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Ekmark & Ekmark, LLC  
6720 North Scottsdale Road, Suite 261  
Scottsdale, AZ 85253

**AMENDED AND RESTATED  
DECLARATION OF CONDOMINIUM AND  
COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR  
SUMMIT PARK CONDOMINIUMS**

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**AMENDED AND RESTATED  
DECLARATION OF CONDOMINIUM AND  
COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR  
SUMMIT PARK CONDOMINIUMS**

This Amended and Restated Declaration of Condominium and Covenants, Conditions, and Restrictions for Summit Park Condominiums is made as of the date set forth at the end of this Declaration by Summit Park Condominium Association, Inc., an Arizona non-profit corporation.

**BACKGROUND**

A. Summit Park Associates, L.L.C., an Arizona limited liability company (“Declarant”) recorded a Declaration of Condominium and Covenants, Conditions, and Restrictions for Summit Park Condominiums on August 13, 1996, at Instrument No. 96-25164, Official Records, Coconino County, Arizona Recorder; a First Amendment to Declaration of Condominium and Covenants, Conditions, and Restrictions for Summit Park Condominiums was recorded on September 12, 1996, at Instrument No. 96-28544, Official Records, Coconino County, Arizona Recorder; a Second Amendment to Declaration of Condominium and Covenants, Conditions, and Restrictions for Summit Park Condominiums was recorded on November 6, 1997, at Instrument No. 97-32016, Official Records, Coconino County, Arizona Recorder; a Third Amendment to Declaration of Condominium and Covenants, Conditions and Restrictions for Summit Park Condominiums was recorded on October 26, 2012 at Instrument No. 3643543, Official Records, Coconino County, Arizona Recorder (collectively, “Original Declaration”);

B. The Original Declaration governs the certain real property that is depicted on the Plat, located in the City of Flagstaff, County of Coconino, State of Arizona, and that is additionally described as follows:

See Exhibit “A” attached to and incorporated in this Declaration by this reference (the “Property”).

C. The Association, by and through the Owners, wishes to amend and restate the Original Declaration in its entirety as set forth in this Declaration.

D. Accordingly, the Association declares that the Units, Common Elements, and Limited Common Elements described in this Declaration as the Project shall be held, sold, mortgaged, encumbered, leased, rented, used, occupied, improved, and conveyed subject to the following reservations, easements, limitations, restrictions, servitudes, covenants, conditions, charges, and liens for the purpose of protecting the value, attractiveness, and desirability of the Property, and the covenants and restrictions shall benefit, burden, and run with the title to the Property and shall be binding upon all parties having any right, title, or interest in or to any part

of the Property and their heirs, successors, and assigns. The covenants and restrictions shall inure to the benefit of each Owner.

## **ARTICLE 1** **DEFINITIONS**

1.1 “Act” means the Arizona Condominium Act found at A.R.S. §§ 33-1201 through 33-1270, as and if amended from time to time.

1.2 “Articles” means the Articles of Incorporation of the Association filed in the office of the Corporation Commission of the State of Arizona, as may be amended from time to time in the manner set forth in the Articles.

1.3 “Assessment” means the Annual Assessments, Special Assessments and Individual Expense Assessments levied and assessed against each Unit pursuant to this Declaration, together with all accrued interest, court costs, attorneys’ fees, late fees, and all other expenses incurred in connection with the Assessments and amounts described above, whether or not a lawsuit or other legal action is initiated.

1.4 “Association” means Summit Park Condominium Association, Inc., incorporated as a non-profit Arizona corporation, and shall mean additionally the Association’s successors and assigns.

1.5 “Association Rules” means any rules and regulations or design guidelines that may be adopted or amended by the Association.

1.6 “Board” and “Board of Directors” means the Board of Directors of the Association.

1.7 “Building” means any of the buildings actually constructed from time to time on the Property. A Building will contain one or more Units. The horizontal boundaries of a Building shall be the plane of its top elevation, as actually constructed, and the plane of its base elevation, as actually constructed. The vertical boundaries shall be the exterior of the outside perimeter walls of each Building, as actually constructed.

1.8 “Bylaws” means the Bylaws of the Association, as may be amended from time to time in the manner set forth in the Bylaws.

1.9 “Common Elements” means all those areas of the Project that are not included within the description of the Units, including, without limitation, the on-site private sewer system that serves the Property. Unless otherwise specified in this Declaration, the Limited Common Elements are considered part of the Common Elements.

1.10 “Condominium Unit” means a residential condominium unit designated for separate ownership or occupancy, together with the Easement Rights associated with or

appurtenant to each Condominium Unit and the Fractional Interest of the Condominium Unit in and to the Common Elements. The physical boundaries of the Condominium Unit shall be: (i) the underside of the finished but undecorated ceiling as the top boundary; (ii) the top of the finished but undecorated floor as the bottom boundary; and (iii) the interior of the finished but undecorated walls as the vertical boundaries. Without limiting the generality of the previous sentence, all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other materials constituting any part of the finished surfaces are part of the Condominium Unit but all walls, floors, ceilings, exterior doors and windows, and similar structural elements, as described above, are part of the Common Elements. All interior and non-structural partitions and fixtures and improvements located within the physical boundaries of the Condominium Unit are considered part of the Condominium Unit. A Condominium Unit may be referred to by the identifying number as shown on the Plat by the applicable designation “101,” et seq. The letter designations that follow the Condominium Unit numbers on the Plat are for the purpose of identifying the applicable floor plan only and they shall not be included in the legal description of any Condominium Unit.

1.11 “Declaration” means this Amended and Restated Declaration of Condominium and Covenants, Conditions, and Restrictions and the covenants and restrictions set forth in this entire document (in entirety or by reference), as may be amended from time to time in the manner set forth herein.

1.12 “Easement Rights” means the beneficial right of the Owners to use and enjoy the applicable easements created and reserved in this Declaration or the Plat over the Common Elements, whether created or reserved solely for the use and benefit of one (1) Owner or multiple Owners.

1.13 “Eligible Vote” means the vote of a Member whose voting rights are not currently suspended by the Board as set forth in Section 2.4.

1.14 “Fractional Interest” means the appurtenant and undivided percentage interest in the Common Elements allocated to each Condominium Unit, as determined by dividing the numerator of one (1) by the denominator equaling the total number of Condominium Units in the Project. The Fractional Interest allocated to each Condominium Unit shall be one-one hundred twenty-fourth (1/124) of a whole.

1.15 “Detached Garage Unit” means a detached garage unit, as depicted on the Plat, designated for ownership by a single Owner. The physical boundaries of the Detached Garage Unit shall be: (i) the underside of the finished but undecorated ceiling as the top boundary; (ii) the top of the finished but undecorated floor as the bottom boundary; and (iii) the interior of the finished but undecorated walls and garage door as the vertical boundaries. Without limiting the generality of the previous sentence, all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other materials constituting any part of the finished surfaces are part of the Detached Garage Unit, but all walls, floors, ceilings, exterior doors and windows, and similar structural elements, as described above, are part of the Common Elements. All interior and non-structural partitions and fixtures and improvements located within the physical boundaries of the Detached Garage Unit, including any automatic garage door

opening and closing device are considered part of the Detached Garage Unit. A Detached Garage Unit may be referred to by the identifying number as shown on the Plat by the applicable designation "101," et seq. A Detached Garage Unit may not be conveyed or transferred to any Person other than a Condominium Unit Owner, and an Owner may not own more Detached Garage Units than the number equal to: (i) two (2) times the number of Condominium Units then owned by that Owner; minus (ii) the number of Storage Units then owned by that Owner. Any attempted conveyance or transfer of a Detached Garage Unit in violation of the restriction described in the preceding sentence shall be void.

1.16 "Limited Common Elements" means: (i) the covered parking space designated for use solely by an Owner of a Condominium Unit or the Owner's Permittees; (ii) any stairways or entry walks designated for use by one or more, but not all, Units and any balconies and patios designed to serve a single Condominium Unit (but located outside the physical boundaries of a Condominium Unit); (iii) any shutters, awnings, window boxes, door steps, exterior doors to the Unit, and windows and other similar features designated to serve a single Unit (but located outside the physical boundaries of a Unit); (iv) the heater, air handler, and water heater servicing a single Unit; (v) all sewer and drainage pipes, water lines, and other utility lines servicing a single Unit, between the point of entry into the Unit and the point of connection with joint or common utility lines; and (vi) any chimney, chute, flue, duct, or other similar improvement that lies partially within and partially outside of the physical boundaries of a Unit and that serves only a single Unit (with any item of the type described in subparagraph (vi) that services more than a single Unit being deemed a part of the Common Elements and not a Limited Common Element). All Limited Common Elements are reserved for the exclusive use and benefit of the designated Owners, subject to the rights of the Association described in this Declaration or the other Project Documents.

