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**DECLARATION OF CONDOMINIUM
AND DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS ESTABLISHING AND GOVERNING
LA MONTANA CROSSING CONDOMINIUMS**

TABLE OF CONTENTS

<u>Article</u>	<u>Page</u>
RECITALS	1
I DEFINITIONS	2
1.1 Act	2
1.2 Articles	2
1.3 Assessments.....	2
1.4 Association.....	2
1.5 Association Rules	2
1.6 Board	3
1.7 Building	3
1.8 Bylaws	3
1.9 Common Elements.....	3
1.10 Common Expenses	3
1.11 Condominium.....	3
1.12 Condominium Documents.....	4
1.13 Declarant.....	4
1.14 Declaration	4
1.15 Eligible Mortgage Holder.....	4
1.16 Limited Common Elements	4
1.17 Majority or Majority of Owners.....	4
1.18 Master Declaration.....	4
1.19 Member.....	4
1.20 Mortgage.....	4
1.21 Occupant	5
1.22 Owner.....	5
1.23 Period of Declarant Control	5
1.24 Person.....	5
1.25 Plat.....	5
1.26 Property	5
1.27 Restrictions.....	5
1.28 Unit	6
II CREATION OF THE CONDOMINIUM	6
2.1 Establishment of the Condominium.....	6
2.2 Rights and Obligations	6

Article

Page

III DESCRIPTION OF THE BUILDINGS, THE UNITS AND THE COMMON ELEMENTS7

3.1 Name7

3.2 Buildings7

3.3 Units7

3.4 Common Elements.....8

3.5 Limited Common Elements8

3.6 Fractional Interest in the Common Elements.....8

IV MAINTENANCE.....8

4.1 Maintenance of Units8

4.2 Maintenance of Common Elements9

4.3 Owner Default in Maintenance9

4.4 Utilities.....9

V ASSOCIATION.....10

5.1 Association10

5.2 Membership10

5.3 Powers10

5.4 Personal Liability11

5.5 Voting11

5.6 Declarant's Rights11

5.7 Board of Directors11

5.8 Qualifications of Directors12

5.9 Independent Manager.....12

5.10 Board's Determination Binding.....12

5.11 Action by Owners12

5.12 Annual Meeting12

5.13 Right of Association to Enter Units12

5.14 Association Rules13

5.15 Reserve Fund13

5.16 Availability of Condominium Documents13

5.17 Action by Owners.....13

5.18 Additional Provisions in Articles of Incorporation
and Bylaws of the Association13

<u>Article</u>	<u>Page</u>
VI ASSESSMENTS	14
6.1 Creation of Lien and Personal Obligation for Assessments.....	14
6.2 Purpose of Assessments	14
6.3 Regular Assessments.....	14
6.4 Capital Improvement Assessments.....	15
6.5 Special Assessments	15
6.6 Date of Commencement of Assessments	15
6.7 Uniform Assessments	16
6.8 Assessments by Declarant.....	16
6.9 Reduction of Abatement of Regular Assessments.....	16
6.10 No Offsets.....	16
6.11 Certificate of Payment.....	16
6.12 Initial Working Capital Fund.....	16
VII EFFECT OF NONPAYMENT OF ASSESSMENTS AND REMEDIES	17
7.1 Delinquency.....	17
7.2 Late Charge	17
7.3 Interest.....	17
7.4 Action at Law.....	17
7.5 Notice of Lien	17
7.6 Foreclosure Sale	18
7.7 Suspension of Votes	18
VIII COMMON ELEMENTS; EASEMENTS	18
8.1 Use of Common Elements	18
8.2 Public Utilities	19
8.3 Easements for Encroachments.....	19
8.4 Development Easements for Declarant	20
8.5 Parking.....	20
8.6 Patios, Balconies, Driveways and Entryways.....	20
IX RESTRICTIONS	20
9.1 Master Declaration.....	20
9.2 Signs	20
9.3 Nuisance	21

Article**Page**

9.4	Temporary Structures	21
9.5	Parking and Vehicles	21
9.6	External Fixtures	22
9.7	Window Covers	22
9.8	External Laundering	22
9.9	Outside Speakers and Amplifiers	23
9.10	Repairs	23
9.11	Unightly Items	23
9.12	Oil and Mineral Activity	23
9.13	Animals	23
9.14	Leases	24
9.15	Landscape Maintenance	24
9.16	Association Rules	24
9.17	Alterations, Additions or Improvements	24
9.18	Decorating	25
9.19	Architectural Control	25
9.20	Roof Leaks and Repairs	26
9.21	Public Dedication	26
9.22	Waterbeds	26
9.23	Garage Doors and Garages	26
9.24	Satellite Dishes and Antennas	26
X	INSURANCE	26
10.1	Insurance Requirements Generally	26
10.2	Casualty Insurance	28
10.3	Public Liability and Property Damage Insurance	28
10.4	Workmen's Compensation and Employer's Liability Insurance	29
10.5	Fidelity Bonds	29
10.6	Insurance by Owners	29
10.7	Receipt and Application of Insurance Proceeds	30
10.8	Other Insurance by the Association	30
XI	DESTRUCTION, CONDEMNATION, OBSOLESCENCE, AND RESTORATION OR SALE OF CONDOMINIUM	30
11.1	Definitions	30
11.2	Restoration of the Condominium	32
11.3	Sale of the Condominium	32

<u>Article</u>	<u>Page</u>
11.4	Special Assessments for Restoration.....32
11.5	Receipt and Application of Condemnation Funds32
11.6	Reorganization in the Event of Condemnation.....33
11.7	Rights of Owners in any Distributions.....34
XII	DECLARANT.....34
12.1	Exemption of Declarant from Restrictions and Reservation of Special Declarant Rights.....34
12.2	Reservation of Development Rights.....34
XIII	RIGHTS OF ELIGIBLE MORTGAGE HOLDERS.....35
13.1	Notices of Eligible Mortgage Holders.....35
13.2	Priority of Eligible Mortgage Holders.....35
13.3	Relationship with Assessment Liens.....36
13.4	Required Eligible Mortgage Holder Approval36
13.5	Other Rights of Eligible Mortgage Holders38
13.6	Notices of Action.....38
13.7	Prior Written Approval of First Mortgagees.....39
13.8	Liens Prior to First Mortgage40
13.9	Right of First Refusal.....40
XIV	MISCELLANEOUS.....40
14.1	Enforcement40
14.2	No Waiver.....40
14.3	Cumulative Remedies40
14.4	Severability41
14.5	Covenants to Run with the Land; Term; Termination of Condominium.....41
14.6	Construction41
14.7	Gender and Number41
14.8	Nuisance41
14.9	Attorneys' Fees41
14.10	Notices42
14.11	Effect of Declaration43
14.12	Personal Covenant43
14.13	Nonliability of Officials43
14.14	Unsegregated Real Property Taxes43

<u>Article</u>	<u>Page</u>
14.15 Use of Funds Collected by the Association	43
14.16 Notification of Sale and Transfer Fee	44
14.17 Owner Liability and Indemnification	44
14.18 Conflicting Provisions	44
14.19 Amendments	45
XV DISPUTE RESOLUTION AND LIMITATION ON LITIGATION	46
15.1 Agreement to Avoid Litigation	46
15.2 Claims	46
15.3 Mandatory Procedures	47
15.4 Allocation of Costs of Resolving Claims	49
15.5 Enforcement of Resolution	49

EXHIBIT A - Legal Description for Real Property
 EXHIBIT B - Plat

**DECLARATION OF CONDOMINIUM
AND DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS ESTABLISHING AND GOVERNING
LA MONTANA CONDOMINIUMS**

This Declaration of Condominium and Declaration of Covenants, Conditions and Restrictions Establishing and governing LA Montana Crossing Condominiums (the "Declaration") is made as of the date hereinafter set forth by 6726 La Montana Drive, LLC, an Arizona limited partnership ("Declarant").

RECITALS:

A. Declarant is the owner of that certain real property situated in the Town of Fountain Hills, County of Maricopa, State of Arizona, which is more particularly described on *Exhibit A* attached hereto and incorporated herein by this reference (the "Parcel").

B. The Parcel is located within the development boundaries of the master planned community known as Fountain Hills, which is governed by that certain Declaration of Reservations, Fountain Hills, Arizona, a Resubdivision of Airspace lot 9A, Block 3, Fountain Hills Arizona Final Plat No. 102, as recorded in Book 544 of maps, page 35 records of Maricopa County Recorder, Maricopa County, Arizona Being a portion of Section 15, T. 3 N., R. 6 E., of the G. & S.R.B. & M., Maricopa County, Arizona.

C. Declarant desires to submit and subject the parcel, together with all buildings and improvements now or hereafter constructed thereon, and all easements and rights appurtenant thereto, to a condominium plan of description and ownership pursuant to Title 33, Chapter 9 of the Arizona Revised Statutes.

D. Declarant desires to comply with all terms of the Master Declaration and to establish for its own benefit and for the mutual benefit of all future Owners or Occupants of the Parcel, or any part thereof, certain covenants, conditions, restrictions, easements, rights, privileges, assessments, and liens as set forth herein (collectively referred to as the "Restrictions"), which shall run with and be a burden upon the Parcel.

E. Declarant intends that the Owners, Occupants, Mortgagees, and all other persons hereinafter acquiring any interest in the Parcel, shall at all times enjoy the benefits of, and shall hold their interest subject to this Declaration, which is recorded in furtherance of establishing a general plan of condominium ownership for the Parcel and for establishing rules for the use, occupancy, management, and enjoyment thereof, all for the purpose of enhancing and protecting the value, desirability, and attractiveness of the Parcel and the quality of life therein.

NOW, THEREFORE, Declarant, for the purposes hereinafter set forth, declares as follows:

ARTICLE I

DEFINITIONS

As used herein, unless the context otherwise requires, the following terms shall have the following definitions.

Section 1.1 "Act" shall mean Title 33, Chapter 9 of the Arizona Revised Statutes ("A.R.S.") pertaining to condominiums in the State of Arizona, as the same may be amended from time to time.

Section 1.2 "Articles" shall mean the articles of incorporation of the Association, as they may be amended from time to time.

Section 1.3 "Assessments" shall mean the charges against Owners and Units pursuant to Article VI of this Declaration to defray the Common Expenses as well as miscellaneous special Assessments, special Assessments for capital improvements, and special Assessments for the purpose of restoring and reconstructing the Property in the event of casualty, all as provided in this Declaration.

Section 1.4 "Association" shall mean LA MONTANA CROSSING Condominiums Homeowners' Association, Inc., an Arizona nonprofit corporation, and its successors and assigns, whose membership shall include each Owner of a Unit in the Condominium, and whose functions shall be to serve as the "unit owners' association", as defined in the Act, and to enforce the Condominium Documents. The Association will be incorporated prior to the conveyance of a Unit by Declarant.

Section 1.5 "Association Rules" shall mean and refer to the rules and regulations, if any, adopted by the Association pursuant to this Declaration and in furtherance of the Bylaws and in accordance with the Act.

Section 1.6 "Board" shall mean the board of directors of the Association elected pursuant to the Articles and Bylaws and serving as the governing body of the Association.

Section 1.7 "Building" shall mean and refer to each of the structures to be located on the Property and forming a part of the Property as shown on the Plat, whether or not such structures are composed of one or more floors or stories.

Section 1.8 "Bylaws" shall mean the Bylaws adopted by the Association pursuant to A.R.S. § 33-1246, and A.R.S. § 10-3101 et seq., for the purpose of regulating the affairs of the Association, as the same may be amended from time-to-time.

Section 1.9 "Common Elements" shall mean the "common elements", as that term is defined in A.R.S. § 33-1202(7), including, without limitation, the land on which the Buildings are constructed, the foundations, floors, roofs and bearing walls of the Buildings, exterior stairways and stairwells, central air conditioning and heating systems (excluding any portion of such systems which exclusively serve one particular Unit), parking areas, driveways, landscaped areas, courtyards, walkways, swimming pool, spa, pool area equipment, changing rooms, exercise rooms, recreational areas, ramadas, gas barbecues, offices, parking areas, and all other portions of the Condominium, except the Units. "Common Elements" shall include any Limited Common Elements as may be hereinafter described.

Section 1.10 "Common Expenses" shall mean the actual and estimated costs for: (A) maintenance, management, operation, repair and replacement of the Common Elements which are maintained by the Association; (B) deficiencies arising by reason of unpaid Assessments; (C) management and administration of the Association, including, but not limited to, compensation paid by the Association to accountants, attorneys and employees; (D) utilities (other than separately metered utilities for the Units), trash pickup and disposal, gardening, pool service, and other related services; (E) insurance and bonds required by this Declaration or any additional insurance and bonds obtained by the Board in its discretion; (F) the establishment of reasonable reserves as the Board shall deem appropriate in its discretion; and (G) other miscellaneous charges incurred by the Association or the Board pursuant to this Declaration, the Bylaws, or the Association Rules in furtherance of the purposes of the Association or in discharge of the duties and powers of the Association.

Section 1.11 "Condominium" shall mean: (A) the Parcel; (B) the Units; and (C) the Common Elements, including all Buildings, improvements and other permanent fixtures of whatsoever kind situated on the Parcel and all rights, privileges and appurtenances thereto, intended for the mutual use, benefit and enjoyment of the

Owners; and such term shall in general have the same meaning as set forth in A.R.S. § 33-1202(10), as it relates to the Condominium hereby created.

Section 1.12 "Condominium Documents" shall mean the Articles, the Bylaws, this Declaration, the Plat and the Association Rules.

Section 1.13 "Declarant" shall mean 6726 LA MONTANA DRIVE, L.L.C., a Limited Liability Company and the successors and assigns of the Declarant's rights hereunder in the ownership of the Condominium for the purpose of the original development and sale thereof.

Section 1.14 "Declaration" shall mean this Declaration including Exhibits A and B, attached hereto and hereby incorporated herein by this reference, and any and all amendments hereof and supplements hereto.

Section 1.15 "Eligible Mortgage Holder" shall mean any holder of a First Mortgage on a Unit which has notified the Association in accordance with Section 13.1 of this Declaration.

Section 1.16 "Limited Common Elements" shall mean a portion of the Common Elements specifically designated in this Declaration as a limited common element allocated by this Declaration or by operation of the Act for the exclusive use of one or more but fewer than all of the Units.

Section 1.17 "Majority" or "Majority of Owners" shall mean the Owners of Units to which more than fifty percent (50%) of the undivided ownership of the Common Elements is appurtenant. Any specified fraction or percentage of the Owners means the Owners of Units to which that fraction or percentage of undivided ownership of the Common Elements is appurtenant.

Section 1.18 "Master Declaration" shall mean and refer to the Master Declaration, as heretofore defined. AKA: DECLARATION OF RESERVATIONS FOUNTAIN HILLS ARIZONA, FINAL PLAT 101, MARICOPA COUNTY, ARIZONA

Section 1.19 "Member" shall mean any Person who is or becomes a member of the Association.

Section 1.20 "Mortgage" shall mean any recorded, filed or otherwise perfected mortgage, deed of trust or other instrument against a Unit given in good faith and for valuable consideration which is not a fraudulent conveyance under Arizona law as security for the performance of an obligation, but does not mean any instrument creating or evidencing solely a security interest arising under the Arizona Uniform Commercial Code. "Mortgagee" means a person secured by a Mortgage, including a trustee and beneficiary under a deed of trust; and "Mortgagor" means the

party executing a Mortgage. "First Mortgage" means a Mortgage which is the first and most senior of all Mortgages upon the same Unit.

