in Docket 12109 at page 260 *et seq.*, office of the Pima County Recorder; and

WHEREAS, Section 13.3.1 of the Declaration provides that the Declaration may be amended by a vote of the Unit Owners to which at least eighty percent (80%) of the votes in the Association are allocated; and

WHEREAS, the following amendment to the Declaration has been approved by the requisite number of Unit Owners.

NOW, THEREFORE, Section 5.2 of the Declaration is deleted in its entirety and replaced with the following:

**5.2 Duties of Unit Owners.** Each Unit Owner shall maintain, repair and replace, at his own expense, all portions of his Unit. In addition, each Unit Owner shall be responsible for: (A) the maintenance and repair of the Limited Common Elements allocated to his Unit pursuant to Subsections 2.8.1.1 and 2.8.1.2, except for failure in plumbing pipes that results from deficiencies in the initial construction or initial installation of said pipes. The Association shall be responsible for rectifying such deficiencies or failure. (B) The exterior doors and door frames and windows allocated to the Unit as Limited Common Elements pursuant to Section 2.8.1.3, and the frames and glass for such windows and the hardware for the exterior doors. (C) The interior of the patio allocated to the Unit by Subsection 2.8.4, as well as any walls enclosing the patios allocated to the exclusive use of the Unit.

IN WITNESS WHEREOF, the President of STONE CURVES CONDOMINIUM OWNERS ASSOCIATION, an Arizona non-profit corporation, certifies that this Fourth Amendment to the Declaration of Covenants, Conditions and Restrictions for Stone Curves Condominium was approved by Unit Owners to which at least eighty percent (80%) of the votes in the Association are allocated.

STONE CURVES CONDOMINIUM OWNERS  
ASSOCIATION, an Arizona non-profit corporation

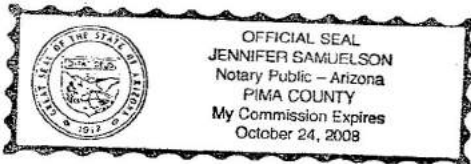
By: Robin Fox  
Its: President

ATTEST:

Paul S. Carson  
Secretary

STATE OF ARIZONA )  
: ss.  
County of Pima )

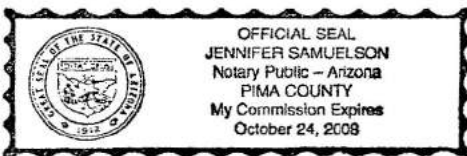
This instrument was acknowledged before this 10<sup>th</sup> day of Nov, 2005, by  
Robin Fox, President of STONE CURVES CONDOMINIUM  
OWNERS ASSOCIATION, an Arizona non-profit corporation.



Jennifer Samuelson  
Notary Public

STATE OF ARIZONA )  
: ss.  
County of Pima )

This instrument was acknowledged before this 10<sup>th</sup> day of Nov, 2005, by  
Linda Aaronson, Secretary of STONE CURVES CONDOMINIUM  
OWNERS ASSOCIATION, an Arizona non-profit corporation.



Jennifer Samuelson  
Notary Public

**CERTIFICATE OF SECOND AMENDMENT TO  
DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR  
STONE CURVES CONDOMINIUM**

WHEREAS, the Declaration of Covenants, Conditions and Restrictions for Stone Curves Condominium (the "Declaration") was recorded on August 7, 2003, in Docket 12109 at page 260 *et seq.*, office of the Pima County Recorder; and

WHEREAS, Section 13.3.4 of the Declaration provides that the Declarant may amend the Declaration during the period of Declarant Control; and

WHEREAS, the following amendments to the Declaration are required by the mortgage lender providing loans to Unit Owners within Stone Curves Condominiums; and

WHEREAS, the following amendments to the Declaration have been approved by the Declarant .