1.17 "Member" shall mean an Owner of a Condominium Unit that is located within the Project.

1.18 "Mortgage" shall mean the consensual conveyance or assignment of any Unit, or the creation of a consensual lien on any Unit, to secure the performance of an obligation. The term Mortgage includes a deed of trust, mortgage, assignment, or any other agreement for the purpose of creating a lien to secure an obligation and also includes the instrument evidencing the obligation. "First Mortgage" shall mean a Mortgage that is the first and most senior of all Mortgages on the applicable Unit.

1.19 "Mortgagee" shall mean a Person or entity to whom a Mortgage is made and shall include a holder of a promissory note, a beneficiary under a deed of trust, or a seller under an agreement for sale. "First Mortgagee" shall mean a Mortgagee that is the first and most senior of all Mortgagees upon the applicable Unit.

1.20 "Owner" shall mean the record owner, whether one or more Persons or entities, of a fee simple legal title to any Unit. An Owner shall not include those Persons having an interest in a Unit merely as security for the performance of an obligation or duty (i.e., a Mortgagee). In the case of Units in which the fee simple title is vested of record in a trustee pursuant to Arizona Revised Statutes, §§ 33-801, et seq., the Owner of the Unit shall be deemed to be the trustor. In



the case of a Unit covered by an Agreement for Sale of Real Property as described in A.R.S., §§ 33-741, et seq., the buyer of the Unit shall be deemed to be the Owner.

1.21 “Owner’s Permittees” shall mean all family members, guests, tenants, licensees, invitees, and agents that use or occupy the Owner’s Ownership Unit or other portions of the Project (including the Common Elements) with the implied or express consent of an Owner.

1.22 “Ownership Unit” shall mean all Condominium Units, Detached Garage Units, and Storage Units owned by a particular Owner.

1.23 “Person” shall mean a natural person, a corporation, a partnership, a trust, or any other legal entity.

1.24 “Plat” will refer to the following: (a) the condominium plat for The Summit Park Condominiums, recorded in Case 6, Map 90, Official Records of Coconino County, Arizona; (b) the condominium plat for The Summit Park Condominiums Unit 2, recorded in Case 7, Map 50, Official Records of Coconino County, Arizona; (c) the condominium plat for The Summit Park Condominiums Unit 3, recorded in Case 7, Map 51, Official Records of Coconino County, Arizona; (d) the condominium plat for The Summit Park Condominiums Unit 4, recorded in Case 7, Map 94, Official Records of Coconino County, Arizona, as the same may be amended from time to time pursuant to this Declaration.

1.25 “Project” or “Property” means the real property described on “Exhibit A” hereto, and all improvements thereto.

1.26 “Project Documents” refers to this Declaration, the Articles, the Bylaws, the Association Rules, and the Plat, collectively, as any or all of the foregoing may be amended from time to time.

1.27 “Single Family” shall mean either: (i) a group of one or more persons each related to the other by blood, marriage, or legal adoption; or (ii) a group of adult persons not all so related who maintain a common household in a Condominium Unit not exceeding the number that is two (2) times the number of bedrooms contained in the particular Condominium Unit.

1.28 “Single Family Residential Use” shall mean the occupancy or use of a Condominium Unit by a Single Family in conformity with the Project Documents and the requirements imposed by applicable zoning laws or other federal, state, county, or municipal rules, ordinances, codes, and regulations.

1.29 “Storage Unit” means a detached storage unit, as depicted on the Plat, designated for ownership by a single Owner. The physical boundaries of the Storage Unit shall be: (i) the underside of the finished but undecorated ceiling as the top boundary; (ii) the top of the finished but undecorated floor as the bottom boundary; and (iii) the interior of the finished but undecorated walls and Storage Unit door as the vertical boundaries. Without limiting the generality of the previous sentence, all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other materials constituting any part of the

finished surfaces are part of the Storage Unit, but all walls, floors, ceilings, exterior doors and windows, and similar structural elements, as described above, are part of the Common Elements. All interior and non-structural partitions and fixtures and improvements located within the physical boundaries of the Storage Unit are considered part of the Storage Unit. A Storage Unit may be referred to by the identifying number as shown on the Plat by the applicable designation “101,” et seq. A Storage Unit may not be conveyed or transferred to any Person other than a Condominium Owner, and an Owner may not own more Storage Units than the number equal to: (i) two (2) times the number of Condominium Units then owned by that Owner; minus (ii) the number of Detached Garage Units then owned by that Owner. Any attempted conveyance or transfer in violation of the restriction described in the preceding sentence shall be void.

1.30 “Unit” means a Condominium Unit, a Detached Garage Unit, a Storage Unit, or any combination of the foregoing.

## **ARTICLE 2**

### **PROPERTY RIGHTS IN COMMON ELEMENTS**

2.1 Condominium Description. The Property consists of one hundred twenty-four (124) Condominium Units and the Detached Garage Units, Storage Units, and Common Elements as depicted on the Plat and further described herein.

2.2 Exclusive Use. Subject to the terms of the Project Documents, each Owner of a Condominium Unit shall have the exclusive right to the use of: (i) the Ownership Units; (ii) the covered parking space assigned to the Condominium Unit; (iii) any balcony or patio designed to serve the Condominium Unit; and (iv) those Limited Common Elements described in subparagraph (iii), (iv), (v), and (vi) of Section 1.16. The exclusive right to the use and possession of the foregoing shall be appurtenant to and inseparable from the ownership of the Ownership Unit. Other Limited Common Elements not reserved for the exclusive use of a single Owner are reserved for the exclusive and joint use of the applicable Owners.

2.3 Interpretation. In interpreting the Plat, this Declaration, and the other Project Documents, the existing physical boundaries of a Unit (or a Unit reconstructed in substantial conformity with its original plans) conclusively shall be presumed to be its actual boundaries regardless of settling, shifting, lateral, or other movement of any of the Buildings, and regardless of minor variances between the actual boundaries of a Unit and those boundaries shown on the Plat, this Declaration, or the other Project Documents.

2.4 Owners’ Easements of Enjoyment. Except as provided in this Declaration with respect to Limited Common Elements, every Owner shall have a non-exclusive right and easement of use and enjoyment in and to the Common Elements, in common with all other persons entitled to use the Common Elements. An Owner’s right and easement to use and enjoy the Common Elements shall be appurtenant to and pass with the title to every Condominium Unit and shall be subject to the following:

(a) Charges and Regulations. The right of the Association to charge reasonable admission and other fees for the use of the Common Elements and to regulate the use of the Common Elements; the right of the Association to limit the number of the Owner's Permittees who use the Common Elements; the right of the Association to limit the number and type of pets that use the Common Elements; the right of the Association to hold the Owners accountable for the conduct of the Owner's Permittees and pets;

(b) Suspension of Voting and Usage Rights. The right of the Association to suspend the voting rights of any Owner and to suspend the right to the use of the Common Elements by an Owner or the Owner's Permittees for any period during which any Assessment against any Ownership Unit remains unpaid for a period of more than thirty (30) days, or, in the case of any non-monetary infraction of the Project Documents, for a reasonable time period, as determined by the Board;

(c) Dedication/Grant. The right of the Association to dedicate or grant an easement covering all or any part of the Common Elements to any provider utility company or municipality for the purposes, and subject to the conditions, that may be established by the Board.

2.5 Delegation of Use. Subject to and in accordance with the Project Documents, any Owner may delegate its right of enjoyment to the Common Elements to the Owner's Permittees.

### **ARTICLE 3**

#### **MEMBERSHIP AND VOTING RIGHTS**

3.1 Membership. Every Owner of an Ownership Unit, by accepting a deed for that Ownership Unit (whether or not expressed in the deed or conveying instrument) or otherwise becoming an Owner, shall be a Member of the Association and shall be bound by the provisions of the Project Documents, shall be deemed to have personally covenanted and agreed to be bound by all covenants and restrictions contained in the Project Documents, and shall be deemed to have entered into a contract with the Association and each other Owner for the performance of the respective covenants and restrictions. Membership in the Association shall be appurtenant to and may not be separated from ownership of any Condominium Unit that is subject to Assessment. Upon the permitted transfer of a Condominium Unit, the new Owner shall automatically become a Member of the Association. Membership in the Association shall be restricted solely to Owners of Condominium Units.