Section 1.21 "Occupant" shall mean a Person or Persons other than an Owner in possession of, or using a Unit or the Common Elements, including, without limitation, family members, tenants, guests, or invitees.

Section 1.22 "Owner" shall mean the Person or Persons who are vested with record title to a Unit according to the records of the County Recorder of Maricopa County, Arizona, including a purchaser under an agreement for sale within the meaning of A.R.S. § 33-741 et seq.; however, Owner shall not include a Person who holds an interest in a Unit merely as security for the performance of an obligation. Declarant shall be considered the record Owner of any Unit prior to its initial conveyance by Declarant. 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 trust property shall be deemed to be the Owner.

Section 1.23 "Period of Declarant Control" means the time period commencing on the date this Declaration is recorded in the official records of the Maricopa County, Arizona Recorder's Office, and expiring upon the earlier of: (A) ninety (90) days following the conveyance of seventy-five percent (75%) of the Units in all of the Phases of the Condominium to Owners other than Declarant; (B) five (5) years after the conveyance of the first Unit to an Owner other than Declarant; or (C) four (4) years after Declarant or any successor to Declarant's Special Declarant Rights reserved in Section 12.1 hereof ceases to offer Units for sale in the ordinary course of business.

Section 1.24 "Person" shall mean a natural individual, corporation, partnership, trustee or other entity capable of holding title to real property.

Section 1.25 "Plat" shall mean that certain plat of survey of the Parcel showing thereon twenty (20) Units, each of which is identified by a number. A copy of the Plat is included as *Exhibit B*, attached hereto and hereby incorporated by this reference. The original Plat is recorded in Book 604 of Maps, page 13, in the records of the office of the County Recorder of Maricopa County, Arizona.

Section 1.26 "Property" shall mean the Parcel, the Buildings, all improvements and permanent fixtures located thereon, and all easements and rights appurtenant thereto.

Section 1.27 "Restrictions" shall mean the covenants, conditions, assessments, easements, liens and restrictions set forth in this Declaration.

Section 1.28 "Unit" shall mean each of the fifteen (15) portions of the Property which consist of one (1) or more rooms situated in a Building comprising a part of the Property and designed or intended for independent use as a dwelling unit, together with any attached garage appurtenant thereto, as shown on *Exhibit B*, attached hereto, together with the respective fractional interests in the Common Elements. Each Unit shall consist of the space enclosed and bounded by the horizontal and vertical planes as shown on the Plat; provided, however, that no structural components of the Building in which each Unit is located, and no pipes, wires, conduits, ducts, flues, shafts, or public utility, water or sewer lines situated within such Unit and forming part of any system serving one or more other Units or the Common Elements shall be deemed part of a Unit. "Unit", as used herein, shall have the same meaning as that defined in A.R.S. § 33-1202(22).

ARTICLE II

CREATION OF THE CONDOMINIUM

Section 2.1 Establishment of the Condominium. Declarant hereby creates and establishes this Condominium pursuant to the Act, to be hereafter known as LA MONTANA CROSSING CONDOMINIUMS. All Units within the Condominium shall be owned, leased, sold, conveyed and encumbered or otherwise held or disposed of subject to the Restrictions. Declarant hereby submits and subjects all of the Units, together with all improvements, easements, rights and appurtenances thereto, to the Condominium.

Section 2.2 Rights and Obligations. Each grantee of Declarant, by the acceptance of a deed of conveyance, each purchaser under any agreement of sale within the meaning of A.R.S. § 33-741 et seq., by execution of such an agreement for sale, and each Mortgagee, by the acceptance of any instrument conveying any interest in the Condominium as security for the performance of an obligation, accepts the same subject to all Restrictions, and the jurisdiction, rights and powers created or reserved by this Declaration. All rights, benefits and privileges of every character hereby granted, created, reserved or declared, and all impositions and obligations hereby imposed, shall be deemed and taken to be covenants running with the land and equitable servitudes and shall be binding upon and shall inure to the benefit of any grantee, purchaser or any person having at any time any interest or estate in the Condominium in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance, purchase contract or other instrument of transfer, and each such grantee shall be entitled to bring, and shall be subject to, an action for the recovery of damages, or for injunctive relief, or both, resulting from any breach of any such provisions, and each such grantee further

acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the Association and all Owners.

ARTICLE III

DESCRIPTION OF THE BUILDINGS, THE UNITS AND THE COMMON ELEMENTS

Section 3.1 Name. The Condominium shall be known as "LA MONTANA CROSSING CONDOMINIUMS."

Section 3.2 Buildings. A description of the cubic content space of each Building with reference to its location on the Parcel is set forth on the Plat. The horizontal boundaries shall be the plane of the top elevation of the Building, as shown on the Plat, and the plane of the base elevation of the building, as shown on the Plat. The vertical boundaries shall be the exterior of the outside perimeter walls of the Building as shown on the Plat.

Section 3.3 Units. The cubic content space of each of the fifteen (15) Units within the Buildings to be located on the Parcel are set forth on the Plat. The identifying numbers of the Units are 101 through 107, inclusive, and 201 through 208, inclusive, as shown on the Plat. The boundaries of each Unit are the interior unfinished surfaces of the exterior perimeter walls, floors and roof of the Unit and the interior party (common) wall to a depth equal to one-half of its width. All lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the finished surfaces are a part of the Unit and all other portions of the walls, floors or roof are a part of the Common Elements. Subject to the provisions of Section 3.5 below, all spaces, interior partitions and other fixtures and improvements within the boundaries of a Unit are part of the Unit. Each garage that is identified by a Unit number on the Plat shall be deemed a part of the identified Unit and all references to each Unit shall be deemed to include the garage appurtenant thereto. Notwithstanding the foregoing, no portion of the roof, bearing walls, or other structural components of the Building in which each Unit is located, and no pipes, wires, conduits, ducts, flues, shafts, or other public utility, water or sewer lines situated within any Unit and forming part of a system serving one or more other Units or other Common Elements shall be deemed to be a part of a Unit. Units shall, however, include hot water heaters, air conditioning units (including compressors and condensers), automatic garage door openers, interior lighting fixtures, and all spaces, interior partitions and other fixtures and improvements within the boundaries of a Unit. 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 as shown on

the Plat and the actual physical boundaries for any Unit. Declarant reserves the right to relocate the boundaries between adjoining Units owned by the Declarant and to reallocate 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.

Section 3.4 Common Elements. The Common Elements are all of those portions of the Condominium not included within the description of the Units.

Section 3.5 Limited Common Elements. The Limited Common Elements are portions of the Common Elements allocated hereby or pursuant to the Act for the exclusive use of certain Unit Owners. If any chute, flue, duct, wire, conduit, bearing wall, bearing column, heating or air conditioning unit, or apparatus or other fixture lies partially within and partially outside the boundaries of a Unit, any portion serving only that Unit is a Limited Common Element allocated solely to that Unit and any portion serving more than one Unit or any portion of the Common Elements is a part of the Common Elements. Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, entryways, storage areas, or patios, and all exterior doors and windows or other fixtures designed to serve a single Unit, but located outside the Unit's boundaries, are Limited Common Elements, allocated exclusively to that Unit.

Section 3.6 Fractional Interest in the Common Elements. The fractional interest hereby allocated to each Unit in the Condominium, which interest shall constitute an undivided interest in the Common Elements (including, without differentiation, the Limited Common Elements appurtenant to each such Unit), shall be one-fifteenth (1/15th) of the whole.

ARTICLE IV

MAINTENANCE

Section 4.1 Maintenance of Units. Each Owner shall furnish and be responsible for, at such Owner's own expense, all of the maintenance, repairs, and replacements within such Owner's Unit. Such obligation shall include: (A) the maintenance of all interior doors, all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other materials constituting the finished surfaces of floors, ceilings, or interior walls (all other portions of the walls, floors, or ceilings being part of the Common Elements); (B) repair and replacement of all window and door glass and the interior and exterior cleaning of such window and door glass; (C) the maintenance of, in an open and unobstructed condition, all sewer and drainage pipes, water and other utility lines serving an Owner's respective Unit between the points at which the same enter the respective Unit and the points where

the same join the utility lines serving other Units; (D) maintenance of the interior of the attached garage appurtenant to a Unit to the same extent as a Unit; (E) maintenance of any fenced in decks, balconies or patios appurtenant to a Unit; and (F) maintenance, repair and replacement of air conditioners, hot water heaters, garage door openers, and lighting fixtures serving a Unit and any attached garage appurtenant to such Unit. An Owner may make non-structural alterations within such Owner's Unit, but an Owner shall not make any structural or exterior alterations to the Common Elements or Limited Common Elements, except as otherwise permitted by the Board.

Section 4.2 Maintenance of Common Elements. The Association shall furnish and be responsible for, as part of the Common Expenses, the maintenance, repair, and replacement of the Common Elements, including the Limited Common Elements (except the interiors of attached garages and any fenced in patios or balconies), which shall include all structural components of the Buildings, all exterior stairways and stairwells, and all pipes, wires, conduits, ducts, flues, shafts and public utility, water or sewer lines situated within the airspace of any Unit and forming part of any system serving one or more other Units or the Common Elements. All maintenance of Common Elements and Limited Common Elements by the Association shall be considered a Common Expense unless it is subject to a capital improvement Assessment or a special Assessment in accordance with Section 6.4 or 6.5 below.

Section 4.3 Owner Default in Maintenance. If an Owner fails to maintain such Owner's Unit or make repairs thereto, in such a manner as may be deemed reasonably necessary in the judgment of the Board to preserve and protect the attractive appearance and value of the Property, or if an Owner shall fail to observe any covenant or restriction imposed on such Owner by the terms of the Declaration, then the Board shall give written notice to such Owner stating with particularity the nature of the default and the corrective action which the Board determines to be required and requesting that the same be carried out within a period of fifteen (15) days after the giving of such written notice. If such Owner fails to carry out such action within the period specified by the notice, the Board may cause such action to be taken and shall levy a special Assessment for the cost thereof to such Owner, such special Assessments to be due and payable within thirty (30) days after the Board gives written notice thereof and to be secured by the Assessment lien created in Section 6.1 of this Declaration.

Section 4.4 Utilities. All utilities for individual Units (except for those utility costs which are metered collectively and paid by the Association as a Common Expense item) will be metered separately to each Unit and such utility charges shall be the responsibility of the respective Owners.

ARTICLE V**ASSOCIATION**

Section 5.1 Association. The Association has been, or will be formed, to constitute the "unit owners' association," as that term is defined in A.R.S. § 33-1202(4) and shall have all of the powers set forth in A.R.S. § 33-1242. The Association shall serve as the governing body for all of the Owners and shall make provisions for the maintenance, repair, replacement, administration and operation of the Common Elements, assessment of Common Expenses, payment of losses, division of profits, acquisition of hazard insurance and disposition of such hazard insurance proceeds, and other matters as provided in the Act, the Declaration, the Articles and the Bylaws.

Section 5.2 Membership. Each Owner shall be a member of the Association as soon and so long as he or she shall be an Owner. Such membership shall automatically terminate when an Owner ceases for any reason to be an Owner, and the new Owner shall likewise automatically succeed to such membership in the Association. Membership in the Association shall not be transferred, pledged or alienated in any way, except upon the sale of the Unit to which it is appurtenant (and then only to the purchaser involved in such sale) or by intestate succession, testamentary disposition, foreclosure of a Mortgage of record or other legal process transferring equitable or fee simple title to such Unit (and then only to the Person to whom such title is transferred). Any attempt to make a prohibited transfer of a membership will be void and will not be recognized by or reflected upon the books and records of the Association. In the event the Owner of any Unit should fail or refuse to transfer the membership registered in such Owner's name upon the sale of such Owner's Unit to the purchaser of such Owner's Unit, the Association shall have the right to enter a transfer upon the books of the Association and issue a new membership to the purchaser, and thereupon the old membership outstanding in the name of the seller shall be null and void as though the same had been surrendered.

Section 5.3 Powers. The Association shall have all the powers of a nonprofit corporation organized under the Arizona Revised Statutes concerning nonprofit corporations, subject only to such limitations on the exercise of such powers as are set forth in the Articles, the Bylaws and this Declaration. The Association shall have the power to do any lawful thing that may be authorized, required, or permitted to be done by the Association under this Declaration, the Articles and the Bylaws, and to do and perform any act that may be necessary or proper for or incidental to, the exercise of any of the express powers of the Association, including, without limitation, the following: (A) commence and maintain actions or restrain and enjoin any actual or threatened breach of this Declaration and enforce, by mandatory injunction or

otherwise, all of the provisions of this Declaration; (B) pay taxes, capital improvement Assessments or special Assessments and other liabilities which are or would become a lien on any portion of the Condominium owned or maintained by the Association; (C) levy Assessments and perfect and enforce liens as hereinafter provided; (D) enter into contracts including, but not limited to, management contracts; (E) perform the duties set forth herein, including but not limited to, maintenance and repair of the Common Elements and the obtaining of insurance; and (F) adopt, amend and repeal rules and regulations as it deems reasonable.

Section 5.4 Personal Liability. No member of the Board, or any officer of the Association, or any manager, or Declarant, or any agent of Declarant, shall be personally liable to any Owner, or to any other party, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of any such person or entity if such person or entity has, on the basis of such information as may be possessed by him or it, acted in good faith without willful or intentional misconduct.

Section 5.5 Voting. The votes in the Association shall be allocated equally among all of the Units with each Unit having one (1) vote. When more than one (1) person holds an interest as an Owner in any Unit, all such persons shall be members. The voting for such Unit shall be exercised as such persons among themselves determine, or, in the absence of such determination, as determined by the Board, but in no event shall more than one vote be cast with respect to any Unit. If any Owner or Owners cast a vote representing a certain Unit, it will, in the absence of prompt protest from the other Owners of such Unit during the meeting at which such vote is cast, thereafter be conclusively presumed for all purposes that such Owner or Owners were acting with the authority and consent of all other Owners of the same Unit.

Section 5.6 Declarant's Rights. During the Period of Declarant Control, Declarant shall have the right to appoint and remove the members of the Board and the officers of the Association, none of which need be Unit Owners. Declarant may voluntarily suspend its right to appoint and remove the members of the Board and the officers of the Association before termination of the Period of Declarant Control and, in that event, Declarant may require for the duration of the Period of Declarant Control that specified actions of the Association or the Board, as described in a recorded instrument executed by Declarant, be approved by Declarant before they become effective.

Section 5.7 Board of Directors. The governing body of the Association shall be the Board elected pursuant to the Bylaws. Except as otherwise provided in this Declaration, the Bylaws, or the Association Rules, the Board may act

in all instances on behalf of the Association. The Board shall act to adopt the Bylaws and any Association Rules.

Section 5.8 Qualifications of Directors. Each director shall be an Owner or the spouse of an Owner (or if an Owner is a corporation, partnership or trust, a director may be an officer, partner, trustee or beneficiary of such Owner) and shall be current in the payment of any Association Assessments attributable to such Owner's Unit. If a director shall cease to meet such qualifications during his or her term, he or she will thereupon cease to be a director, and his or her place on the Board shall be deemed vacant. The requirements of this Section 5.8 shall not apply to directors appointed by Declarant.