NOW, THEREFORE, the Declaration hereby is amended as follows:

**CHANGE: Section 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) Fifty-one percent (51%) of the Eligible Mortgage Holders (as defined in Section 11.1, and eighty percent (80%) of the Unit Owners, including every Owner of a Unit or allocated Limited Common Element which will not be rebuilt, vote not to rebuild. (Implied approval of an Eligible Mortgage Holder may be assumed when it fails to submit a response to any written proposal of termination of the Condominium within 30 days after it receives proper notice of the proposal, provided the notice was delivered by certified or registered mail with a "return receipt" requested.) 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.

**ADD: Section 11.7. Approval of Amendments to Condominium Documents.** Amendments to the Condominium Documents that are of a material nature must be approved by eighty percent (80%) of the total allocated votes in the Association and by at least fifty-one percent (51%) of the Eligible Mortgage Holders. (Implied approval of an Eligible Mortgage Holder may be assumed when it fails to submit a response to any written proposal of termination of the Condominium within 30 days after it receives proper

notice of the proposal, provided the notice was delivered by certified or registered mail with a "return receipt" requested.) A change to any of the provisions governing the following would be considered as material:

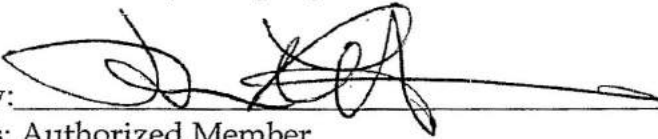
- 11.7.1 Voting rights;
- 11.7.2 The Association's ability to raise the previously assessed amounts by more than 25% ~~without the vote of the Members~~; assessment liens or the priority of assessment liens; reductions in reserves for maintenance, repair and replacement of common elements;
- 11.7.3 Responsibility for maintenance and repairs;
- 11.7.4 Reallocation of interests in the general or limited common elements, or rights to their use;
- 11.7.5 Redefinition of any of the Unit boundaries;
- 11.7.6 Convertibility of Units into Common Elements or vice versa;
- 11.7.7 Expansion or contraction of the Parcel, or the addition, annexation or withdrawal of property to or from the Condominium;
- 11.7.8 Hazard or fidelity insurance requirements;
- 11.7.9 Imposition of any restrictions on the leasing of Units;
- 11.7.10 Imposition of any restrictions on a Unit Owner's right to sell or transfer his or her Unit;
- 11.7.11 A decision by the Association to establish self-management if professional management had been required previously by the Condominium Documents or by an Eligible Mortgage Holder.
- 11.7.12 Restoration or repair of the Condominium (after damage or partial condemnation) in a manner other than that specified in the Condominium Documents; or
- 11.7.13 Any provisions that expressly benefit mortgage holders, insurers or guarantors.



**CHANGE: Section 13.2. Termination of Condominium.** The Condominium may be terminated only in the manner provided for in the Condominium Act. In addition, at least 51% of the Eligible Mortgage Holders (as defined in Section 11.1) must agree, in writing, to termination of the Condominium. Implied approval of an Eligible Mortgage Holder may be assumed when it fails to submit a response to any written proposal of termination of the Condominium within 30 days after it receives proper notice of the proposal, provided the notice was delivered by certified or registered mail with a "return receipt" requested.

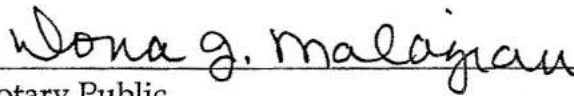
IN WITNESS WHEREOF, Declarant has executed this Declaration on the day, month and year first above written.


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

By:   
 Its: Authorized Member

STATE OF ARIZONA )  
   : ss.  
 County of Pima         )

This instrument was acknowledged before this 18th day of August, 2004, by James L. Hamilton, as authorized Member of Stone Curves Developments, L.L.C., an Arizona limited liability company.

  
 Notary Public

 Notary Public State of Arizona  
 Pima County  
 Dona J. Melazian  
 Expires October 05, 2007