3.2 Voting Rights. Each Member shall be entitled to one (1) vote for each Condominium Unit owned. The number of Detached Garage Units or Storage Units owned by an Owner shall not entitle the Owner to any additional votes beyond those provided for in the preceding sentence. When more than one Person holds an interest in any Condominium Unit, all joint Owners shall be Members; however, for all voting purposes and quorum purposes, they shall together be considered to be one (1) Member. The vote for any jointly-owned Condominium Unit shall be exercised as the joint Owners determine, but in no event shall more than one (1) vote be cast with respect to any Condominium Unit. Any attempt to cast multiple

votes for a given Condominium Unit shall result in the invalidity of all votes cast for that Condominium Unit.

**ARTICLE 4**  
**COVENANT FOR MAINTENANCE ASSESSMENTS**

4.1 Lien and Personal Obligation for Assessments. Each Owner of an Ownership Unit, by accepting a deed for that Ownership Unit (whether or not expressed in the deed or conveying instrument) or otherwise becoming an Owner, is deemed personally to covenant and agree to be bound by all covenants and restrictions and all duties, obligations, and provisions of the Project Documents and to pay to the Association:

- (a) Annual Assessments or charges;
- (b) Special Assessments for capital improvements under Section 4.4, unexpected or extraordinary expenses for repairs of the Common Elements, or other Association matters;
- (c) Individual Expense Assessments in an amount sufficient to indemnify and hold the Association harmless for, from, and against all obligations undertaken or incurred by the Association at or on account of that individual Owner's special request and to repay the Association for all expenditures on account of the special request, and to reimburse the Association for the cost of performing any obligation of an Owner under the Project Documents that the Owner has failed to timely pay or perform; and
- (d) All other Assessments as may be fixed, established, and collected from time to time as provided in this Declaration or the other Project Documents, including, without limitation, any accrued interest, taxable court costs, late fees, attorneys' fees, fines, penalties, or other charges.

Pursuant to A.R.S. § 33-1256, the Association shall have a consensual and continuing lien upon the Ownership Unit against which the Assessment is made or has been incurred for the payment of all Assessments. Each Assessment also shall be the personal, joint and several obligation of each Person who was the Owner of the Ownership Unit at the time when the Assessment became due or charge was incurred. The personal obligation for delinquent Assessments shall not pass to the particular Owner's successors in title unless expressly assumed by them; however, the personal obligation of the prior Owner for the delinquent Assessments or charges shall not be deemed released or discharged by reason of any assignment, conveyance, or transfer of title of an Ownership Unit. Notwithstanding the previous sentence, in the event of an assignment, conveyance, or transfer of title to any Ownership Unit, the Assessment additionally shall continue as a consensual lien against the Ownership Unit in the hands of the subsequent Owner, except in those circumstances described in Section 4.9 below. The recordation of this Declaration shall constitute record notice and perfection of any Assessment or Assessment lien, and, notwithstanding Section 4.10 below, further recordation of any claim of lien (or Notice and Claim of Lien) for Assessment shall not be required for perfection or enforcement.

4.2 Purpose of Annual Assessments. The Annual Assessments levied by the Association shall be used for the purpose of:

- (a) promoting the recreation, health, safety, welfare, and desirability of the Project for its Owners;
- (b) operating the Common Elements (including payment of all taxes, utilities, maintenance, snow removal, and rubbish collection fees, if any, and if not individually billed to the Owners);
- (c) insuring (including a reserve fund for insurance deductibles), maintaining, repairing, painting, replacing and improving the Common Elements (including any reserve fund for the foregoing); and
- (d) enhancing and protecting the value, desirability, and attractiveness of the Units and Common Elements generally.

The Annual Assessment may include a reserve fund for taxes, insurance, insurance deductibles, maintenance, repairs, and replacements of the Common Elements and other improvements that the Association is responsible for maintaining.

4.3 Annual Assessments. The Annual Assessments for Condominium Units, Detached Garage Units and Storage Units shall be assessed separately. The 2013 Annual Assessments are as follows: (i) \$120.00 per Storage Unit; (ii) \$240.00 per Detached Garage Unit; and (iii) \$2,136.00 per Condominium Unit. The Annual Assessment amount shall be as determined by the Board, subject to the limitations below. The Board shall annually establish the budget for the Association, and no ratifications by the Condominium Unit Owners shall be required. To fulfill the requirements of the budget, the Board, without a vote of the Members, may increase the Annual Assessment in any fiscal year of the Association by an amount equal to the greater of: (i) twenty percent (20%) over the prior year's Annual Assessment; or (ii) a percentage calculated by dividing the Consumer Price Index in the most recent October by the Consumer Price Index for the October one (1) year prior (the term "Consumer Price Index" shall refer to the "United States Bureau of Labor Statistics, Consumer Price Index for All Urban Consumers (CPI-U), United States and selected areas, all items" issued by the U.S. Bureau of Labor Statistics, or its equivalent or revised or successor index). The Annual Assessment may not be increased above such amount in any fiscal year of the Association unless such increase is approved at a duly called regular or special meeting by an affirmative vote (in person or by absentee ballot) of a majority of the total number of Eligible Votes cast at that meeting. Increases to the Annual Assessments for Condominium Units, Detached Garage Units and Storage Units shall be calculated separately and such increases need not be uniform across Unit types (e.g. the increase in the Annual Assessment for Condominium Units in a given year may differ from the increase in the Annual Assessment for Storage Units for that same year).

4.4 Special Assessments. The Association, at any time and from time to time, in addition to the Annual Assessments authorized above or any other Assessments authorized elsewhere in this Declaration, may levy a Special Assessment against all of the Members for the

purpose of defraying, in whole or in part: (i) the cost of any construction, reconstruction, repair, or replacement (whether or not due to destruction, governmental taking, or otherwise) of a capital improvement upon or under the Common Elements (including fixtures and personal property related to the Common Elements); or (ii) the cost of any other unexpected or extraordinary expenses for repairs of the Common Elements or other Association matters; however, any Special Assessment must be approved at a duly called regular or special meeting by the affirmative vote (in person or by absentee ballot) of two thirds (2/3) of the total number of Eligible Votes cast at that meeting. Notwithstanding the foregoing, no approval of the Members shall be needed to levy Individual Expense Assessments against an Owner that arise out of the Owner's failure to comply with the Project Documents.

4.5 Notice and Quorum. Written notice of any meeting called for the purpose of taking any action authorized under Section 4.3 or 4.4 shall be sent to all Members not less than ten (10) days nor more than sixty (60) days in advance of the meeting. At the first meeting called regarding any given proposal, the presence (at the beginning of the meeting) of Members (in person or by absentee ballot) entitled to cast a majority of the Eligible Votes shall constitute a quorum. If the required quorum is not present, one other meeting for the same purpose may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be thirty percent (30%) of the total number of Eligible Votes. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

4.6 Uniform Rate of Assessment. Both the Annual Assessments outlined in Section 4.3 and the Special Assessments outlined in Section 4.4 must be fixed at a uniform rate for all assessable Units, based on the type of the Unit (e.g. all Condominium Units must be assessed at a uniform amount, all Storage Units must be assessed at a uniform amount, and all Detached Garage Units must be assessed at a uniform amount; however, the amounts may differ between the categories of Units). Annual Assessments may be collected in installments throughout the year as the Board may determine. The provisions of this Section 4.6 shall not preclude the Association from levying an Individual Expense Assessment against an Owner for or on account of special services or benefits rendered to, conferred upon, or obtained by or for that Owner or the Owner's Ownership Unit. If any expense incurred by the Association is caused by the misconduct of any Owner or the Owner's Permittees, the Association may levy an Individual Expense Assessment exclusively against the offending Owner's Ownership Unit.

4.7 Due Dates of Assessments. The Board shall endeavor to fix the amount of the Annual Assessment against each Unit at least thirty (30) days in advance of each Annual Assessment period; however, the Annual Assessment shall be binding notwithstanding any delay. Written notice of the Annual Assessment and of any Special Assessments shall be sent to every Owner subject to the Assessment. The due dates shall be established by the Board. The Association, acting through the Board, upon written demand and for a reasonable charge, shall furnish to any Owner or the Owner's authorized representative a certificate signed by an officer of the Association setting forth whether the Assessments and charges on a specified Ownership Unit have been paid and setting forth any other matters as may be required from time to time by Arizona law. A properly executed certificate of the Association as to the status of Assessments on an Ownership Unit and any other required matters shall be binding on the Association as of the date of issuance of the certificate and for the time period specified in the certificate.