Section 5.9 Independent Manager. The Board may employ a responsible person or entity as manager to manage, operate and maintain the Common Elements, with all of the administrative functions and such other powers and duties as the Board may delegate from time-to-time and for such fees as the Board may establish consistent with other provisions of this Declaration. Any agreement for management of the Condominium shall be in writing and shall provide for termination by the Association, with or without cause and without payment of a termination fee or penalty, on thirty (30) days written notice, and the term of such agreement shall not exceed one (1) year, renewable by written agreement of the parties for successive periods of one (1) year each.

Section 5.10 Board's Determination Binding. Subject to the right of any Owner to institute an action at law or in equity, in the event of any dispute or disagreement between any Owners related to the Condominium, or any question of interpretation or application of the provisions of this Declaration, the Articles or the Bylaws, the determination thereof by the Board shall be final and binding on each and all of such Owners.

Section 5.11 Action by Owners. The Board may not act on behalf of the Association to amend or terminate this Declaration, or to elect members of the Board, except in filling vacancies in its membership for the unexpired portion of any term.

Section 5.12 Annual Meeting. The Association shall hold an annual meeting as provided in the Bylaws.

Section 5.13 Right of Association to Enter Units. The Association, acting through the Board or its duly authorized agent, shall have the right at all times upon reasonable notice (and at any time in case of an emergency) to enter upon or in any Unit to abate any infractions, to make repairs, or to correct any violation of any of the Restrictions herein set forth, and in connection therewith shall have the further

right to assess all costs incurred against the Owner, such Assessment to be secured by the lien provided in Section 6.1 of this Declaration. If, in the case of an emergency, it becomes necessary to break into a Unit because no means of access was provided by the Occupant or Owner, the Association, its directors, officers and agents shall not be liable for any damage done to the Unit as a result of the exercise of this right of entry. The party exercising this right of entry shall see that reasonable measures are taken to secure the Unit until either the Occupant or Owner shall be notified that the Unit has been entered.

Section 5.14 Association Rules. The Board may adopt Association Rules in furtherance of the Bylaws for the regulation and operation of the Condominium.

Section 5.15 Reserve Fund. The Association shall maintain an adequate reserve fund for maintenance, repair and replacement of those Common Elements that must be maintained, repaired or replaced on a periodic basis, and such reserve shall be funded as part of the regular Assessments.

Section 5.16 Availability of Condominium Documents. With the exception of records which may be withheld from disclosure pursuant to Arizona law, the Association will maintain current copies of this Declaration, the Articles, the Bylaws, and the Association Rules concerning the Condominium and the Association's own books, records, and financial statements available for inspection during normal business hours by any Owner or Mortgagee (or any Eligible Insurer or Guarantor of a Mortgagee).

Section 5.17 Action by Owners. To the extent permitted by the Act, all actions required to be taken by the Owners, acting as a unit owners' association for the Condominium, shall be taken by the Association acting as such unit owners association, by and through its directors and officers, such actions to include, without limitation, adoption of rules and regulations for the Condominium created hereby.

Section 5.18 Additional Provisions in Articles of Incorporation and Bylaws of the Association. The Articles and Bylaws may contain any provision not inconsistent with the Act or with this Declaration relating to the conduct of the affairs of the Association and the rights and powers of its directors, officers, employees, agents and members.

ARTICLE VI**ASSESSMENTS**

Section 6.1 Creation of Lien and Personal Obligation For Assessments. Each Owner, including Declarant to the extent Declarant is an Owner as defined herein, of any Unit, by acceptance of a deed or other instrument creating in such Owner the interest required to be deemed an Owner, whether or not it shall be so expressed in any such deed or other instrument, is deemed to covenant and agree to pay to the Association, such Assessments to be fixed, established and collected from time to time as provided in this Declaration. The Assessments, together with interest thereon, late charges, attorneys' fees, court costs and all other costs of collection incurred by the Association in collecting or attempting to collect delinquent assessments, whether or not suit is filed, shall be a continuing lien upon the Unit against which each such Assessment is made in favor of the Association pursuant to A.R.S. § 33-1256. Each such Assessment, together with such interest, late charges, costs and reasonable attorneys' fees, shall also be the personal obligation of the Owner of such Unit at the time the Assessment becomes due. The personal obligation shall not pass to the successor in title of an Owner unless expressly assumed by such successor.

Section 6.2 Purpose of Assessments. The Assessments levied by the Association shall be used exclusively for the purposes of promoting the health, safety and welfare of the Owners, the management, maintenance, care, preservation, and protection of the Condominium, enhancing the quality of life in the Condominium and the value of the Condominium including, without limitation, the improvement and maintenance of the services and facilities devoted to this purpose and related to the use and enjoyment of the Common Elements, or in furtherance of any other duty or power of the Association.

Section 6.3 Regular Assessments. Pursuant to A.R.S. § 33-1243(C), the Board is hereby expressly authorized to adopt and amend budgets for the administration and operation of the Common Elements (including the maintenance and repair thereof), without ratification by the Owners, provided, however, the Board shall within thirty (30) days after adoption of any proposed budget for the Condominium, provide a summary of the budget to all of the Unit Owners. Not later than thirty (30) days prior to the beginning of each fiscal year, the Board shall distribute to each Owner a pro forma operating statement or budget for the upcoming fiscal year which shall, among other things, estimate the total Common Expenses to be incurred for such fiscal year. The Board shall, at that time, determine the amount of the regular Assessment to be paid by each Owner. Each Owner shall thereafter pay to the Association such Owner's regular Assessment in equal monthly installments on the first (1st) day of each month. In the event the Board shall

determine that the estimate of total charges for the current year is, or will become, inadequate to meet all Common Expenses for any reason, it shall then immediately determine the approximate amount of such inadequacy and issue a supplemental estimate of the Common Expenses and determine the revised amount of the regular Assessment against each Owner, and the date or dates when revised monthly installments of regular Assessments shall commence.

Section 6.4 Capital Improvement Assessments. In addition to regular Assessments, the Board may levy in any fiscal year a capital improvement Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction or replacement (other than due to destruction) of a described capital improvement of the Common Elements, including the necessary fixtures and personal property related thereto, or for any other lawful Association purpose. The Board shall not impose a capital improvement Assessment exceeding ten percent (10%) of the then estimated annual Common Expenses without the approval of the Unit Owners representing two-thirds (2/3) of the votes entitled to be cast by Unit Owners who are voting in person or by proxy at a meeting duly called for such purpose, or at an annual meeting with notice such Assessment will be considered. All amounts collected as capital improvement Assessments may only be used for the stated purposes and shall be deposited by the Board in a separate bank account to be held in trust for such purposes and said funds shall not be commingled with any other funds of the Association.

Section 6.5 Special Assessments. Special Assessments shall be levied by the Board against a Unit and its Owner to reimburse the Association for:

A. Costs incurred in bringing an Owner and such Owner's Unit into compliance with the provisions of this Declaration, the Bylaws, or Association Rules for misconduct or other failure to comply;

B. Any other charge designated as a special Assessment in this Declaration, Bylaws, or the Association Rules; and

C. Attorneys' fees, interest and other charges relating thereto as provided in this Declaration.

In the event the Association undertakes to provide materials or services which benefit individual Units and which can be accepted or not by individual Owners, such Owners, in accepting such materials or services, agree that the costs thereof shall be a special Assessment.

Section 6.6 Date of Commencement of Assessments. Regular and other Assessments shall commence as to all Units, on the first (1st) day of the month

following the conveyance of the first Unit by Declarant to an Owner other than Declarant. Until the Association makes an Assessment, the Declarant shall pay all Common Expenses of the Property.

Section 6.7 Uniform Assessments. Except as provided in Section 6.8 below, all Assessments (other than special Assessments) shall be fixed at an equal amount for each Unit, including Common Expenses associated with the Association's maintenance, repair and replacement of Limited Common Elements.

Section 6.8 Assessments by Declarant. After the commencement of Assessments, Declarant shall pay the full amount of Assessments for each Unit it owns, except that it shall pay only twenty-five percent (25%) of the Assessments for each Unit that it owns on which construction has not been substantially completed, provided, however, Declarant shall be obligated to pay to the Association any deficiency in moneys due to the Declarant having paid such reduced Assessments where necessary for the Association to be able to timely pay all Common Expenses.

Section 6.9 Reduction or Abatement of Regular Assessments. In the event the amount budgeted to meet Common Expenses for a particular fiscal year proves to be excessive in light of the actual Common Expenses, the Board in its discretion may either reduce the amount of the regular Assessments or may abate collection of regular Assessments as it deems appropriate.

Section 6.10 No Offsets. All Assessments shall be payable in the amount specified by the Assessment and no offsets against such amount 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 this Declaration, or a claim that an Owner does not use recreational facilities or other Common Elements.

Section 6.11 Certificate of Payment. The Association shall, upon demand, furnish to any Owner liable for Assessments a certificate in writing signed by an officer or authorized agent of the Association setting forth whether the Assessments relating to a specified Unit have been paid and the amount of delinquency, if any. A reasonable charge may be collected by the Board for the issuance of each such certificate. Each certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid.

Section 6.12. Initial Working Capital Fund. In connection with the close of escrow relative to the sale of each Unit to an Owner other than Declarant, such Owner shall pay to the Association an amount equal to two (2) months regular Assessments to be used as an initial working capital fund. All amounts received by the Association relative to the initial working capital fund shall be deposited by the Association in a segregated fund. Under no circumstances shall any amounts

contributed to the Association for the initial working capital fund be deemed to be advance payments of Assessments or otherwise creditable or reimbursable to any Owner but shall be used by the Association as the Association, in its prudent discretion, may determine.

ARTICLE VII

EFFECT OF NONPAYMENT OF ASSESSMENTS AND REMEDIES

Section 7.1 Delinquency. Any Assessment which is not paid when due is delinquent. Whenever an Assessment is delinquent, the Board may at its option invoke any or all of the sanctions provided for herein.

Section 7.2 Late Charge. If any Assessment is not paid within fifteen (15) days after the date when it becomes due and payable, the Owner shall be obligated to pay a late charge in an amount established by the Board. The amount of such late charge until paid shall constitute part of the Assessment lien as provided for in Section 6.1 of this Declaration.

Section 7.3 Interest. If any Assessment is not paid within thirty (30) days after it becomes due and payable, interest at the rate of eighteen percent (18%) per annum or such other rate as then may be in effect as established by the Board may be assessed on the amount owing from the date due until such time as it is paid.

Section 7.4 Action at Law. The Association shall have the right, at its option, to enforce collection of any delinquent Assessments in any manner allowed by law. The Association may bring an action to recover a delinquent Assessment personally against the Owner obligated to pay same or to foreclose the Assessment lien in the manner provided by law for foreclosure of a realty mortgage; provided, however, that the Association's choice of one remedy shall not prejudice or constitute a waiver of the Association's right to exercise the other. All costs of collection, whether or not a lawsuit is commenced, including the costs of preparing and filing the complaint shall be assessed against the delinquent Owner and such Owner's Unit and reasonable attorneys' fees, court costs and collection costs will thereafter be added to the amount in delinquency (plus interest and/or late charges, if appropriate). Each Owner vests in the Association or its assigns the right and power to bring actions at law and/or lien foreclosures against such Owner or Owners for the collection of delinquent Assessments.

Section 7.5 Notice of Lien. The recording of this Declaration constitutes record notice and perfection of the Assessment lien. The Association

may, at its option, record a notice of such Assessment lien. The Association shall first make written demand on the Owner for payment of all delinquent Assessments and related charges secured by the Assessment lien. If not paid within ten (10) days of the date of the demand, the Association may proceed with recording a notice of such Assessment lien, and may charge the Owner of the applicable Unit a lien fee in an amount established or approved by the Board.

Section 7.6 Foreclosure Sale. Any foreclosure and sale provided for in this Declaration is to be conducted in accordance with applicable provisions relating to the foreclosure of realty mortgages in the State of Arizona. The Association, may through its duly authorized agents, have and exercise the power to bid on the Unit at the foreclosure sale and to acquire, hold, lease, mortgage and convey such Unit.

Section 7.7 Suspension of Votes. The Board shall suspend for the entire period during which an Assessment remains delinquent the obligated Owner's right to vote on any matter at regular or special meetings of the Association.

ARTICLE VIII

COMMON ELEMENTS; EASEMENTS

Section 8.1 Use of Common Elements. Upon admission to the Condominium, there shall be appurtenant to each Unit a non-exclusive and perpetual right and easement to use the Common Elements in common with all other persons entitled to use the Common Elements (except as otherwise provided herein), as may be required for the purposes of access, ingress and egress to and from, and the use, occupancy and enjoyment of the Units and the Common Elements for their intended purposes as provided herein. Such right and easement shall extend to each Unit Owner or Occupant and the agents, servants, family members and invitees of such Unit Owner or Occupant. Such right and easement shall be subject to such limitations, restrictions, rules and regulations as may from time to time be promulgated by the Board including, but not limited to, the right of the Board to suspend the right of any Unit Owner or Occupant and the agents, servants, tenants, family members and invitees of any Unit Owner or Occupant to use the recreational facilities which are a part of the Common Elements for any period during which the Common Expenses attributable to such Owner's Unit hereof remain unpaid or for a period not to exceed sixty (60) days for any violation of regulations adopted and published by the Board, and shall be subject to and governed by the provisions of this Declaration, the Articles and Bylaws. The Board shall have authority to lease, convey easements or grant concessions consistent with the overall character and use of the Condominium with respect to parts of the Common Elements and to change the character, description and use thereof, subject to the provisions of the Act, this

Declaration, the Articles and the Bylaws. Any funds received by the Association from leases, concessions or other sources shall be held and used for the benefit of the members of the Association pursuant to such rules, resolutions or regulations as the Board may adopt or prescribe. Notwithstanding anything contained herein to the contrary, Declarant shall be entitled to exclusive access to and occupancy of all or any portion of any Unit until such time as the construction thereof has been completed and the particular Unit has been conveyed to an Owner by Declarant, and Declarant shall be entitled to nonexclusive access to and occupancy of all or any portion of the Common Elements until such time as all Units have been conveyed to Owners by Declarant. Notwithstanding anything contained herein to the contrary, there shall be no restriction upon any Owner's right of ingress and egress to or from such Owner's Unit, which right shall be perpetual and appurtenant to the ownership of such Owner's Unit.

Section 8.2 Public Utilities. Easements and rights over the Property for the installation and maintenance of electricity lines, telephone lines, cable television, water lines, gas lines, sanitary sewer lines, drainage facilities, and such other public utilities needed to serve the Property are hereby reserved by Declarant, together with the right to grant and transfer the same; provided, however, such easements and rights shall not unreasonably interfere with the use of the Common Elements and the Units by the Owners or Occupants. Declarant or the Association shall have the power to grant and convey in the name of all of the Owners as their attorney-in-fact to any other person easements and rights-of-way in, on, over or under the Common Elements for the purpose of constructing, erecting, operating or maintaining lines, cables, wires, conduits, or other devices for electricity, cable television, power, telephone, public sewers, storm water drains and pipes, water systems, sprinkling systems, water heating and gas lines or pipes, and any similar public or quasi-public improvements or facility, and each Owner in accepting the deed to a Unit expressly consents to such easements and rights-of-way and authorizes and appoints the Association and Declarant (as long as Declarant owns one or more Units in the Property) as attorney-in-fact of such Owner to execute any and all instruments conveying or creating such easements or rights-of-way. However, no such easement can be granted if it would permanently interfere with the use, occupancy, or enjoyment by any Owner of such Owner's Unit.