Assessments shall be payable in the full amount specified by the notice, and no offsets against such amount shall be permitted for any reason whatsoever including, without limitation, abandonment of the Ownership Unit, a claim that the Association is not properly exercising its duties in maintenance or enforcement, or the non-use or claim of non-use by Owner of all or any portion of the Common Elements. Assessments may be collected in advance or in arrears as the Board shall determine in their sole discretion.

4.8 Effect of Nonpayment of Assessments - Remedies of the Association. Any Assessment that is not paid within fifteen (15) days after the due date shall be subject to a one-time late charge of twenty-five dollars (\$25.00) and, additionally, shall bear interest from the due date at the minimum rate of twelve percent (12%) per annum or any other legal interest rate approved by the Board. Each Owner of an Ownership Unit, by accepting a deed for that Ownership Unit (whether or not expressed in the deed or conveying instrument), or otherwise becoming an Owner, vests in the Association and its agents the right and power to bring all actions against the Owner personally for the collection of all Assessments due under the Project Documents as a debt and to enforce the lien securing the Assessment by all methods available for the enforcement or foreclosure of liens. The Association shall have the power to bid in any foreclosure, sheriff's sale, or similar sale (whether or not the foreclosure was initiated by the Association or some other Person) and to acquire, hold, lease, Mortgage, and convey the Unit purchased. The Association may institute suit to recover a money judgment for unpaid Assessments of the Owner without being required to foreclose its lien on the Unit and without waiving the lien that secures the unpaid Assessments. Any foreclosure may be instituted without regard to the value of the Unit, the solvency of the Owner, or the relative size of the Owner's default. The Assessment lien and the rights of enforcement under this Declaration shall be in addition to and not in substitution of all other rights and remedies that the Association may have under the Project Documents or under Arizona law.

4.9 Subordination of the Lien to Mortgages. Except as established under A.R.S. § 33-1256 and regardless of whether or not a Notice and Claim of Lien has been recorded, the lien for Assessments is prior to all other liens, interests and encumbrances on an Ownership Unit except: (i) liens and encumbrances recorded before the recordation of the Original Declaration; (ii) recorded First Mortgage on an Ownership Unit; and (iii) liens for real estate taxes and other governmental assessments or charges against the Ownership Unit. The sale or transfer of any Ownership Unit shall not affect the lien for Assessments or the personal obligation of the Owner to pay all Assessments arising during the Owner's ownership of the Ownership Unit; however, the sale or transfer of any Ownership Unit pursuant to a judicial foreclosure or trustee's sale by a Mortgagee shall extinguish that portion of the lien on the Ownership Unit (but not the personal obligation) that became due prior to the judicial foreclosure or trustee's sale. In the case of a sale or transfer by judicial foreclosure or trustee's sale by a Mortgagee, the Mortgagee or other successor Owner shall not be liable for any Assessments that become due prior to the sale or transfer by the Mortgagee. No sale or transfer pursuant to a judicial foreclosure or trustee's sale of any Mortgagee shall relieve the foreclosed Owner from personal liability or shall act to release the lien on any Assessments that may become due or arise after the judicial foreclosure or trustee's sale. A sale or transfer pursuant to a judicial foreclosure or trustee's sale, however, shall not be construed to release any Owner or previous Owner from the Owner's personal obligation to pay any Assessment arising during the Owner's or previous Owner's ownership of the

Ownership Unit, and the Association may enforce the personal obligation to pay the Assessments arising during the Owner's ownership of the Ownership Unit in any manner permitted under Arizona law or the Project Documents.

4.10 Notice of Lien. Without affecting the priority and perfection of any Assessment that has been perfected as of the date of recordation of this Declaration, the Association may give (but is not obligated to give) notice to any Owner whose Assessment is due and unpaid by mailing to the Owner a copy of a "Notice and Claim of Lien" which may state, among other things, the following:

- (a) The last known name of the delinquent Owner;
- (b) The legal description or street address of the Ownership Unit against which the claim of lien is made;
- (c) The amount claimed to be due and owing from the Owner and assessed against the Ownership Unit; and
- (d) A statement that the claim is made by the Association pursuant to the terms of the Declaration and the other Project Documents.

Each default in the payment of any Assessment shall constitute a separate basis for a claim of lien, but any number of defaults may be included within a single Notice and Claim of Lien. The Association may record a Notice and Claim of Lien against the delinquent Owner's Ownership Unit. The Notice and Claim of Lien may be executed by any officer of the Association, the managing agent for the Association, or legal counsel for the Association, but in all events the lien will remain that of the Association.

4.11 Initial Working Capital Contribution by Owners. Upon acceptance of a deed for an Ownership Unit (whether or not expressed in the deed or conveying instrument) or otherwise becoming an Owner, each Owner shall contribute to the working capital of the Association an amount equal to one-sixth (1/6) of the Annual Assessment then in effect as determined in accordance with this Article 4. This amount shall be deposited by the buyer into the purchase and sale escrow and disbursed from the purchase and sale escrow directly to the Association. All amounts paid as working capital shall be nonrefundable and shall not act as a credit against any assessment payable by an Owner pursuant to this Declaration.

## **ARTICLE 5**

### **COMMON ELEMENTS AND UNIT MAINTENANCE**

5.1 Common Elements. Except as provided in Sections 5.2 or 5.3 below, the Association shall be responsible for the maintenance, repair, and replacement of the Common Elements (including the private portions of the water and sewer systems on the Project, the exterior and the structural elements of all garages, all structural elements of the Buildings such as walls, patios, and balconies, and the roofs of the Buildings). Without any approval of the



Owners, the Association may: (i) reconstruct, repair, replace, and refinish any Common Elements; (ii) maintain, repair, and landscape any shared entry area for the Project (whether established through easement, license, or otherwise); and (iii) do any other acts deemed necessary to preserve, beautify, and protect the Common Elements in accordance with the general purposes specified in the Project Documents. The Board shall be the sole and absolute judge as to the appropriate maintenance of the Common Elements. Notwithstanding anything contained in this Section 5.1, the Association will have no obligation to perform any maintenance or repair work that is performed by any municipality or provider utility company responsible for the maintenance of any utilities or improvements located within any Common Elements. No Owner may alter, remove, injure, damage, or interfere in any way with any landscaping, lawns, plants, irrigation systems, sprinklers, shrubs, trees, and the like, if any, placed on the Common Elements. No Owner may plant any plants, shrubs, trees or flowers on the Common Elements without prior written approval of the Board.

5.2 Repairs Necessitated by Owner. In the event that the need for maintenance or repair to the Common Elements or Ownership Units is caused through the acts or omissions (including negligent acts or omissions) of an Owner, the Owner's Permittees, or any pet of the Owner, the cost of the maintenance or repairs, including the deductible portion of any applicable insurance policy, shall be assessed as an Individual Expense Assessment against the Ownership Unit owned by that Owner, without regard to the availability of any insurance proceeds payable to the Association for the cost of the maintenance or repairs. In addition to the foregoing, if the Owner of a given Ownership Unit is held liable to the Association by a court of competent jurisdiction for maintenance or repair work performed by the Association to any other Ownership Unit (i.e., an Ownership Unit not owned by that Owner), the amount of that judgment shall be assessed as an Individual Expense Assessment against the Ownership Unit owned by such Owner.

5.3 Maintenance of Ownership Units. Each Owner shall maintain, repair, and replace, at the Owners' expense and without disturbance to the rights of other Owners:

- (a) All portions of the Owner's Ownership Unit;
- (b) The interior portions of the Ownership Unit, including, without limitation:
  - (i) service equipment such as a dishwasher, laundry, refrigerator, microwave, oven, and stove, whether or not these items are built-in fixtures;
  - (ii) interior fixtures such as electrical and plumbing fixtures, tubs, toilets, sinks, floor coverings, and surfaces except the floor slab and subfloor; and
  - (iii) all interior surfaces including but not limited to windows, doors, inside paint, and other inside wall finishes;
- (c) All windows and glass doors (including the cleaning of the interior and exterior of any windows and glass doors), and the exterior of the doors of the Detached Garage Units and Storage Units;
- (d) The doors to the Condominium Unit, Storage Unit and Detached Garage Unit (including locks), except for the exterior painting of such doors, which shall be done by the Association.