Section 8.3 Easements for Encroachments. If any portion of the Common Elements now encroaches upon any Unit, or if any Unit now encroaches upon any other Unit or the Common Elements, or if any such encroachment shall occur hereafter as a result of the manner in which the Buildings have been constructed or due to settling, shifting, alteration, replacement, repair, or restoration by Declarant or the Association, a valid easement for encroachment shall exist so long as the Buildings stand.

Section 8.4 Development Easements for Declarant. Until all Units have been sold by Declarant, there are hereby reserved to Declarant, together with the right to grant and transfer the same to others, including Declarant's sales agents, representatives and assigns, easements and rights upon, across, over, under and through the Property for construction, display (including the use of the Units as models), maintenance, sales and exhibit purposes (including the use of signs and other advertising devices) in connection with the sale or lease of Units within the Property; provided, however, that no such use by Declarant or its agents shall otherwise restrict Owners or Occupants in the reasonable use and enjoyment of their Units.

Section 8.5 Parking. The Board shall have full authority to establish, operate and manage covered and uncovered parking spaces which have not been designated as a Limited Common Element attributable to any Unit, as well as guest or extra parking spaces, for the benefit of all Owners, and the use thereof shall be subject to such rules and regulations as may be imposed by the Board.

Section 8.6 Patios, Balconies, Driveways and Entryways. Each Owner of a Unit shall have an exclusive easement to use any patio, balcony, driveway or entryway adjacent or appurtenant to such Unit as set forth and depicted on the Plat. These exclusive easements shall be Limited Common Elements appurtenant to each respective Unit where so identified and may not be severed from the ownership of the Unit.

ARTICLE IX

RESTRICTIONS

Section 9.1 Master Declaration. Notwithstanding anything to the contrary contained in this Declaration, no Person shall use or cause to be used any portion of the Condominium in any manner which would violate any of the terms set forth in the Master Declaration. Any Person owning, using or having an interest in the Condominium or any portion thereof shall comply with all the conditions on use of the Condominium set forth in the Master Declaration, and the Association shall have the right, independently of or in conjunction with the Master Association, to enforce any and all of the covenants of the Master Declaration, all of which are specifically incorporated by reference herein as if fully restated in this Declaration.

Section 9.2 Signs. No sign of any nature whatsoever, other than a dignified name and/or address sign, shall be displayed or placed in any Unit, in any window or any part of the Common Elements. No "for sale" or "for rent" signs of any nature whatsoever shall be permitted on any part of the Condominium, and no other signs or graphics shall be permitted on any patio or balcony or in any of the Common

Elements without the prior written consent of the Board. A master "for sale" sign may be placed on the Common Elements by the Board of Directors with the telephone number to call for information. The provisions of this Section 9.2 relating to signs shall not apply to the Declarant until the last Unit owned by Declarant has been sold and in connection therewith, nothing herein shall prevent Declarant and its agents and assigns from utilizing reasonable signs, flags, markers, and sales devices in furtherance of sales activities.

Section 9.3 Nuisance. No noxious or offensive activity shall be carried on upon the Condominium, nor shall any activity which might be or become an annoyance or nuisance to Owners or Occupants be permitted to interfere with their rights of quiet enjoyment or increase the rate of any insurance. No Owner or Occupant shall engage in activity within the Condominium in violation of any law, ordinance, statute, rule or regulation of any local, county, state or federal body. Nothing herein shall be construed to prevent Declarant and its agents from engaging in all forms of construction and sales activities until all Units have been sold by Declarant.

Section 9.4 Temporary Structures. No structure or building of a temporary character, including a tent or shack, shall be placed upon the Property or used therein unless the same and its proposed use are approved by the Board. Nothing herein shall be construed as preventing Declarant from using temporary structures or trailers for construction and/or sales purposes or engaging in all forms of construction and sales activities within the Property.

Section 9.5 Parking and Vehicles.

A. Unless otherwise permitted by the Board, no motor vehicle (including a motorcycle or golf cart), trailer, camper, boat or similar item, and no bicycle, shall be permitted to remain upon the Property unless parked or placed within the attached garage appurtenant to a Unit; provided, however, temporary parking of motor vehicles shall be permitted in spaces designated for such use. Notwithstanding the foregoing, no parking whatsoever shall be permitted at any time within areas designated on the Plat as auto courts. For purposes hereof, "temporary parking" shall mean parking of vehicles belonging to invitees of Owners and Occupants, parking of delivery trucks, service vehicles and other commercial vehicles being used in the furnishing of goods and services to the Association or to the Owners and Occupants as well as parking of vehicles belonging to and being used by Owners, Occupants and invitees for loading and unloading purposes. Except for temporary parking, no mobile homes, travel trailers, tent trailers, trailers, camper shells, detached campers, recreational vehicles, boats, boat trailers or trucks designed for commercial purposes shall be maintained or parked upon the Property, except inside garages or with the prior written approval of the Board. Nothing herein shall be construed as preventing

Declarant from using temporary parking in connection with its sales activities within the Property.

B. The Board may adopt Association Rules relating to the admission and temporary parking of vehicles within the Property, including the assessment of charges to Owners and Occupants who violate, or whose invitees violate, such rules. Any charges so assessed shall be special Assessments. Nothing herein shall be construed as preventing Declarant from using temporary structures or trailers for construction and/or sales purposes or engaging in all forms of construction and sales activities within the Property.

C. The Board, after reasonable efforts to provide prior notice thereof, shall have the right to tow any motor vehicle or equipment or similar item parked, kept, maintained, constructed, reconstructed or repaired in violation of the Declaration, Bylaws or Association Rules at the sole expense of the owner of the vehicle or equipment.

Section 9.6 External Fixtures. No external items such as, but not limited to, solar panels, flag poles, clotheslines, wiring, insulation, air conditioning equipment, water softening equipment, fences, awnings, ornamental screens, screen doors, porch or patio or balcony enclosures, sunshades, walls, swimming pools, fountains, spas, landscaping and planting, other than those provided in connection with the original construction of the Condominium, and any replacements thereof, and other than those approved by the Board and any replacements thereof, shall be constructed, erected or maintained on the Property, including any Buildings thereof. The foregoing notwithstanding, nothing herein shall be construed as preventing Declarant and its agents and assigns from engaging in all forms of construction and sales activities within the Property. The Association may maintain in effect or cause to be maintained in effect a central antenna system or systems, which shall provide connections to each Unit via underground or internal wall wiring, or a combination thereof.

Section 9.7 Window Covers. Only curtains, blinds, shutters, drapes and shades may be installed as window covers. No window shall be covered by paint, foil, sheets or similar items. All window coverings visible from the exterior of the Buildings shall be of a neutral color or otherwise compatible with the exterior decor of the Buildings. The Board may adopt Association Rules regulating the type, color and design of the external surface of window covers.

Section 9.8 External Laundering. Unless otherwise permitted by the Board, external laundering and drying of clothing and other items is prohibited.

Section 9.9 Outside Speakers and Amplifiers. No radio, stereo, broadcast or loudspeaker units and no amplifiers of any kind shall be placed upon or outside, or be directed to the outside of any Building without the prior written approval of the Board.

Section 9.10 Repairs. No repairs of any detached machinery, equipment or fixtures, including without limitation, motor vehicles, shall be made upon the Property.

Section 9.11 Unsightly Items. All rubbish, debris or unsightly materials or objects of any kind shall be regularly removed from Units and shall not be allowed to accumulate therein or thereon. Refuse containers and machinery and equipment not a part of the Units, shall be prohibited upon any Unit unless obscured from view of adjoining Units and Common Elements. Trash and garbage not disposed of by equipment contained within the Units shall be placed in containers kept in the garage for each Unit by Owners and Occupants for removal from the Property in accordance with Association Rules applicable thereto adopted by the Board. The Board may adopt rules applicable to the provisions of this Section 9.11 and their enforcement, including the assessment of charges to Owners and Occupants who violate, or whose invitees violate, such rules. Any charges so assessed shall be special Assessments. The foregoing notwithstanding, nothing herein shall be construed as preventing Declarant and its agents and assigns from engaging in all forms of construction and sales activities within the Property.

Section 9.12 Oil and Mineral Activity. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon the surface of the Property, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be installed upon the surface of the Property or within five hundred (500) feet below the surface of the Property. No derrick or other structure designed for use in boring for water, oil or natural gas shall be erected, maintained or permitted upon the Property.

Section 9.13 Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept upon the Property, except that dogs, cats, or other household pets may be kept within a Unit, provided they are not raised, bred, kept or maintained for any commercial purpose or in numbers or of a size deemed unreasonable by the Board. Notwithstanding the foregoing, no animal or fowl may be kept within a Unit which, in the good faith judgment of the Board, results in an annoyance or is obnoxious to Owners or Occupants within the Property. All animals permitted to be kept by this Section 9.13 shall be kept on a leash when on any portion of the Property except within a Unit. The Board may adopt Association Rules applicable to the provisions of this Section 9.13 and to the keeping of pets within the Property, and their enforcement, including the assessment of charges to Owners and

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Occupants who violate such rules. Any charges so assessed shall be special Assessments.

Section 9.14 Leases. Any Owner who shall lease his or her Unit shall be responsible for assuring compliance by the Occupant with this Declaration, the Bylaws and the Association Rules. Failure by an Owner to take legal action, including the institution of a forcible entry and detainer proceeding against his or her Occupant who is in violation of this Declaration, the Bylaws or the Association Rules within ten (10) days after receipt of written demand so to do from the Board, shall entitle the Association, through the Board, to take any and all such action including the institution of proceedings in forcible entry and detainer on behalf of such Owner against such Owner's Occupant and the Owner hereby assigns such Owner's rights as a landlord to enforce such defaults. Any expenses incurred by the Association, including attorneys' fees and costs of suit, shall be repaid to it by such Owner. Failure by such Owner to make such repayment within ten (10) days after receipt of a written demand therefor shall entitle the Board to levy a special Assessment against such Owner and his Unit for all such expenses incurred by the Association. In the event such special Assessment is not paid within thirty (30) days of its due date, the Board may resort to all remedies of the Association for the collection thereof.

Section 9.15 Landscape Maintenance. The Declarant and the Association shall have the right to maintain all landscaping in the Condominium. The Declarant and the Association shall have the right of access to all areas of the Property which are necessary for such landscape maintenance. Each Owner of a Unit shall be responsible for the maintenance of all landscaping within any fenced in courtyard or patio appurtenant to such Unit.

Section 9.16 Association Rules. The Association shall have the power to make and adopt reasonable Association Rules with respect to activities which may be conducted on any part of the Condominium. The Board's determination as to whether a particular activity being conducted or to be conducted violates or will violate such Association Rules shall be conclusive unless, at a regular or special meeting of the Association, owners representing a Majority of the voting power of the Association vote to the contrary.

Section 9.17 Alterations, Additions or Improvements. Notwithstanding anything contained in this Declaration to the contrary, no alterations of any Common Elements or any additions or improvements thereto or any alterations, additions or improvements to the garage, patios, or balconies associated with any Unit shall be made by any Owner, except Declarant, without the prior written approval of the Board. Any Owner may make nonstructural alterations, additions or improvements within the interior of such Owner's Unit without the prior written approval of the Board, but such Owner shall be responsible for any damage to any other Units or the

Common Elements resulting from such alteration, addition or improvement. In addition to the required approval of the Board, there shall be no structural alterations or additions to any Building without the prior approval of a Majority of the Owners given at a regular or special meeting of the members of the Association and the prior approval of a Majority of First Mortgagees. Unless otherwise determined at any such meeting, the cost of such alterations or additions shall be paid by means of a special Assessment levied and collected from each Owner in proportion to such Owner's undivided interest in the Common Elements.

Section 9.18 Decorating. Each Owner, at such Owner's own expense, shall furnish and be responsible for all of the decorating within such Owner's own Unit (but any furnishing or decorating of any patio or balcony shall be subject to the provisions of Section 9.17 hereof) from time-to-time, including painting, wallpapering, paneling, floor coverings, draperies, window shades, curtains, lamps and other furniture and interior decorating. Each Owner shall be entitled to the exclusive use of the interior unfinished surfaces of the walls, floors and ceilings within such Owner's Unit, and each Owner shall have the right to decorate such surfaces from time-to-time as such Owner may see fit at such Owner's sole expense. Decorating and maintenance of the Common Elements and any redecorating of Units to the extent made necessary by any damage caused by maintenance, repair or restoration work by the Association on the Common Elements shall be furnished by the Association and paid for as part of the Common Expenses.

Section 9.19 Architectural Control. No building, fence, wall, tower, awning, sign or other structure of any kind or character shall be constructed, erected, placed or maintained within the Condominium, nor shall any exterior addition, change or alteration be made thereto or therein, including without limitation to any exterior wall, patio or balcony, whether or not part of any Unit, which is visible from the exterior of any Building, and no additions to, changes in, or alterations of landscaping, grade or drainage shall be made, until plans and specifications showing the nature, kind, color, shape, height, materials, location and other physical attributes of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board or by an architectural committee appointed by the Board. In the event the Board, or such committee, if one has been appointed, fails to approve or disapprove such proposal at its next regular meeting occurring more than thirty (30) days after proper plans and specifications have been received by it, such approval will not be required, and this Section 9.19 will be deemed to have been fully complied with. All such plans and specifications shall be delivered for submittal to the committee at the Association's principal place of business. The restrictions contained in this Section 9.19 shall not apply to the Declarant in any way.

Section 9.20 Roof Leaks and Repairs. The Association shall repair promptly all leaks or other damage to the roofs of any of the Buildings of which the Association has notice in writing, provided, however, that the cost of repairing leaks or damage due to the willful or negligent act of an Owner or a member of such Owner's family or guest or other occupant or visitor of such Owner or other person for whom such Owner may be responsible shall be the obligation of such Owner.

Section 9.21 Public Dedication. Nothing contained in this Declaration shall be deemed to constitute a dedication for public use or to create any rights in the general public. Nothing contained in this Declaration shall be construed as creating an obligation on the part of the City of Fountain Hills or any other governmental authority having jurisdiction over the Condominium to maintain, repair or replace any portion of the Condominium or the appurtenances thereto.

Section 9.22 Waterbeds. No waterbeds are permitted to be installed, maintained or used on the second floors of any of the Units except as otherwise may be permitted by the Board.

Section 9.23 Garage Doors and Garages. Garage doors shall be kept closed at all times when not in use. Garages shall only be used for parking of vehicles and incidental storage and shall not be used or converted for living or recreational purposes.

Section 9.24 Satellite Dishes and Antennas. Except as permitted by Federal Law and regulations promulgated by the Federal Communications Commission (the "FCC"), all exterior satellite dishes and antennas shall be prohibited. The Board shall have the authority to develop rules conforming to Federal Law and FCC regulations regarding camouflaging, screening and placement of any permitted antennas and satellite dishes.

ARTICLE X

INSURANCE

Section 10.1 Insurance Requirements Generally. Prior to the first conveyance of a Unit to an Owner other than Declarant, and at all times thereafter, the Association shall have the authority to and shall obtain and maintain in full force and effect certain casualty, liability and other insurance as hereinafter provided. All such insurance shall be obtained from responsible companies duly authorized to transact insurance business in the State of Arizona with no less than a Class A financial category rating in Best's Key Rating Guide (or any comparable rating in any comparable publication). All such insurance shall name the Association or its

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authorized representative or trustee as the insured, in its individual capacity for the benefit of the Owners and also either as attorney-in-fact or trustee for all Owners. The Board shall review all such insurance at least annually and shall increase the amounts thereof as it deems necessary or appropriate. All such insurance shall:

A. Contain a special condominium endorsement providing for a waiver of subrogation by the insurer as to claims against the Association, its directors, officers, employees and agents and against each Owner and each Owner's employees, agents and invitees, and against each Mortgagee of all or any part of the Condominium or of any Unit, and any other person for whom the Association, any Owner or Mortgagee may be responsible and shall provide for recognition of any authorized representative or trustee of the Association, if applicable;

B. Provide that any "no other insurance" clause in the insurance policy shall exclude any policies of insurance maintained by any Owner or Mortgagee of all or any part of the Condominium or any Unit and that the insurance policy shall not be brought into contribution with insurance maintained by the Owner or Mortgagee of all or any part of the Condominium or any Unit;

C. Contain a standard without contribution mortgagee clause endorsement in favor of the Mortgagee, its successors and assigns, of any Unit or all or any part of the Condominium;

D. Contain an "agreed amount" and "inflation guard" endorsement, if available;

E. Provide that the policy of insurance shall not be terminated, cancelled or reduced in coverage without at least thirty (30) days prior written notice to the Association and to each Owner and to each Mortgagee covered by any standard mortgagee clause endorsement;

F. Provide that the insurer shall not have the option to restore the premises if condominium ownership of the Units and Common Elements is to be terminated or the Units and Common Elements are to be sold as an entirety in accordance with Article XI of this Declaration; and

G. Contain a "severability of interest endorsement" which shall preclude the insurer from denying the claim of any Owner or the Association due to the negligent acts of the Association or any Owner(s).

Under no circumstances shall any policies of insurance be obtained where: (1) under the terms of the insurance carrier's charter, bylaws or policy, contributions or assessments may be made against the Association, any Unit Owner

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or any Mortgagee; or (2) under the terms of the insurance carrier's charter, bylaws or policy, loss payments are contingent upon action by the insurance carrier's board of directors, policy holders or members; or (3) the policy includes any limiting clauses (other than insurance conditions) which could prevent any Unit Owner or any Mortgagee from collecting insurance proceeds.

Such public liability and property damage insurance may provide for coverage of any cross liability claims of Owners against the Association or other Owners and of the Association against owners without right of subrogation. Any insurance policy may contain such deductible provisions as the Association deems consistent with good business practice.

Certificates of insurance coverage or copies of insurance policies shall be issued to and at the expense of each Owner and each Mortgagee who makes or on whose behalf written request is made to the Association for any such certificate or copy.

The cost and expense of all insurance obtained by the Association, except insurance covering additions, alterations or improvements made to a Unit by an Owner or other insurance obtained at the request of and specifically benefiting any particular Owner, shall be a Common Expense.

Section 10.2 Casualty Insurance. The Association shall obtain and maintain a master policy or policies of casualty insurance covering the Common Elements and each Unit, exclusive of the personal property contained therein, and all fixtures and building service equipment to the extent such is a part of the Common Elements insuring against loss or damage by fire and such other hazards as are covered under standard extended coverage policies, for not less than one hundred percent (100%) of the replacement cost of the Common Elements and each Unit (exclusive of the land, foundations, excavations and other items normally excluded from coverage), as determined on an annual basis by an appraisal made in accordance with the rules and regulations of the Board of Underwriters or like board or body recognized and accepted by the insurance company or companies issuing such insurance and a National Flood Insurance Association Standard Flood Insurance Policy, unless such insurance is not available or the Association determines that the Condominium is not located within a flood hazard area. Such master policy or policies of casualty insurance shall, to the extent available, contain a standard all risk endorsement and shall insure against all other perils which are customarily covered with respect to condominium projects which are similar in construction, location and use.

Section 10.3 Public Liability and Property Damage Insurance. The Association shall obtain and maintain comprehensive public liability and property

damage insurance covering liability for bodily injury, including death, and liability for property damage occurring in, upon or about the Common Elements. Each Owner and the Association shall be insured with respect to such liability arising out of the ownership, maintenance, repair or operation of the Units and the Common Elements. The limits of liability for such coverage shall not be less than \$1,000,000.00 for each occurrence with respect to bodily injury, death or property damage. The Association shall also obtain and maintain steam boiler explosion insurance with limits of liability of not less than \$100,000.00 per occurrence in the event there is a steam boiler in operation within the Condominium.

Section 10.4 Workmen's Compensation and Employer's Liability Insurance. The Association shall obtain and maintain workmen's compensation and employer's liability insurance as may be necessary to comply with applicable law.

Section 10.5 Fidelity Bonds. The Association shall obtain and maintain bonds covering all persons or entities handling funds of the Association, including, without limitation, any professional manager employed by the Association and any of such professional manager's employees, in amounts not less than the maximum funds that will at any time be in the possession of the Association or any professional manager employed by the Association but, in no event less than the total of: (A) assessments for a three (3) month period with respect to all Units; and (B) all reserve funds maintained by the Association. With the exception of a fidelity bond obtained by a professional manager covering such professional manager's employees, all fidelity bonds shall name the Association as an obligee. In addition, all such bonds shall provide that the same shall not be terminated, cancelled or substantially modified without at least thirty (30) days prior written notice to the Association and all First Mortgagees.

Section 10.6 Insurance by Owners. Each Owner shall be free to obtain such additional or other insurance as he deems desirable, including insurance covering such Owner's furnishings and personal property, including, by way of illustration but not of limitation, any additions, alterations and improvements such Owner may have made to such Owner's Unit, and covering personal liability of such Owner and his employees, agents and invitees and any other persons for whom such Owner may be responsible. Any insurance policy obtained by an Owner must not diminish or adversely affect or invalidate any insurance or insurance recovery under policies carried by the Association and must, to the extent possible, contain a waiver of the rights of subrogation by the insurer as to any claim against the Association, its officers, directors, agents and employees and against other Owners and their employees, agents and invitees and against any Mortgagee of all or any part of the Condominium or any Unit or other person for which the Association or any such Owner or Mortgagee may be responsible.

Section 10.7 Receipt and Application of Insurance Proceeds. Except in a case where a Mortgagee or any other person shall have the legal right to receive insurance proceeds directly, all insurance proceeds and recoveries under policies maintained by the Association shall be paid to and received by the Association to be held in trust for the benefit of the Association, the Declarant, all Owners and all Mortgagees of any Unit or all or any part of the Condominium as their respective interests may appear. Subject to the rights of any Mortgagee, the Association shall have the right, acting alone, to adjust or settle any claim by it under any insurance maintained by it. Such funds shall be disbursed in accordance with the following priorities, subject to such evidence of application as such escrow agent shall require, and shall be applied by the Association as follows: first, as expressly provided in Article XI hereof; second, to the Owners or persons whom the Association determines are legally or equitably entitled thereto; and third, the balance, if any, to the Owners in proportion to their respective interest in the Common Elements. Notwithstanding any provision contained herein to the contrary, the rights of and lien priority of any First Mortgagee shall not be affected by any loss, damage or destruction and shall continue in any insurance proceeds payable with respect to the Unit subject to such Mortgage in accordance with the provisions of such Mortgage.

Section 10.8 Other Insurance by the Association. The Association shall also have the power and authority to obtain and maintain other and additional insurance coverage, including but not limited to casualty insurance covering personal property of the Association, fidelity bonds or insurance covering employees and agents of the Association and insurance indemnifying officers, directors, employees and agents of the Association. Notwithstanding any other provisions of this Declaration, the Association shall continuously maintain in effect such casualty, flood and liability insurance and fidelity bonds meeting the insurance and fidelity bond requirements for condominium projects established by the Federal National Mortgage Association, or the Government National Mortgage Association, so long as any of such entities is a Mortgagee or Owner of a Unit, except to the extent that such coverage is not available or has been waived in writing by such entities.

ARTICLE XI

DESTRUCTION, CONDEMNATION, OBSOLESCENCE, AND RESTORATION OR SALE OF CONDOMINIUM

Section 11.1 Definitions. As used herein, the following terms shall have the following definitions:

A. "Substantial Destruction" shall exist whenever the Board determines that, as a result of any casualty, damage to or destruction of the

Condominium or any part thereof, the excess of estimated costs of Restoration (as herein defined) over Available Funds (as herein defined) is fifty percent (50%) or more of the estimated Restored Value of the Condominium (as herein defined). **"Partial Destruction"** shall mean any other casualty, damage to or destruction of the Condominium or any part thereof.

B. **"Substantial Condemnation"** shall exist whenever the Board determines that a complete taking of the Condominium has occurred or that a taking of part of the Condominium by condemnation or eminent domain or by grant or conveyance in lieu of condemnation or eminent domain has occurred, and that the excess of the estimated costs of Restoration over Available Funds is fifty percent (50%) or more of the estimated Restored Value of the Condominium. **"Partial Condemnation"** shall mean any other such taking by eminent domain or by grant or conveyance in lieu of eminent domain.

C. **"Substantial Obsolescence"** shall exist whenever the Owners of Units to which eighty percent (80%) of the undivided interest in the Common Elements is appurtenant determine by vote that the Condominium or any part thereof has reached an undesirable state of obsolescence or disrepair. **"Partial Obsolescence"** shall mean any state of obsolescence or disrepair which does not constitute Substantial Obsolescence.

D. **"Restoration"**, in the case of any casualty, damage or destruction, shall mean restoration of the Condominium to a condition the same or substantially the same as the condition in which the Condominium existed prior to the casualty, damage or destruction; in the case of condemnation, shall mean restoration of the remaining portion of the Condominium to an attractive, sound and desirable condition; and, in the case of obsolescence, shall mean restoration of the Condominium to an attractive, sound and desirable condition.

E. **"Restored Value of the Condominium"** shall mean the value of the Condominium after Restoration as determined by the Board.

F. **"Available Funds"** shall mean any proceeds of insurance or condemnation awards or payments in lieu of condemnation received by the Association and any uncommitted reserves of the Association other than amounts derived through assessments or special assessments. Available Funds shall not include that portion of insurance proceeds or condemnation awards or payments in lieu of condemnation legally required to be paid to any party other than the Association, including a Mortgagee of all or any part of the Condominium or of any Unit, or that portion of any condemnation award or payment in lieu of condemnation paid to the owner of a Unit for the condemnation or taking of that Owner's individual air space.

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Section 11.2 Restoration of the Condominium. Restoration of the Condominium shall be undertaken by the Association without a vote of the Owners in the event of Partial Destruction, Partial Condemnation or Partial Obsolescence and shall be undertaken in the event of Substantial Destruction, Substantial Condemnation or Substantial Obsolescence unless the Owners of Units to which eighty percent (80%) of the undivided interest in the Common Elements is appurtenant consent to terminate the Condominium established pursuant to this Declaration. Such restoration shall be performed substantially in accordance with this Declaration and the original plans and specifications for the buildings, the Common Elements and the Units.

Section 11.3 Sale of the Condominium. In the event of Substantial Destruction, Substantial Condemnation or Substantial Obsolescence and the Owners of Units to which eighty percent (80%) of the undivided interest in the Common Elements is appurtenant consent to terminate the Condominium created pursuant to this Declaration, the Association shall cause a termination agreement and notice of intent to sell the Condominium to be prepared and recorded and the real estate shall be sold. Such termination agreement shall contain the ratification of the Owners to which eighty percent (80%) of the undivided interest in the Common Elements is appurtenant, shall specify a date after which the agreement will be void unless it is recorded before that date, a statement that the real estate shall be sold and the minimum terms of the sale. In the event of such sale, condominium ownership under this Declaration shall terminate and the proceeds of sale and any insurance proceeds, condemnation awards or payments in lieu of condemnation shall be distributed by the Association pro rata to each Owner according to the ratio that the cubic content space of such Owner's Unit and its allocated Limited Common Elements bears to the total cubic content space of all Units and Limited Common Elements in the Condominium created pursuant to this Declaration. Such payment shall be made to Owners or, as to Units which are subject to a Mortgage of record at the time of such payment jointly to such Owner and such Mortgagee as their interests may appear.

Section 11.4 Special Assessments for Restoration. Whenever Restoration is to be undertaken, the Association may levy and collect Assessments from each Owner in proportion to such Owner's undivided interest in the Common Elements, payable over such period as the Association may determine, to cover the costs and expenses of Restoration to the extent not covered by the Available Funds.

Section 11.5 Receipt and Application of Condemnation Funds. Except in a case where a Mortgagee or any other person shall have the legal right to receive condemnation awards or payments in lieu of condemnation or eminent domain directly, all compensation, damages or other proceeds constituting awards for condemnation or eminent domain or payments in lieu of condemnation or eminent domain shall be paid, or if received by the Association shall be turned over promptly in

the identical form received without commingling with any asset or property of the Association, to an independent financial institution or title company selected by the Association authorized to act as escrow agent for the benefit of the Association, the Declarant, all Owners and all Mortgagees of any Unit or all or any part of the Condominium as their respective interests may appear. The Association shall have the right, acting alone, to adjust or settle any condemnation award or payment in lieu of condemnation or eminent domain payable to it. Such funds shall be disbursed by said escrow agent in accordance with the following priorities, subject to such evidence of application as such escrow agent shall require. The amount thereof equitably allocable as compensation for the taking of or injury to the individual air space of a particular Unit or to improvements of an Owner therein shall be apportioned and paid to the Owner of such Unit or, as to Units which are subject to a Mortgage of record at the time of such payment, jointly to such Owner and such Mortgagee as their interests may appear. The balance of such funds shall be applied to costs and expenses of Restoration, if undertaken, and, to the extent not so applied, shall be allocated as follows: first, any portion of such funds allocable to the taking of or injury to the Common Elements shall be apportioned among all Owners of the Common Elements according to the ratio that the cubic content space of each Owner's Unit and its allocated Limited Common Elements bears to the total cubic content space of all Units and Limited Common Elements in the Condominium created pursuant to this Declaration; secondly, any portion of such funds received or awarded for severance damages shall be apportioned among Owners of Units whose individual air space was not taken or injured according to the foregoing ratio; thirdly, any portion of such funds received or awarded for consequential damages or for other purposes shall be apportioned as the Association determines to be equitable under the circumstances. The lien priority of any First Mortgage shall not be disturbed by any condemnation proceeding and shall continue in the proceeds of any condemnation award attributable to the mortgaged Unit in accordance with the provisions of this Section 11.5.

Section 11.6 Reorganization in the Event of Condemnation. Subject to the provisions of A.R.S. § 33-1206, in the event all or substantially all of the individual air space within a Unit is taken by condemnation or eminent domain, such Unit shall, upon payment of compensation as hereinabove provided, cease to be a part of the Condominium, the Owner thereof shall cease to be a member of the Association, and the undivided interest in Common Elements appurtenant to that Unit shall become reallocated to each of the remaining Units whose then undivided interest in and to the Common Elements shall be equal to a fraction with a numerator of one and a denominator equal to the total number of Units then a part of the Condominium. In such event, the Association shall promptly prepare, execute and record an amendment to the Declaration reflecting the reallocations. Any remnant of a Unit remaining after part of a Unit is taken by condemnation or eminent domain shall become a Common Element.