(e) The heater, air handler, and hot water heater servicing the Unit;

(f) The decorating within the Ownership Unit including, without limitation, painting, wallpapering, paneling, floor covering, draperies, window shades, curtains, lamps, and other furniture and interior decorating. Subject to the provisions of this Declaration, each Owner shall be entitled to the exclusive use of the interior surfaces of the perimeter and interior walls, floors, and ceilings within the Ownership Unit, and each Owner shall maintain these surfaces in good condition at the Owner's sole expense. Maintenance by the Owners may be subject to the rules and regulations of the Association as may be necessary for the common good of the Property;

(g) To the extent not included within the categories identified above in this Paragraph 5.3, the Limited Common Elements of the type described in subparagraphs (iii) and (vi) of Section 1.16 of this Declaration.

5.4 Owner's Failure to Maintain. If an Owner fails to perform any items of maintenance and repair required under the terms of this Article 5, then, after reasonable written notice, as determined by the Board, has been given to that Owner, the Association shall have the right (but not the obligation) to enter upon or into that Ownership Unit or Limited Common Elements and to provide the required maintenance or make the required repairs or replacements. Any entry by the Association or its agents shall not be considered a trespass. The cost of these maintenance items and repairs shall be assessed as an Individual Expense Assessment upon the Ownership Unit owned by that Owner. The rights of the Association described above are in addition to any other remedies available to the Association under the Project Documents or Arizona law.

5.5 Access at Reasonable Hours. For the purpose of performing the maintenance, repairs, or replacements permitted under Section 5.4, the Association and the Association's agents or employees shall have the right, after reasonable notice to an Owner (except in the case of emergency, in which case no notice need be given), to enter onto the Owner's Ownership Unit or Limited Common Elements at any reasonable time. For the purposes of performing the maintenance authorized by Sections 5.1 and 5.2 upon any portion of the Common Elements, the Association and the Association's agents or employees may enter onto the Common Elements without notice to any Owner at reasonable hours.

5.6 Exterior Repairs and Alterations. Notwithstanding the fact that the Owner may be required to maintain certain of the Limited Common Elements that are outside of the physical boundaries of the Unit, the Owner will not be permitted to change any exterior color, style, or condition of the Limited Common Elements without the prior approval of the Board.

5.7 General Standards. Except as may be otherwise provided in this Declaration or the other Project Documents, each respective Owner shall maintain the areas they are respectively responsible for at a level of general maintenance at least equal to that prevailing with respect to areas of a similar nature located in residential communities commonly and generally deemed to be of the same quality as the Project.

5.8 Utilities. Except for those utility costs that are metered collectively for the Common Elements, the Detached Garage Units, and the Storage Units and paid by the Association as a common expense, all utilities for Units will be metered separately to each Unit and will be the responsibility of the respective Owners for payment.

## **ARTICLE 6** **POWERS AND AUTHORITY OF THE OWNERS' ASSOCIATION**

6.1 Powers and Authority. In addition to the duties and powers enumerated in the other Project Documents or elsewhere in the Declaration, the Association, through the Board, shall have the power and authority to:

(a) Common Elements. Maintain and otherwise manage the Common Elements and all other real and personal property that may be acquired by the Association;

(b) Legal and Accounting Services. Obtain legal, accounting, and other services deemed by the Board, at its discretion, to be necessary or desirable in the operation of the Association and the Common Elements;

(c) Easements. Subject to the limitations, if any, imposed by the Project Documents, grant easements where necessary for utilities, sewer facilities, and CATV on, under, over, through, upon, or across the Common Elements to serve the Common Elements or any Unit;

(d) Employment of Managers. Employ affiliated or third-party managers or other persons and contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Association;

(e) Purchase Insurance. Purchase insurance for the Property for risks, with companies, and in amounts as the Board determines to be necessary, desirable, or beneficial, subject to the provisions of Section 6.2 below;

(f) Other. Perform other acts authorized expressly or by implication under this Declaration and the other Project Documents including, without limitation, the right to construct improvements on the Units and Common Elements; and

(g) Enforcement. Enforce the provisions of this Declaration and the other Project Documents by all legal means, including, without limitation, the expenditure of funds of the Association, the employment of legal counsel, the commencement of actions, and the establishment of a system of fines or penalties for the enforcement of this Declaration and the other Project Documents.

## 6.2 Insurance.

(a) Liability Insurance. Comprehensive general liability insurance covering the Common Elements shall be maintained by the Association at all times. The premiums shall be paid out of the Association's funds. The insurance shall be carried with reputable companies authorized and qualified to do business in Arizona. The minimum amounts of coverage shall be \$1,000,000 for bodily injury and property damage on a combined single limit basis. The policy shall name as insureds the Owners, the Association and its directors, officers, employees, and agents in the scope of their employment. This policy shall include, but need not be limited to, insurance against injury or damage occurring in or on the Common Elements.

(b) Hazard and Multi-Peril Insurance - Master Policy for Common Elements. A master or blanket hazard and multi-peril insurance policy naming the Association as the insured shall be maintained by the Association at all times. The premiums shall be paid out of the Association's funds. The hazard insurance policy shall be carried with reputable companies authorized and qualified to do business in the State of Arizona and shall insure against loss from fire and other hazards covered by the standard extended coverage endorsement and "all risk" endorsement to the hazard insurance policy for the full replacement cost of all of the Common Elements (excluding land, foundations, excavations, and other items that are usually excluded from insurance coverage), and Limited Common Elements. The hazard insurance policy shall be in an amount determined from time to time by the Board in its sole discretion.

(c) Other Insurance. The Board may purchase (but is not obligated to purchase) additional insurance as the Board may determine to be advisable or necessary including, but not limited to, workers' compensation insurance, boiler explosion insurance, demolition insurance to remove improvements that are not rebuilt, flood insurance, fidelity bonds or insurance, director and officer liability insurance, and insurance on personal property owned by the Association. In addition, the Association may, but is not obligated to, provide coverage for the Units that is reasonably available and is in the best interest of the Association and the Owners, as determined by the Board. If the Association opts to not carry insurance on the Units, it may require the Owners to carry property insurance on their Units. If the Board determines that it would be in the best interest of the Association and the Owners for the Association to carry insurance on the Units, the Board may modify the insurance coverage upon providing the Owners with thirty (30) days written notice of the change to insurance coverage. If, on the other hand, the Board determines that it is in the best interest of the Association and the Owners to modify or eliminate insurance carried by the Association on the Units, the Board may modify the insurance coverage upon providing the Owners with thirty (30) days written notice of the change to insurance coverage so that the Owners may obtain the necessary additional coverage on the Units. By virtue of owning a Unit subject to this Declaration, each Owner covenants and agrees with all other Owners and the Association that each Owner shall carry "all-risk" casualty insurance on all Units owned by the Owner, to the extent such insurance is not provided by the Association. Without limiting any other provision of the Declaration, it shall be each Owner's sole responsibility to secure comprehensive personal liability insurance, theft, fire, multi-peril, and other hazard insurance covering loss or damage to the Owner's personal property, furniture, fixtures and any other insurance not carried by the Association that the Owner desires. The premiums on any insurance maintained by the Association shall be paid out of the Association's

funds, and the Association may assess the Owners in advance for the estimated costs of these types of insurance as part of the Annual Assessment or a Special Assessment. The deductible shall be paid by the Association and/or Owners as set forth in this Declaration or the other Project Documents.

(d) General Provisions on Insurance. The Board is granted the authority to negotiate loss settlements with the appropriate insurance carriers covering insurance purchased and obtained by the Association pursuant to Paragraph 6.2. Any two (2) Directors of the Association may sign a loss claim form and release form in connection with the settlement of a loss claim, and their signatures shall be binding on the Association and the Members. The deductible shall be paid by the party who would be responsible for the repair in the absence of insurance and, in the event multiple parties are responsible but without waiving any right to enforce joint and several liability, the deductible shall be allocated in relation to the amount each party's responsibility bears to the total loss, as determined by the Board. The amount of the deductible may be assessed as an Individual Expense Assessment against the applicable Ownership Unit(s). Where possible, each insurance policy maintained by the Association must require the insurer to notify the Association in writing at least ten (10) days before the cancellation or any substantial change to the Association's insurance.