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Section 11.7 Rights of Owners in any Distributions. In the event that any Owner or Mortgagee is entitled to receive any distribution of money, property or other things from the Association for any reason, including without limitation the sale or other disposition of all or any part of the Common Elements or the cessation or termination for any reason of the Condominium created hereby, such distribution shall be according to the ratio that the cubic content space of such Owner's or Mortgagee's Unit and its allocated Limited Common Elements bears to the total cubic content space of all Units and Limited Common Elements in the Condominium created pursuant to this Declaration, except as specifically provided to the contrary in Articles X or XI hereof.

ARTICLE XII

DECLARANT

Section 12.1 Exemption of Declarant from Restrictions and Reservation of Special Declarant Rights. Notwithstanding anything contained in this Declaration to the contrary, none of the restrictions contained in this Declaration shall be construed or deemed to limit or prohibit any act of Declarant, its employees, agents, and subcontractors, or parties designated by it in connection with any construction, completion, sale or leasing of any portion of the Condominium. In addition to the foregoing, Declarant expressly reserves the following Special Declarant Rights, as defined in A.R.S. § 33-1202(21), and the right to transfer such rights, as provided in A.R.S. § 33-1244:

- A. The right to construct any improvements as provided herein;
- B. The right to exercise any Development Right as more fully set forth in Section 12.2 hereof;
- C. The right to maintain sales offices, management offices, signs advertising the Condominium and model Units within the Condominium until the last Unit is sold to an Owner other than Declarant;
- D. The right to use any easements through the Common Elements for the purpose of making improvements within the Condominium; and
- E. The right to appoint or remove any officer of the Association or any Board member during the Period of Declarant Control.

Section 12.2 Reservation of Development Rights. Declarant hereby expressly reserves the following Development Rights, as provided in

A.R.S. § 33-1202(14) and the right to exercise such rights without the consent of any Mortgagee or any Owner, except as otherwise provided in Section 13.4 of this Declaration:

A. To create easements, Units, Common Elements or Limited Common Elements within any portion of the Condominium;

B. To subdivide Units, convert Units into Common Elements or convert Common Elements into Units;

C. To withdraw Units from the Condominium;

D. To amend this Declaration during any Period of Declarant Control to comply with applicable law or to correct any error or inconsistency in this Declaration provided that such amendment does not adversely affect the rights of any Unit Owner; and

E. To amend this Declaration during any 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 governing transactions involving Mortgage instruments.

ARTICLE XIII

RIGHTS OF ELIGIBLE MORTGAGE HOLDERS

Section 13.1 Notices of Eligible Mortgage Holders. An Eligible Mortgage Holder shall not be entitled to receive any notice which this Declaration requires the Association to deliver to Eligible Mortgage Holders unless and until such Eligible Mortgage Holder has delivered to the Board a written notice stating that such Eligible Mortgage Holder is the holder of a Mortgage encumbering a Unit within the Property. Notwithstanding the foregoing, if any right of an Eligible Mortgage Holder under this Declaration is conditioned on a specific written request to the Association, in addition to having delivered the notice provided in this Section 13.1 an Eligible Mortgage Holder must also make such request in writing delivered to the Association. Except as provided in this Section 13.1, an Eligible Mortgage Holder's rights pursuant to this Declaration, including, without limitation, the priority of any Mortgage lien over the lien of Assessments levied by the Association hereunder shall not be affected by the failure to deliver a notice or request to the Board.

Section 13.2 Priority of Eligible Mortgage Holders. No breach of the Restrictions herein contained, nor the enforcement of any lien provision herein, shall

affect, impair, defeat or render invalid the lien or charge of any Eligible Mortgage Holder made in good faith and for value encumbering any Unit, but all of said Restrictions shall be binding upon and effective against any Owner whose title to a Unit is derived through foreclosure or trustee's sale, or otherwise.

Section 13.3 Relationship with Assessment Liens.

A. The lien provide for in Section 6.1 of this Declaration for the payment of Assessments shall be subordinate to the lien of any Eligible Mortgage Holder which was recorded prior to the date any such Assessment becomes due;

B. If any Unit which is subject to a monetary lien created by this Declaration is also subject to the lien of an Eligible Mortgage Holder, then: (1) the foreclosure of any lien created by this Declaration shall not operate to affect or impair the lien of such Eligible Mortgage Holder; and (2) the foreclosure of the lien of an Eligible Mortgage Holder or the sale under a power of sale included in a Mortgage or deed of trust shall not operate to affect or impair the lien hereof, except that any Person who obtains an interest thereafter shall take title free of any lien created by this Declaration or any personal obligation for said charges as shall have accrued up to the time of any foreclosure, but subject to the lien hereof for all said charges that shall accrue subsequent to such foreclosure;

C. Without limiting the provisions of subsection (B) of this Section 13.3, any Eligible Mortgage Holder who obtains title to a Unit by reason of any foreclosure, or deed or assignment in lieu of foreclosure, or any Person who obtains title at a private or judicial foreclosure sale, shall take title to such Unit free of any lien or claim for unpaid Assessments against such Unit which accrued prior to the time such Eligible Mortgage Holder or purchaser takes title to such Unit, except for liens or claim for a share of such Assessments resulting from a pro rata reallocation of such Assessments to all Units within the Condominium; and

D. Nothing in this Section 13.3 shall be construed as releasing any Person from the personal obligation to pay for any Assessments levied pursuant to this Declaration during the period such Person is an Owner.

Section 13.4 Required Eligible Mortgage Holder Approval. The approval of Eligible Mortgage Holders holding First Mortgages on Units the Unit Owners of which have at least sixty-seven percent (67%) of the votes in the Association allocated to Unit Owners of all Units subject to First Mortgages held by Eligible Mortgage Holders shall be required to add or amend any material provisions of the Declaration, Articles or Bylaws which establish, provide for, govern or regulate any of the following:

- A. Voting rights;
- B. Increases in Assessments that raise the previously assessed amount by more than twenty-five percent (25%);
- C. Assessment liens or the priority of Assessment liens;
- D. Reductions in reserves for maintenance, repair and replacement of the Common Elements;
- E. Hazard or fidelity insurance requirements;
- F. Responsibility for maintenance and repairs;
- G. Expansion or contraction of the Condominium, or the addition or annexation or withdrawal of property to or from the Condominium;
- H. Redefinition of any boundaries of Units;
- I. Reallocation of interests in the Common Elements or Limited Common Elements or rights to their use;
- J. Convertibility of Units into Common Elements or of Common Elements into Units;
- K. Imposition of any restrictions on the leasing of Units;
- L. Imposition of any restrictions on a Unit Owner's right to sell or transfer such Owner's Unit;
- M. A decision by the Association to establish self management when professional management had been required previously by an Eligible Mortgage Holder or by the Declaration, Articles or Bylaws;
- N. Restoration or repair of the Condominium (after a damage or partial condemnation) in a manner other than that specified in the Declaration, Articles or Bylaws; and
- O. Any provisions which expressly benefit Eligible Mortgage Holders or Eligible Insurers or Guarantors.

13.4.1 Any action to terminate the legal status of the Condominium must be approved by Eligible Mortgage Holders holding Mortgages on Units the Unit

Owners of which have at least sixty-seven percent (67%) of the votes in the Association allocated to Unit Owners of all Units subject to First Mortgages held by Eligible Mortgage Holders.

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

13.4.3 The approvals required by this Section 13.4 shall not apply to amendments that may be executed by the Declarant in the exercise of its Development Rights.

13.4.4 It is Declarant's intention that the Condominium qualify for the possible sale of mortgages encumbering Units to the Federal National Mortgage Association, and/or the Federal Home Loan Mortgage Corporation. The requirements contained in this Section 13.4 are to effectuate that purpose. Should any of the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, subsequently delete any of their respective requirements which necessitate the provisions of this Section 13.4 or make any such requirements less stringent, or should Declarant choose not to qualify the Condominium under any of said programs, this Section 13.4 shall automatically be amended to reflect such changes or to delete those provisions required by the program for which Declarant has not sought qualification. Nothing contained herein, however, shall obligate the Declarant to qualify the Condominium with the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.

Section 13.5 Other Rights of Eligible Mortgage Holders. Any Eligible Mortgage Holder shall, upon written request to the Association, be entitled:

A. To inspect current copies of this Declaration (and any amendments), the Association's Articles, Bylaws, Association Rules, and other books and records of the Association during normal business hours; and

B. To receive an annual financial statement of the Association within one hundred twenty (120) days following the end of the Association's fiscal year.

Section 13.6 Notices of Action. Upon written request to the Association identifying the name and address of the Eligible Mortgage Holder and the

Unit number or address, any such Eligible Mortgage Holder will be entitled to timely written notice of:

A. Any condemnation or casualty loss which affects a material portion of the Condominium or any Unit on which there is a first lien held by such Eligible Mortgage Holder;

B. Any delinquency in the payment of Assessments or charges owed by an Owner of a Unit subject to the lien of an Eligible Mortgage Holder, which remains uncured for a period of sixty (60) days;

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

D. Any proposed action by the Owners or the Association which would amount to a material change in the Declaration as identified in Section 13.4 hereof.

Section 13.7 Prior Written Approval of First Mortgagees. Except as provided by statute in case of condemnation or substantial loss to the Units or the Common Elements, unless at least two-thirds (2/3rd) of all First Mortgagees (based upon one vote for each First Mortgage owned) or Unit Owners (other than the Declarant or other sponsor, developer or builder of the Condominium) of the Units have given their prior written approval, the Association shall not be entitled to:

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

B. Change the pro rata interest or obligations of any individual Unit for the purpose of: (1) levying Assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards; or (2) determining the pro rata share of ownership of each Unit in the Common Elements;

C. Partition or subdivide any Unit;

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

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

Nothing contained in this Section 13.7 or any other provision of this Declaration shall be deemed to grant the Association the right to partition any Unit without the consent of the Owners thereof. Any partition of a Unit shall be subject to such limitations and prohibitions as may be set forth elsewhere in this Declaration or as may be provided under Arizona law.

Section 13.8 Liens Prior to First Mortgage. All taxes, assessments and charges which may become liens prior to a First Mortgage under local law relate only to the individual Unit and not to the Condominium as a whole.

Section 13.9 Right of First Refusal. The right of an Owner to sell, transfer or otherwise convey such Owner's Unit shall not be subject to any right of first refusal or similar restriction.

ARTICLE XIV

MISCELLANEOUS

Section 14.1 Enforcement. The Association or any Owner shall have the right to enforce, by proceedings at law or in equity, all Restrictions and other provisions now or hereafter imposed by this Declaration, or any amendments thereto, including the rights to prevent the violation of any such Restrictions, and the right to recover damages and other sums for such violations. The Association or any Owner shall also have the right to enforce by proceedings at law or in equity the provisions of the Bylaws and Association Rules and any respective amendments thereto.

Section 14.2 No Waiver. Failure by the Association or by any Owner to enforce any Restriction or provision herein contained, or contained in the Bylaws or Association Rules, in any certain instance or on any particular occasion shall not be deemed a waiver of such right of enforcement as to any such future breach of the same or any other Restriction or provision.

Section 14.3 Cumulative Remedies. All rights, options and remedies of Declarant, the Association, and the Owners or the Eligible Mortgage Holders under this Declaration are cumulative, and no one of them shall be exclusive of any other, and Declarant, and the Association, the Owners and the Eligible Mortgage Holders shall have the right to pursue any one or all of such rights, options and remedies or

any other remedy or relief which may be provided by law, whether or not stated in this Declaration.

Section 14.4 Severability. Invalidation of any one or a portion of the Restrictions or provisions set forth in this Declaration or in the Bylaws or the Association Rules by judgment or court order shall in no way affect any other Restrictions or provisions contained herein or therein which shall remain in full force and effect.

Section 14.5 Covenants to Run with the Land; Term; Termination of Condominium. The Restrictions and other provisions of this Declaration shall run with and bind the Property as equitable servitudes and also as covenants running with the land and shall inure to the benefit of and be enforceable by the Association or any Owner, their respective legal representatives, heirs, successors and assigns, for a term of fifty (50) years from the date this Declaration is recorded, after which time the Restrictions and other provisions shall be automatically extended for successive periods of ten (10) years, unless an instrument, signed and acknowledged by Owners of Units to which at least eighty percent (80%) of the votes in the Association are allocated within the Property, has been recorded agreeing to terminate the Condominium at any time during the initial or any subsequent term.

Section 14.6 Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a plan for the development of a residential Condominium community and for the maintenance of the Property. The Article and Section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction.

Section 14.7 Gender and Number. Whenever the context of this Declaration requires, the singular shall include the plural, and vice versa, and the masculine shall include the feminine and the neuter, and vice versa.

Section 14.8 Nuisance. The result of every act or omission whereby any provision or Restriction contained in this Declaration or any provision contained in the Bylaws or Association Rules is violated in whole or in part is hereby declared to be and shall constitute a nuisance, and every remedy allowed at law or in equity against a nuisance, either public or private, shall be applicable with respect to the abatement thereof and may be exercised by the Association or any Owner. Such remedy shall be deemed cumulative to all other remedies set forth in this Declaration and shall not be deemed exclusive.

Section 14.9 Attorneys' Fees. In the event any action is instituted to enforce any of the provisions contained in this Declaration, the Bylaws, or Association

Rules, the party prevailing in such action shall be entitled to recover from the other party thereto as part of the judgment reasonable attorneys' fees and costs of suit.

Section 14.10 Notices. Any notice to be given to an owner, an Eligible Mortgage Holder, or the Association under the provisions of this Declaration shall be in writing and shall be delivered as follows:

A. Notice to an Owner shall be delivered personally or placed in the first class United States mail, postage prepaid, to the most recent address furnished by such Owner in writing to the Board for the purpose of giving notice, or if no such address shall have been furnished, then to the street address of such Owner's Unit; any notice so deposited in the mail shall be deemed delivered seventy-two (72) hours after such deposit; in the case of co-Owners, any such notice may be delivered or sent to any one of the co-Owners on behalf of all co-Owners and shall be deemed delivered to all such co-Owners.

B. Notice to an eligible Mortgage Holder shall be delivered by first class United States mail, postage prepaid, to the most recent address furnished by such an Eligible Mortgage Holder in writing to the Board for the purpose of notice or, if no such address shall have been furnished, to any office of the Eligible Mortgage Holder in Maricopa County, Arizona, or if no such office is located in Maricopa County, to any office of such an Eligible Mortgage Holder. Any notice so deposited in the mail shall be deemed delivered seventy-two (72) hours after such deposit.

C. The declaration of an officer or authorized agent of the Association declaring under penalty of perjury that a notice has been mailed to any Owner or Owners, or to any Eligible Mortgage Holder or Eligible Mortgage Holders, to the address or addresses for the giving of notice pursuant to this Section 14.10, shall be deemed conclusive proof of such mailing.

D. Notices to the Association shall be delivered by registered or certified United States mail, postage prepaid, addressed to the office of the statutory agent or managing agent of the Association, or as follows while the Declarant retains control:

President
La Montana Crossing Condominiums Homeowners' Association, Inc.
16040 N. Boulder Drive
Fountain Hills, AZ 85268

Any notice so deposited in the mail shall be deemed delivered upon the date of receipt.