(e) Nonliability of Association. Notwithstanding the requirement of the Association to obtain insurance coverage as stated in this Declaration, neither the Association, nor any director, officer, or agent of the Association shall be liable to any Owner or any other party if any risks or hazards are not covered by the insurance to be maintained by the Association or if the amount of insurance is not adequate, and it shall be the responsibility of each Owner to ascertain the coverage and protection afforded by the Association's insurance and to procure and pay for any additional insurance coverage and protection that the Owner may desire.

(f) Provisions Required. The comprehensive general liability insurance referred to in Subsection 6.2(a) and, if applicable, the hazard insurance policy referred to in Subsection 6.2(b) shall contain the following provisions (to the extent available at a reasonable cost):

(1) Any "other insurance" clause shall exclude insurance purchased by any Owners or First Mortgagees;

(2) The coverage afforded by the policies shall be primary and shall not be brought into contribution or proration with any insurance that may be purchased by any Owners or First Mortgagees;

(3) The act or omission of any one or more of the Owners or the Owner's Permittees shall not constitute grounds for avoiding liability on the policies and shall not be a condition to recovery under the policies;

(4) A "severability of interest" endorsement shall be obtained that shall preclude the insurer from denying the claim based upon negligent acts or omissions of the Association or Owners;

(5) Any policy of property insurance that gives the carrier the right to elect to restore damage in lieu of a cash settlement must provide that this election is not exercisable without the prior written consent of the Association;

(6) Each insurer shall waive its rights to subrogate under each policy against the Association (and its directors, officers, agents, and employees) and the Owner (and the Owner's Permittees);

(7) A standard Mortgagee clause shall be included and endorsed to provide that any proceeds shall be paid to the Association, for the use and benefit of First Mortgagees as their interest may appear, or endorsed to fully protect the interest of First Mortgagees and their successors and assigns;

(8) Any insurance trust agreement shall be recognized; and

(9) "Agreed Amount," "Construction Code," "Steam Boiler and Machinery," "Special Condominium," and "Inflation Guard" endorsements shall be obtained, when available.

6.3 Other Duties and Powers. The Association, acting through the Board and if required by this Declaration or by law or if deemed necessary or beneficial by the Board for the operation of the Association or enforcement of this Declaration, shall obtain, provide, and pay for any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, or insurance, or pay any taxes or assessments. If, however, any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, insurance, taxes, or assessments are specifically provided or apply to particular Ownership Units, the cost shall be assessed to the Owners of these Ownership Units as an Individual Expense Assessment.

6.4 Association Rules. The Association, through the Board, from time to time and subject to the provisions of this Declaration, may adopt, amend, and repeal rules and regulations for the Project, as well as design guidelines governing exterior alterations to the Project. The Association Rules may restrict and govern the use of any area by any Owner or the Owner's Permittees or the Owner's pets and additionally may establish a system of fines and charges for violations of the Project Documents; however, the Association Rules may not discriminate among Owners. A copy of the Association Rules shall be available for inspection by the Members at reasonable times. The Association Rules shall not be interpreted in a manner inconsistent with this Declaration or the Articles or Bylaws, and, upon adoption, the Association Rules shall have the same force and effect as if they were set forth in full and were a part of this Declaration.

6.5 Protection of Forest Resources. Notwithstanding anything to the contrary contained in this Declaration, the Association shall maintain and manage the Common Elements in compliance with all applicable rules and regulations regarding the protection of forest resources.

6.6 Personal Liability. No Board member, officer, or committee member, employee or representative of the Association, nor the Association, shall be personally liable to any Owner, or to any other Person, including the Association, for any damages, losses, costs, fees (including reasonable attorneys' fees), or any prejudice suffered or claimed on account of any of the acts, omissions, errors or negligence, unless such Person has failed to act in good faith or has engaged in willful or intentional misconduct.

6.7 Limitation of Director Liability. In accordance with the provisions of the Nonprofit Corporation Act (set forth at A.R.S. § 10-3101 et seq., as may be amended from time to time), each director shall be immune from civil liability and shall not be subject to suit indirectly or by way of contribution for any act or omission resulting in damage or injury if said director was acting in good faith and within the scope of his official capacity (which is any decision, act, or event undertaken by the Association in furtherance of the purpose or purposes for which it is organized) unless such damage or injury was caused by willful and wanton or grossly negligent conduct of the director. This provision intends to give all directors the full extent of immunity available under the Nonprofit Corporation Act.

6.8 Indemnification. The Association shall indemnify any Person who incurs expenses or liabilities by reason of the fact that he or she is or was an officer, director, or agent of the Association. This indemnification shall be mandatory in all circumstances in which indemnification is permitted by law; provided, however, that the Association shall have the right to refuse indemnification if the Person to whom indemnification would otherwise have been applicable shall have unreasonably refused to permit the Association, at its own expense and through counsel of its own choosing, to defend him or her in the action.

6.9 Borrowing of Funds. The Association may borrow money in such amounts as are approved by the Owners, subject to the procedures set forth herein. In connection therewith, the Association may assign its right to future income, including the right to receive Assessments, as collateral for such loan. The Board, after consulting with one or more lending institutions, shall submit to the Owners a borrowing plan containing the proposed amount, rates, terms, and security of the loan. The borrowing plan must be approved by the written consent or affirmative vote of Owners representing two-thirds (2/3) of the Eligible Votes in the Association. The rates, terms, and security, and periods of time of the loan are subject to change pursuant to changes in available credit from the time the borrowing plan was obtained from the lending institution and when the borrowing plan was approved by the Owners. The amount borrowed, however, may not be an amount greater than approved by the Owners.

## **ARTICLE 7** **CONDEMNATION**

7.1 Taking. If, at any time during the term of this Declaration, all or any part of the Project is taken or condemned by any public authority or sold or otherwise disposed of in lieu of or in advance of any taking (collectively referred to as "Taking", "Taken", or "Condemned"), the provisions of this Article 7 shall apply.

7.2 Award. All compensation, damages, or other proceeds from the Taking shall be payable to the Association. The compensation, damages, and other proceeds, less the amount of reasonable and necessary costs and expenses including, without limitation, attorneys' fees, appraisal fees, and court costs incurred by the Association in connection with the Taking, are referred to as the "Award."

7.3 Total. In the event that the entire Project is Taken or Condemned, the Condominium shall terminate. The Award shall be apportioned among the Owners ratably according to their Fractional Interests; however, if a different standard is employed in the valuation used to measure the Award in the negotiation, judicial decree, or otherwise, the same standard shall be employed to determine the apportionment among the Owners to the extent it is relevant and applicable. On this basis, the Association, as soon as practical, shall determine the share of the Award to which each Owner is entitled. All shares shall be paid into a separate account and be disbursed as soon as practicable by check payable jointly to the Owners and their respective First Mortgagees.

7.4 Partial.

(a) In the event that less than the entire Project is Taken or Condemned, the Condominium shall not terminate. Each Owner shall be entitled to a share of the Award to be determined in the following manner: (i) the Board shall allocate that portion of the Award attributable to the Taking of or injury to a particular Ownership Unit and/or improvements an Owner made within his own Ownership Unit to the particular Ownership Unit involved; (ii) as soon as practical, the Board shall reasonably and in good faith allocate that portion of the Award attributable to taking of or injury to the Common Elements and apportion that amount among the Owners in accordance with their Fractional Interests in the Condominium; (iii) the Board shall allocate that portion of the Award attributable to severance damages among those Units that were not Taken or Condemned; and (iv) the remainder of the Award shall be apportioned as the Association determines to be equitable under the circumstances. If an allocation of the Award is already established by negotiation, judicial decree, or otherwise, the Association shall employ the same allocation to determine the apportionment among the Owners to the extent it is relevant and applicable. Distribution of apportioned proceeds shall be made by check payable jointly to the respective Owners and their respective First Mortgagees.

(b) Notwithstanding anything to the contrary, if any Ownership Unit is acquired by Condemnation or a Taking, or if part of an Ownership Unit is acquired by Condemnation or a Taking that leaves the Owner with a remnant that may not practically or lawfully be used for any purpose permitted by the Declaration, the Award must compensate the Owner for the Ownership Unit, and, in the case of the Taking of an Owner's Condominium Unit, its Fractional Interest in the Common Elements, regardless of whether any Common Elements are Taken or Condemned. Unless the judicial decree or negotiation provide otherwise, upon acquisition of the Condominium Unit (or a portion of a Condominium Unit that leaves a remnant that may not be practically or lawfully used for any purpose permitted by the Declaration), the Condominium Unit's Fractional Interest is automatically reallocated to the remaining Condominium Units in accordance with the formula set forth in Section 1.14. Any remnant of an



Ownership Unit remaining after part of an Ownership Unit is Taken becomes a Common Element.

(c) If part of the Common Elements is acquired by Condemnation or a Taking, the portion of the Award attributable to the Common Elements Taken shall be paid to the Association for the benefit of the Owners.

7.5 Effect. Without limiting Section 7.4 above, in the event a partial Taking results in the Taking of all of a Building or a part of a Building with the result that the remainder of the Building cannot reasonably be restored to an architectural whole, the Owners of the Units located in each applicable Building (regardless of whether all or any portion of the Owner's undivided Unit was Taken) automatically shall cease to be Members of the Association as of the time of the Taking, which, for the purposes of this Article 7, shall be the date upon which possession is acquired by the condemnor or the date upon which title is conveyed to the condemnor, whichever occurs first. Thereafter, the Board shall reallocate the Fractional Interests of the remaining Owners in the Condominium pursuant to the formula described in Section 1.14 so that the total percentage of all remaining Units shall be one hundred percent (100%).

7.6 Reconstruction. Any reconstruction and repair necessitated by a partial Taking shall be governed by the procedures specified in Article 9.

7.7 Separate Compensation. Nothing contained in this Article 7 shall restrict the rights of lessees, Mortgagees, or any other Person holding an interest in an Ownership Unit or its Common Elements from receiving separate compensation or a portion of the compensation payable, or both, pursuant to this Article 7 and A.R.S. § 33-1206 (as and if amended).

## **ARTICLE 8** **USE RESTRICTIONS**

In addition to all other covenants and restrictions contained in this Declaration and the other Project Documents, the use of the Common Elements, Limited Common Elements, and the Units is subject to the following:

8.1 Restricted Use. Except as otherwise provided in this Declaration, a Condominium Unit shall be used only by a Single Family and only for Single Family Residential Use. A Detached Garage Unit shall be used only by the Owner or the Owner's Permittees solely for purposes incidental to the Single Family Residential Use of the Unit. All Detached Garage Unit doors must remain closed except while the Detached Garage Unit is in use for cleaning, entry, and exit. A Storage Unit shall be used only by the Owner or the Owner's Permittees for purposes incidental to the Single Family Residential Use of the Unit.

8.2 Business and Related Uses. No Unit shall ever be used, allowed, or authorized to be used in any way, directly or indirectly, for any business, commercial, manufacturing, industrial, mercantile, commercial storage, vending, or other similar uses or purposes. The foregoing restriction shall not prevent an Owner from conducting his or her personal affairs on

the Unit or in the Unit and shall not be deemed to prevent an Owner from using the Unit for business purposes that: (i) utilize a minimal portion of the Unit; (ii) do not result in the use of the Unit for business meetings, appointments, gatherings, or day care; (iii) do not result in shipping or receiving from or to the Unit; and (iv) do not otherwise violate local zoning and use laws.

8.3 Signs. No emblem, logo, sign, or billboard of any kind shall be displayed on any Unit or the Common Elements so as to be visible from any other Unit or from the Common Elements, except for: (i) signs used to advertise the Units for sale or lease as required to be permitted by Arizona law; (ii) signs on the Common Elements as may be placed and approved by the Board; (iii) signs that, by law, must be permitted; (iv) any signs as may be required by legal proceedings; and (v) signs as may be approved in advance by the Board in terms of number, type, and style.

8.4 Noxious or Offensive Activities. No noxious or offensive activity shall be engaged in (or permitted to be engaged in) any Unit or the Common Elements. No act or use may be performed in any Unit or the Common Elements that is or may become an annoyance or nuisance to the neighborhood generally or other Owners specifically, or that interferes with the use and quiet enjoyment of any of the Owners and of the Unit. No Owner shall permit any thing or condition to exist upon any property that induces, breeds, or harbors infectious plant diseases or infectious or noxious insects.

8.5 Animals. No animals, livestock, horses, birds, or poultry of any kind shall be raised, bred, or kept in any Unit or structure in a Unit; however, an Owner may keep up to two (2) dogs, or two (2) cats, or two (2) other common household pets, or two (2) of any combination of permitted dogs, cats, or other common household pets in the Unit if permitted under local zoning ordinances. Additional pets are prohibited unless approved in advance by the Board. The foregoing restriction will not apply to fish contained in indoor aquariums. These permitted types and numbers of pets shall be permitted for only so long as they are not kept, bred, or maintained for any commercial purpose and for only so long as they do not result in any annoyance or nuisance to other Owners. No pets shall be permitted to move about unrestrained in the Project, Common Elements, or any public or private street within the Project. Each Owner shall be responsible for the immediate removal and disposal of the waste or excrement of all the Owner's pets from the Project. Owners shall be liable for all damage caused by their pets. The Board may establish a system of fines or charges for any infraction of the foregoing, and the Board will be the sole judge for determining whether a pet is a common household pet or whether any pet is an annoyance or nuisance.

8.6 Trash. All rubbish, trash, and garbage shall be regularly removed from the Units and Limited Common Elements and shall not be allowed to accumulate on any part of the Project. Remodeling debris and waste shall be disposed of outside of the Project, and not in dumpsters within the Project. Debris and waste includes, but is not limited to, paint, solvents, tile, cement, grout, wallboard, carpet, wood and metal. In the case of an Owner who allows trash, debris or waste to accumulate on any portion of the Project, the Board, on behalf of the Association, may arrange and contract for the removal and cleanup of the trash, debris or waste, and the costs shall become an Individual Expense Assessment against the Ownership Unit owned by that Owner. No incinerators shall be kept or maintained on any Unit.

8.7 Woodpiles and Storage Areas. Woodpiles and open storage areas may not be maintained upon any portion of the Project. At no time may an Owner maintain any storage on the Project of Commercial or Recreational Vehicles (as defined in Section 8.15) or Family Vehicles (as defined in Section 8.16) in any stage of construction, reconstruction, modification, or rebuilding. No vehicle frames, bodies, engines, or other parts or accessories may be stored on the Project. Notwithstanding the foregoing, an Owner may store a reasonable quantity of firewood on the balcony of the Owner's Condominium Unit, in accordance with City of Flagstaff fire restrictions, provided that such firewood is for the Owner's personal use in the Unit, and further provided that the stored firewood is not visible from any other Unit or from the Common Elements.

8.8 Antennas. Unless governed by 47 C.F.R. § 1.400 (Over-the-Air Reception Devices Rule), as amended, repealed, or recodified, no antenna or other device for the transmission or reception of television, internet or radio signals or any other form of electromagnetic radiation or any associated equipment shall be erected, used or maintained outdoors on any Unit or the Common Elements, whether attached to a building or structure or otherwise, so as to be visible from any other Unit or from the Common Elements, unless approved in writing by the Board. Any device governed by 47 C.F.R. § 1.400 (Over-the-Air Reception Devices Rule), as amended, repealed, or recodified, shall comply with the applicable antenna installation rules of the Association and shall be mounted, to the extent reasonably possible, so as to not be visible from any other Unit or from the Common Elements.

8.9 Windows and Window Covering. Sheets, newspapers, and similar items may not be used as temporary window coverings. No aluminum foil, reflective screens, awnings, reflective glass, mirrors, or similar reflective materials of any type shall be placed or installed inside or outside of any windows of a Unit without the prior written approval of the Board. No air conditioners, swamp coolers, or similar units may be placed in any window of a Unit.

8.10 Leasing. Nothing in the Declaration shall be deemed to prevent the leasing of a Unit to a Single Family from time to time by the Owner of the Unit, subject to all of the provisions of the Project Documents, and further subject to the restriction that no lease may be for a lease term less than three (3) months. Any Owner who leases his Unit shall promptly notify the Association and shall advise the Association of the lease period and the name of each adult occupying the Unit under the lease. The lease agreement for the lease of any Unit must contain a provision whereby the tenant acknowledges receipt of a copy of the Project Documents (with the exception of the Plat) and agrees to fully abide by the provisions of the Project Documents. The Owner of the leased Unit shall be fully liable to the Association for the actions of the Unit's tenants. No Owner shall be permitted to lease the Owner's Unit for transient or hotel purposes. Detached Garage Units and Storage Units may not be leased apart from the appurtenant Condominium Unit.

8.11 Machinery. No machinery of any kind shall be placed, operated, or maintained in the Project other than machinery that is usual and customary in connection with the use, remodeling, maintenance, or construction of a Unit, and other than machinery that the Association may require for the operation and maintenance of the Property.