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Section 14.11 Effect of Declaration. This Declaration is made for the purposes set forth in the recitals in this Declaration and Declarant makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of this Declaration, or as to the compliance of any of these provisions with public laws, ordinances, regulations and the like applicable thereto. Declarant shall have no liability whatsoever if any of the provisions of this Declaration, the Bylaws or the Association Rules are determined to be unenforceable in whole or in part or under certain circumstances.

Section 14.12 Personal Covenant. To the extent the acceptance of a conveyance of a Unit creates a personal covenant between the Owner of such Unit and Declarant, other Owners or the Association, such personal covenant shall terminate and be of no further force or effect from and after the date when a Person ceases to be an Owner, except to the extent this Declaration provides for personal liability with respect to the Assessments incurred during the period a Person is an Owner.

Section 14.13 Nonliability of Officials. To the fullest extent permitted by law, neither the Board nor any officer of the Association shall be liable to any Owner or the Association for any damage, loss, or prejudice suffered or claimed on account of any decision, approval or disapproval, course of action, act, omission, error, or negligence if such Board member or officer acted in good faith within the scope of his or their duties.

Section 14.14 Unsegregated Real Property Taxes. Until such time as real property taxes have been segregated by the County Assessor of Maricopa County for the Units, the taxes shall be paid by the Association on behalf of the Owners. In connection with such payment, the proportionate share of such tax or installment thereof for a particular Unit shall be determined by multiplying the tax or installment in question by the respective percentage interest of such Unit in the Common Elements. The Association may levy a special Assessment against any Owner who fails to pay his or her share of any real property taxes pursuant to this Section 14.14. In the event such special Assessment is not paid within thirty (30) days of its due date, the Board may resort to all remedies of the Association for the collection thereof.

Section 14.15 Use of Funds Collected by the Association. All funds collected by the Association, including Assessments and contributions to the Association paid by Owners, if any, shall be held by the Association in a fiduciary capacity to be expended in their entirety for nonprofit purposes of the Association in managing, maintaining, caring for, replacing and preserving the Common Elements and for other permitted purposes as set forth in this Declaration. No part of said funds shall inure to the benefit of any Owner (other than as a result of the Association

managing, maintaining, caring for, and preserving the Common Elements and other than as a result of expenditures made for other permitted purposes as set forth in this Declaration).

Section 14.16 Notification of Sale and Transfer Fee. Concurrently with the consummation of the sale or other transfer of any Unit, or within fourteen (14) days after the date of such transfer, the transferee shall notify the Association in writing of such transfer and shall accompany such written notice with a nonrefundable transfer fee to cover Association documentation and processing. The transfer fee shall be equal to the then current regular monthly assessment (or such other amount which is determined by the Board). The written notice shall set forth the name of the transferee and his transferor, the street address of the Unit purchased or acquired by the transferee, the transferee's mailing address, the date of the sale or transfer, and the name and address of the transferee's Lender, if any. Prior to the receipt of such written notice, all notices required or permitted to be given by the Association to the Owner shall be deemed to be duly made or given to the transferee if duly and timely made and given to the transferee's predecessor in interest. The transfer fee shall be the personal obligation of the new Owner and shall be secured by the lien in Section 6.1 hereof. Notwithstanding the other provisions hereof, this Section 14.16 shall not apply to a Lender who becomes an Owner by a foreclosure proceeding or any deed or assignment in lieu of foreclosure.

Section 14.17 Owner Liability and Indemnification. Each Owner shall be liable to the remaining Owners and to the Association for any damage to the Common Elements that may be sustained by reason of the negligence of that Owner or such Owner's family members, contract purchasers, tenants, guests or invitees, but only to the extent that any such damage is not covered by casualty insurance in favor of the Association. Each Owner, by acceptance of a deed for a Unit, agrees personally and for family members, contract purchasers, tenants, guests and invitees to indemnify each and every other Owner, and to hold such other Owners harmless from, and to defend such Owners against, any claim of any person for personal injury or property damage occurring within the Unit of that particular Owner, including any exclusive easement areas, if any, except to the extent: (A) that such injury or damage is covered by liability insurance in favor of the Association or any other Owner, or (B) the injury or damage occurred by reason of the willful or negligent act or omission of the Association or other owner or other person temporarily visiting such Unit.

Section 14.18 Conflicting Provisions. In the case of any conflict between this Declaration, the Articles, Bylaws, or Association Rules, this Declaration shall control.

Section 14.19 Amendments. Subject to the other provisions of this Declaration, including, without limitation, the rights of Eligible Mortgage Holders and Eligible Insurers and Guarantors, this Declaration may be amended as follows:

A. Prior to the conveyance of the first Unit to an Owner other than a Declarant, this Declaration and any amendments thereto may be amended by the execution by Declarant of an instrument amending the same.

B. Subsequent to the conveyance of the first Unit in the Condominium to an Owner other than Declarant, this Declaration may be amended by the written approval or the vote, or combination thereof, of: (1) the Owners to which at least sixty-seven percent (67%) of the total votes in the Association are allocated; and (2) during any Period of Declarant Control, Declarant.

C. An amendment which only requires the execution of an instrument by Declarant as hereinabove provided shall be effective when executed by Declarant and when recorded in the office of the County Recorder of Maricopa County, Arizona; an amendment which requires the affirmative written assent or vote of the Owners as hereinabove provided shall be effective when executed by the President and Secretary of the Association who shall certify that the amendment has been so approved, and when the amendment has been recorded in the office of the County Recorder of Maricopa County, Arizona.

D. Any provision of this Declaration, the Articles, Bylaws or Association Rules which expressly requires the approval of a specified percentage or specified percentage of the voting power of the Association or Eligible Mortgage Holders and Eligible Insurers or Guarantors for action to be taken under said provision can be amended only with the affirmative written assent or vote of not less than the same percentage or percentages of the voting power of the Association and/or Eligible Mortgage Holders and Eligible Insurers or Guarantors.

E. Notwithstanding anything herein to the contrary, the Declarant shall have the unilateral right to amend this Declaration after this Declaration is recorded (without obtaining the approval of the Owners, the Association, or existing Mortgagees) if such amendment is required solely to correct a technical error or in order to meet the guidelines or regulations of the Act or of the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation or any similar agency. If such amendment bears a recitation that it is recorded based on the requirement of the Act or any of the foregoing agencies, such amendment shall not require approval of any Owners or Eligible Mortgage Holders and Eligible Insurers or Guarantors.

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ARTICLE XV

DISPUTE RESOLUTION AND LIMITATION ON LITIGATION

Section 15.1 Agreement to Avoid Litigation. The Declarant, the Association, its officers, directors and committee members, all Persons subject to this Declaration, any Owner, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties") agree to encourage the amicable resolution of disputes involving the Property, without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees that those claims, grievances or disputes described in Section 15.2 ("Claims") shall be resolved using the procedures set forth in Section 15.3 in lieu of filing suit in any court.

Section 15.2 Claims. Unless specifically exempted below, all claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement of this Declaration, Bylaws and Association Rules, or the rights, obligations and duties of any Bound Party under such or relating to the design or construction of improvements on the Property shall be subject to the provisions of Section 15.3. No such claim, grievance or dispute subject to the provisions of Section 15.3 may be brought against the Declarant without prior written consent of one hundred percent (100%) of the Owners.

Notwithstanding the above, unless all parties thereto otherwise agree, the following shall not be Claims and shall not be subject to the provisions of Section 15.3:

15.2.1 Any suit by the Association against any Bound Party to enforce the provisions of Article VI (Assessments).

15.2.2 Any suit by the Association to obtain a temporary restraining order (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Article IX (Restrictions).

15.2.3 Any suit between Owners, which does not include Declarant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of this Declaration of the Bylaws, Guidelines and a Association Rules.

15.2.4 Any suit in which any indispensable party (as determined by applicable law) is not a Bound Party.

15.2.5 Any suit which otherwise would be barred by any applicable statute of limitations.

With the consent of all parties thereto, any of the above may be submitted to the alternative dispute resolution procedures set forth below in Section 15.3.

Section 15.3 Mandatory Procedures.

15.3.1 **Dispute Resolution Agency.** From time to time the Board shall select an independent agency providing dispute resolution services in the Phoenix or Scottsdale, Arizona metropolitan areas for purposes of providing mediation and arbitration services required by this Article XV (the "Dispute Resolution Agency").

15.3.2 **Notice.** Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent") (collectively the "Parties") shall notify each Respondent in writing (the "Notice"), stating plainly and concisely:

- A. The nature of the Claim, including the Persons involved and Respondent's role in the Claim.
- B. The legal basis of the Claim (i.e., the specific authority out of which the claim arises).
- C. Claimant's proposed remedy.
- D. That Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim.

15.3.3 Negotiation and Mediation.

A. The Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in resolving the dispute by negotiation.

B. If the Parties do not resolve the Claim within thirty (30) days of the date of the Notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiations"), Claimant shall have thirty (30) additional days to submit the Claim to mediation under the auspices the Dispute Resolution Agency.

C. If the Claimant does not submit the Claim to mediation within thirty (30) days after Termination of Negotiations, or does not appear for the mediation, 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; provided, nothing herein shall release or discharge Respondent from any liability to any Person other than the Claimant.

D. Any settlement of the Claim through mediation shall be documented in writing by the mediator. 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 by the mediator, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation notice shall set forth that the Parties are at an impasse and the date that mediation was terminated.

E. Within five (5) days of the Termination of Mediation, the Claimant shall make a final written settlement demand ("Settlement Demand") to the Respondent and the Respondent shall make a final written settlement offer ("Settlement Offer") to the Claimant. If the Claimant fails to make a Settlement Demand, Claimant's original Notice shall constitute the Settlement Demand. If the Respondent fails to make a Settlement Offer, Respondent shall be deemed to have made a "zero" or "take nothing" Settlement Offer.

15.3.4 Final and Binding Arbitration.

A. If the Parties do not agree in writing to a settlement of the claim within fifteen (15) days of the Termination of Mediation, the Claimant shall have fifteen (15) additional days to submit the Claim to arbitration to the Dispute Resolution Agency in accordance with the rules of arbitration as may be required by the Dispute Resolution Agency. If not timely submitted to arbitration or if the Claimant fails to appear for the arbitration proceeding, the Claim shall be deemed abandoned, and Respondent shall be released and discharged from any and all liability to Claimant arising out of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to Persons other than Claimant.

B. This Article XV is an agreement to arbitrate and is specifically enforceable under the applicable arbitration laws of the State of Arizona. The arbitration award (the "Award") shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under the laws of the State of Arizona.

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Section 15.4 Allocation of Costs of Resolving Claims.

15.4.1 Subject to Subsection 15.4.2, each Party shall bear its own costs, including any attorneys' fees incurred, and each Party shall share equally all charges rendered by mediator(s) and all filing fees and costs of conducting the arbitration proceeding ("Post Mediation Costs").

15.4.2 Any Award which is equal to or more favorable to Claimant than Claimant's Settlement Demand shall add Claimant's Post Mediation Costs to the Award, such costs to be borne equally by all Respondents. Any Award which is less favorable to Claimant than any Respondent's Settlement offer shall Award to such Respondent its Post Mediation Costs.


Section 15.5 Enforcement of Resolution. After resolution of any Claim, if any Party fails to abide by the terms of any agreement or Award, then any agreement or Award without the need to again comply with the procedures set forth in Section 15.3. In such event, the Party taking action to enforce the agreement or Award shall be entitled to recover from the non-complying Party (or if more than one noncomplying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement or Award, including, without limitation, attorneys' fees and court costs.

IN WITNESS WHEREOF, Declarant has executed this Declaration effective as of this 9 day of August, 2002.

6726 La Montana Drive LLC, an Arizona Limited Liability Company

By 

Scott R. Erikson, Member

By: 
Dave F. Vidalin, Member

(Declarant)

A RESUBDIVISION OF AIRSPACE LOT 9A, BLOCK 3, FOUNTAIN HILLS ARIZONA
FINAL PLAT NO. 102, as recorded in Book 544 of Maps, Page 35 Records of Maricopa County
Recorder, Maricopa County, Arizona being a portion of Section 15, T. 3 N., R. 6 E. of the G. &
S.R.B. & M., Maricopa County, Arizona.

Except all oil, gases and other hydrocarbon substances coal, stone, metals, minerals, fossils and
fertilizers of every name and description, together with all uranium, thorium, or any other
material which is or may be determined to be peculiarly essential to the production of fissionable
materials, whether nor not of commercial value, and except all underground water in, under or
flowing through said land, and water rights appurtenant thereto, as reserved in instrument
recorded in Docket 1839, Page 426, records of Maricopa County, Arizona.

EXHIBIT A

[Legal Description for Real Property]

EXHIBIT B

[Plat]

EXHIBIT A

[Legal Description for Real Property]

EXHIBIT B

[Plat]

FINAL FLAT THE LA MONTANA CROSSING CROSSINGS DECLARATION OF COVENANTS

A RESUBDIVISION OF APARTMENT LOT 8A, BLOCK 3, FOUNTAIN HILLS APARTMENT FINAL PLAT NO. 102, AS RECORDED IN BOOK 844 OF MAPS, PAGE 35 RECORDS OF MARICOPA COUNTY, ARIZONA, BEING A PORTION OF SECTION 15, TOWNSHIP 21N, RANGE 12E, COUNTY OF MARICOPA, ARIZONA.

DEDICATION

THE LA MONTANA CROSSING CROSSINGS, BEING A PORTION OF SECTION 15, TOWNSHIP 21N, RANGE 12E, COUNTY OF MARICOPA, ARIZONA, IS HEREBY DEDICATED TO THE PUBLIC AS A TRAIL AND WALKWAY, TO BE KNOWN AS THE "LA MONTANA CROSSING CROSSINGS TRAIL AND WALKWAY".

ACKNOWLEDGMENT

I, the undersigned, being the owner of the above described property, do hereby acknowledge that the above described property is being dedicated to the public as a trail and walkway.

APPROVALS

APPROVED BY THE TOWN BOARD OF FOUNTAIN HILLS, ARIZONA, ON THIS _____ DAY OF _____, 2003.

NOTES

1. THE TOWN OF FOUNTAIN HILLS, ARIZONA, HAS REVIEWED THE ABOVE DESCRIBED TRAIL AND WALKWAY AND HAS DETERMINED THAT IT IS IN THE BEST INTERESTS OF THE TOWN TO ACCEPT THE DEDICATION.
2. THE TOWN OF FOUNTAIN HILLS, ARIZONA, HAS REVIEWED THE ABOVE DESCRIBED TRAIL AND WALKWAY AND HAS DETERMINED THAT IT IS IN THE BEST INTERESTS OF THE TOWN TO ACCEPT THE DEDICATION.
3. THE TOWN OF FOUNTAIN HILLS, ARIZONA, HAS REVIEWED THE ABOVE DESCRIBED TRAIL AND WALKWAY AND HAS DETERMINED THAT IT IS IN THE BEST INTERESTS OF THE TOWN TO ACCEPT THE DEDICATION.
4. THE TOWN OF FOUNTAIN HILLS, ARIZONA, HAS REVIEWED THE ABOVE DESCRIBED TRAIL AND WALKWAY AND HAS DETERMINED THAT IT IS IN THE BEST INTERESTS OF THE TOWN TO ACCEPT THE DEDICATION.
5. THE TOWN OF FOUNTAIN HILLS, ARIZONA, HAS REVIEWED THE ABOVE DESCRIBED TRAIL AND WALKWAY AND HAS DETERMINED THAT IT IS IN THE BEST INTERESTS OF THE TOWN TO ACCEPT THE DEDICATION.
6. THE TOWN OF FOUNTAIN HILLS, ARIZONA, HAS REVIEWED THE ABOVE DESCRIBED TRAIL AND WALKWAY AND HAS DETERMINED THAT IT IS IN THE BEST INTERESTS OF THE TOWN TO ACCEPT THE DEDICATION.
7. THE TOWN OF FOUNTAIN HILLS, ARIZONA, HAS REVIEWED THE ABOVE DESCRIBED TRAIL AND WALKWAY AND HAS DETERMINED THAT IT IS IN THE BEST INTERESTS OF THE TOWN TO ACCEPT THE DEDICATION.
8. THE TOWN OF FOUNTAIN HILLS, ARIZONA, HAS REVIEWED THE ABOVE DESCRIBED TRAIL AND WALKWAY AND HAS DETERMINED THAT IT IS IN THE BEST INTERESTS OF THE TOWN TO ACCEPT THE DEDICATION.
9. THE TOWN OF FOUNTAIN HILLS, ARIZONA, HAS REVIEWED THE ABOVE DESCRIBED TRAIL AND WALKWAY AND HAS DETERMINED THAT IT IS IN THE BEST INTERESTS OF THE TOWN TO ACCEPT THE DEDICATION.
10. THE TOWN OF FOUNTAIN HILLS, ARIZONA, HAS REVIEWED THE ABOVE DESCRIBED TRAIL AND WALKWAY AND HAS DETERMINED THAT IT IS IN THE BEST INTERESTS OF THE TOWN TO ACCEPT THE DEDICATION.

CERTIFICATION

I, the undersigned, being the owner of the above described property, do hereby certify that the above described property is being dedicated to the public as a trail and walkway.

SURVEYOR

DAVID J. WILSON, Surveyor
1000 N. CENTRAL AVENUE
SUITE 100
TAMPA, FL 33604
PHONE 813-288-2828

OWNER

THE CROSSINGS TRACT, LP
1000 N. CENTRAL AVENUE
SUITE 100
TAMPA, FL 33604
PHONE 813-288-2828

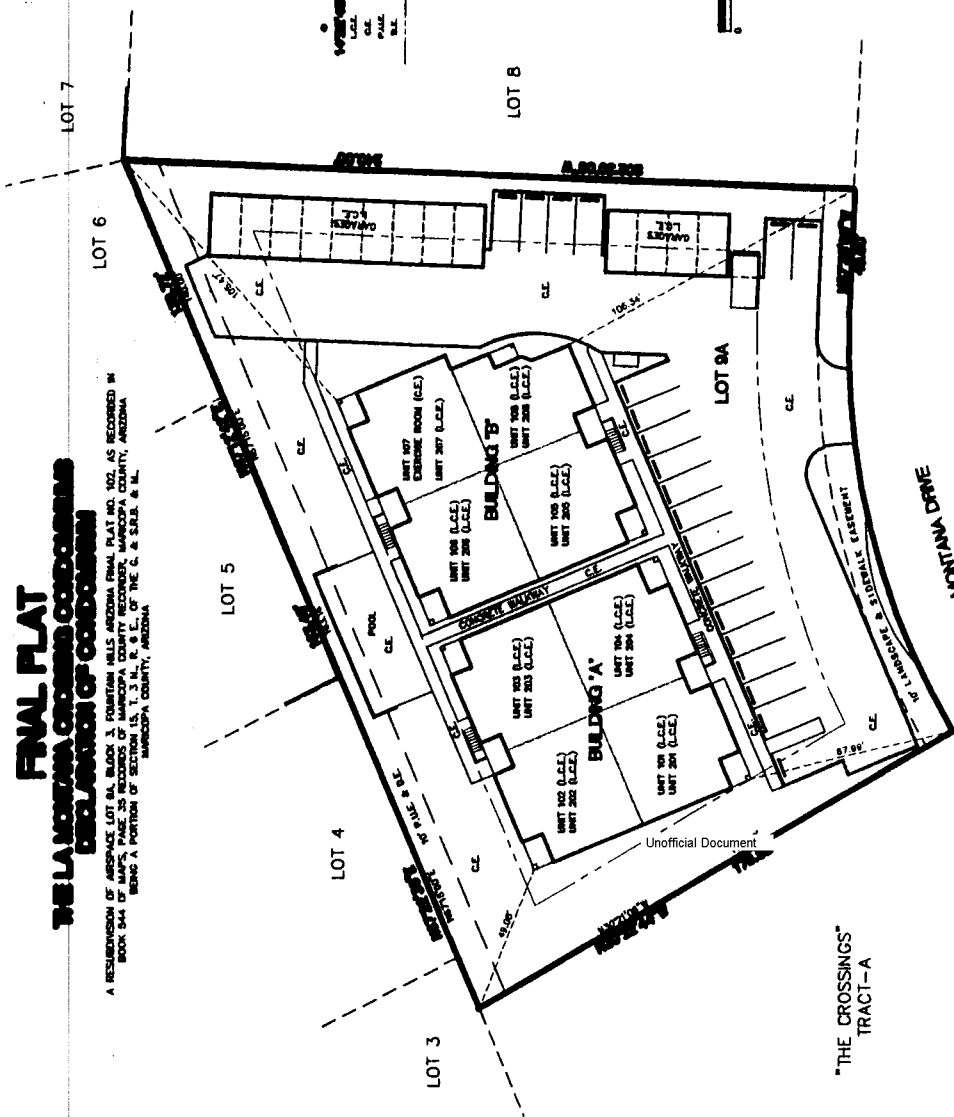
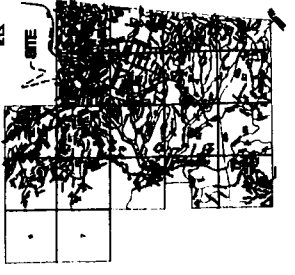
ASSURED WATER SUPPLY

THE DEVELOPMENT OF WATER RESOURCES HAS EXCEEDED THAT OF THE TOWN OF FOUNTAIN HILLS, ARIZONA.

BASS OF BEARING

THE BASS OF BEARING IS THE BASS OF BEARING OF THE TRAIL AND WALKWAY.

TOWN OF FOUNTAIN HILLS



DECLARATION FLAT

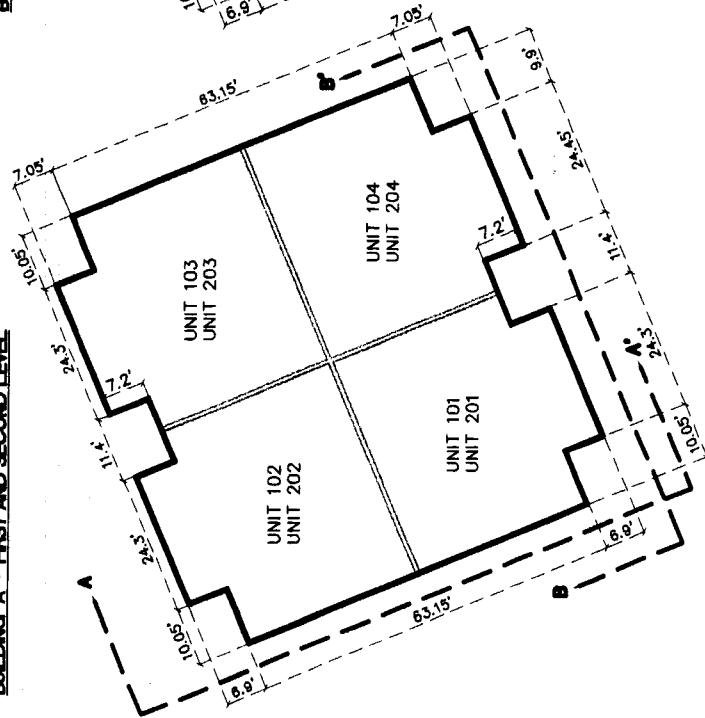
16726 AND 16734 LA MONTANA DR.
FOUNTAIN HILLS, ARIZONA



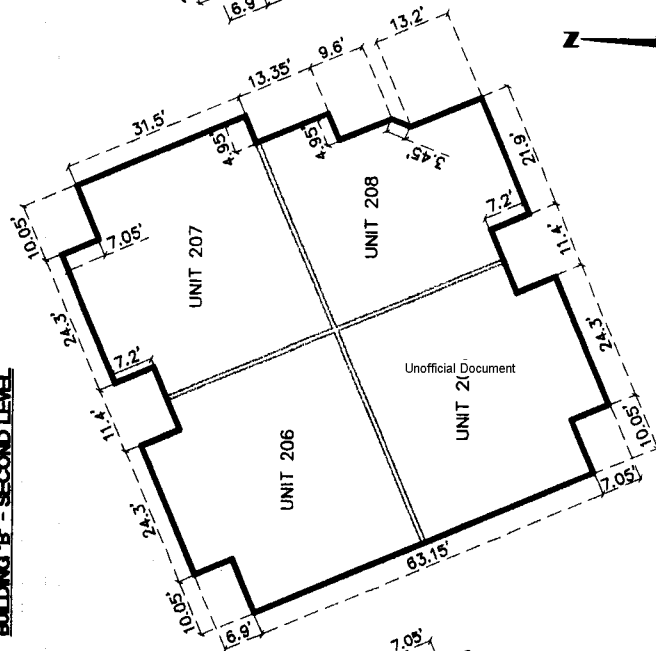
LOT NUMBER	AREA (SQ. FT.)	AREA (SQ. FT.)	AREA (SQ. FT.)	AREA (SQ. FT.)	AREA (SQ. FT.)	AREA (SQ. FT.)	AREA (SQ. FT.)	AREA (SQ. FT.)	AREA (SQ. FT.)
LOT 3	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000
LOT 4	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000
LOT 5	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000
LOT 6	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000
LOT 7	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000
LOT 8	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000
LOT 9A	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000
LOT 9B	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000
LOT 9C	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000
LOT 9D	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000
LOT 9E	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000
LOT 9F	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000
LOT 9G	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000
LOT 9H	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000
LOT 9I	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000
LOT 9J	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000
LOT 9K	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000
LOT 9L	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000
LOT 9M	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000
LOT 9N	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000
LOT 9O	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000
LOT 9P	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000
LOT 9Q	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000
LOT 9R	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000
LOT 9S	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000
LOT 9T	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000
LOT 9U	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000
LOT 9V	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000
LOT 9W	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000
LOT 9X	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000
LOT 9Y	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000
LOT 9Z	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000

FLOOR PLANS

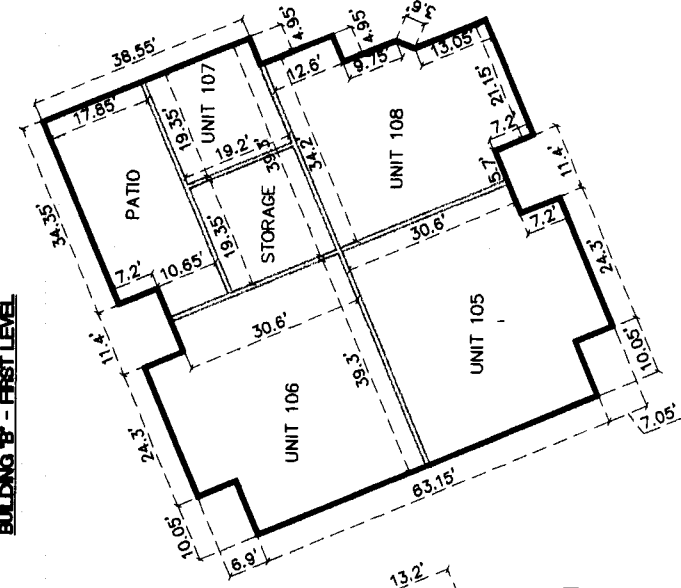
BUILDING 'A' - FIRST AND SECOND LEVEL



BUILDING 'B' - SECOND LEVEL

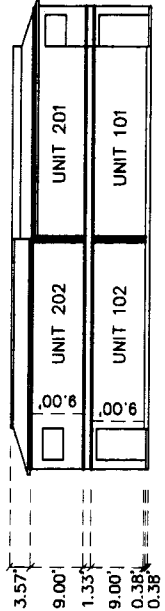


BUILDING 'B' - FIRST LEVEL

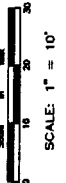
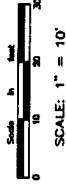
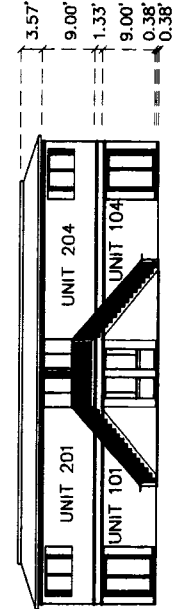


TYPICAL ROOF ELEVATIONS

A-A'



B-B'



INTERIOR DEDICATION

16726 AND 16734 La MONTANA DR.
FOUNTAIN HILLS, ARIZONA



DATE: 03-11-09
DRAWN BY: J.M.
CHECKED BY: J.M.
SCALE: AS SHOWN

96
So

969606699

When recorded mail to
Security Title Agency
13215 N. Verde River Drive, Suite 6
Fountain Hills, Arizona 85268

FIRST AMENDMENT TO THE
DECLARATION OF CONDOMINIUM AND
DECLARATION OF COVENANTS AND
RESTRICTION ESTABLISHING AND
GOVERNING LA MONTANA CROSSING
CONDOMINIUMS

FOUNTAIN HILLS, MARICOPA COUNTY, ARIZONA

THIS FIRST AMENDMENT TO DECLARATION is made this 9th day of April, 2003 by 6726 LA MONTANA DRIVE, L.L.C., an Arizona limited liability company as the Declarant under said Declaration of Reservations (the "Declaration") which were recorded as Document No. 2002-1113421 and which effects the real property as described as Units 101 through 108 inclusive, and Units 201 through 208 inclusive, together with all the common elements recorded in Book of Maps 604, page 13 of the official records of Maricopa County, Arizona.

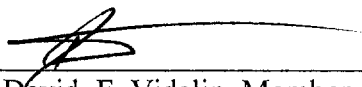
The Declaration is Administratively amended in the following respects and except as expressly amended hereunder, shall remain in full force and effect:

Article IV, Maintenance, Section 4.2 is amended to add that the Homeowners Association owns and will maintain the water lines connecting the water meters to the individual condominium units.

IN WITNESS WHEREOF, this First Amendment has been executed this 9th day of April 2003 by the undersigned.

“DECLARANT”

6726 LA MONTANA DRIVE, L.L.C., an Arizona limited liability company

By: 
David F. Vidalin, Member

STATE OF ARIZONA)
)ss.
County of Maricopa)

Unofficial Document

David F. Vidalin acknowledged this instrument before me on the 9th day of April 2003, Member of 6726 LA MONTANA DRIVE, L.L.C., an Arizona limited liability company.


Notary Public

My Commission Expires