8.12 Increased Risk. Nothing shall be done or kept in or on any Unit or the Common Elements that will increase the rate of insurance on the Common Elements without the prior written consent of the Board. No Owner shall permit anything to be done within the Project that will result in the cancellation of insurance on any Unit or any part of the Common Elements, or that would be in violation of any law.

8.13 Outdoor Burning and Lighting. There shall be no outdoor burning of trash, debris, wood, or other materials, including outdoor barbeques, other than in the designated barbeque areas provided in the Common Elements. Without limiting the provisions of Section 8.4 above and except as originally installed by the Declarant or as otherwise approved by the Board, no spotlights, flood lights, or other high intensity lighting shall be placed or utilized upon any Unit so that the light is directed or reflected on any Common Element or any other Unit.

8.14 Hazardous Wastes. No Owner shall permit any hazardous wastes (as defined under all applicable federal and state laws), gasoline, kerosene, cleaning solvents, or other flammable liquids, asbestos, asbestos containing material, paint, or any petroleum products or by-products to be kept, dumped, maintained, stored, or used in, on, under, or over any portion of the Project; provided, however that an Owner may store in the Owner's Detached Garage Unit such gasoline and cleaning materials as may reasonably be required by the Owner in connection with the Family Vehicle (as defined in Section 8.16) stored in that Detached Garage Unit. Under no circumstances shall the total volume of gasoline and cleaning materials stored by any Owner in the Detached Garage Unit exceed two (2) gallons.

8.15 Commercial and Recreational Vehicles. No commercial truck, freight trailer, semitrailer or similar commercial equipment or vehicle ("Commercial Vehicles"), and no recreational vehicle, wagon, boat trailer, automobile trailer, camper, camper shell, mobile home, motor home, boat, dune buggy, all-terrain vehicle, bus, or similar recreational equipment or vehicle ("Recreational Vehicles") may be stored or parked within the Project, except that Recreational Vehicles owned by an Owner may be parked for periods not exceeding three (3) days in designated parking areas upon prior written authorization from the Board. Such Board authorization must be obtained at least five (5) days prior to the parking of such Recreational Vehicle.

8.16 Covered Parking Spaces and Parking of Family Vehicles. Each Unit may be assigned up to one (1) covered parking space. Additional Family Vehicles that cannot be parked in the covered parking space and the Detached Garage Unit, if any, owned by the applicable Owner, may be parked in any undesignated parking areas on the Project so long as the Family Vehicles are operable and are, in fact, operated from time to time. A "Family Vehicle" means any currently registered domestic or foreign cars, station wagons, sport wagons, pick-up trucks, vans, mini-vans, jeeps, sport utility vehicles, motorcycles, and similar non-commercial and non-recreational vehicles that are used by the Owner of the applicable Unit or the Owner's Permittees for family and domestic purposes only. A "Family Vehicle" also includes: (i) pick-up trucks with no more than three-quarter (3/4) ton capacity that, with or without attached camper shells, are no more than eight (8) feet in height, measured from ground level; and (ii) non-commercial pick-up trucks of greater than three-quarter (3/4) ton capacity that the Board determines, in advance of

use within the Project, to be similar in size and appearance to smaller vehicles. A “Family Vehicle” does not include any of the Commercial Recreational Vehicles described in Section 8.15 above. Notwithstanding the foregoing provisions of this Paragraph 8.16, in no event shall the Owner or occupants of any Condominium Unit park more than three (3) motor vehicles on the Property at any one time.

8.17 Vehicle Repairs. Routine maintenance and repairs of Family Vehicles may be performed within an Owner’s Detached Garage Unit, but not in the Condominium Unit or anywhere else on the Project. No vehicles of any type may be constructed, reconstructed, or assembled anywhere within the Project. Without limiting the provisions of Sections 8.15 or 8.16 above, no Family Vehicle shall be permitted to be or remain anywhere on the Project (including in a Detached Garage Unit) in a state of disrepair or in an inoperable condition, including any flat tires.

8.18 Owner’s Failure to Comply with Use Restrictions. If an Owner fails to comply with any of the use restrictions described in this Article 8, then upon reasonable written notice, as determined by the Board, has been provided to that Owner, the Association shall have the right (but not the obligation) to enter upon or into the Unit or Limited Common Elements and take those actions as may be required to remedy the non-compliance. Any entry by the Association or its agents shall not be considered a trespass. The cost of the actions required to remedy the non-compliance shall be assessed as an Individual Expense Assessment against the Ownership Unit owned by that Owner. The rights of the Association described above are in addition to any other remedies available to the Association under the Project Documents or Arizona law.

8.19 Access at Reasonable Hours. For the purpose of performing the actions permitted under Section 8.18, the Association and the Association’s agents or employees shall have the right, after reasonable notice to an Owner (except in the case of emergency, in which case no notice need be given), to enter onto the Owner’s Ownership Unit or Limited Common Elements at any reasonable time.

## **ARTICLE 9**

### **CASUALTY DAMAGE**

9.1 Attorney-in-Fact. The Owners irrevocably appoint the Board as their true and lawful agent and attorney-in-fact (in their name, place, and stead) for the purpose of dealing with the Project in the event of its damage or destruction including, but not limited to, the right to negotiate with any insurer and adjust any loss covered by the insurance required by this Declaration. Each Owner by becoming an Owner of a Unit shall automatically constitute appointment of the Board as its agent and attorney-in-fact for the purposes outlined in this Declaration.

9.2 Restoration. The Board shall have full and complete authorization, right, and power to make, execute, and deliver any contract, deed, or other instrument with respect to the interest of an Owner that may be necessary or appropriate to exercise the power granted to the Board in this Declaration. Repair and reconstruction of the improvements as used in this Article

9 means restoring the Project to substantially the same condition that existed prior to the damage and with each Unit and the Common Elements having substantially the same vertical and horizontal boundaries as before. The proceeds of any insurance collected shall be used by the Board for the purpose of repair and reconstruction unless: (i) the Condominium is terminated; (ii) repair or replacement would be illegal under any state or local health or safety statute or ordinance; or (iii) eighty percent (80%) of the Owners, including every Owner of a Unit that will not be rebuilt, vote not to rebuild (the foregoing are collectively called “Events of Non-Repair”). If the damaged property is to be repaired and restored, no Owner or lienholder is entitled to receive payments of any portion of the proceeds of any insurance unless there is a surplus of proceeds after the damaged property has been completely repaired or restored.

9.3 Declaration. For the purposes of this Article 9, the following terms shall have the following meanings:

(a) “Casualty Event” means any event causing damage or destruction of all or part of the Project.

(b) “Total Destruction” means damage or destruction to the Project that renders eighty percent (80%) or more of the Condominium Units uninhabitable in the judgment of the Board.

(c) “Partial Damage” means any damage or destruction that is less than Total Destruction.

9.4 Costs. As soon as practicable after a Casualty Event, the Board shall obtain estimates that it deems reliable and complete of the costs of repair or reconstruction of the Project or that portion of the Project that was damaged or destroyed.

9.5 Partial Damage. Unless there occurs an Event of Non-Repair, any Partial Damage to the Project shall be repaired as promptly as possible by the Board as attorney-in-fact for the Owner or Owners, whether insurance proceeds are sufficient to cover the partial damage or not, and any cost of the repair or reconstruction in excess of insurance proceeds available and reserves, if any, shall be assessed as a Common Expense, or may be assessed against the applicable Unit Owner(s), to the extent allowable under this Declaration and by law. If the Owners vote not to rebuild any Condominium Unit pursuant to Section 9.2(iii), the unrepaired Condominium Unit’s Fractional Interest shall be automatically reallocated to the remaining Condominium Units.

9.6 Total Destruction. In the event of Total Destruction, the following provisions shall govern:

(a) Unless an Event of Non-Repair occurs, the repair and reconstruction promptly shall be performed by the Board as attorney-in-fact for the Owners.

(b) In the event that insurance proceeds (as estimated by the Board) are insufficient to cover the cost of repair and reconstruction in the judgment of the Board and there

has not previously occurred an Event of Non-Repair, the Board shall advise all Owners of this estimate and shall give notice of a special meeting of Owners to be held as soon as reasonably possible after the date of the Casualty Event for the purpose of determining whether or not the repair or reconstruction should be performed. The Condominium Project shall be reconstructed unless at least eighty percent (80%) of the Owners agree in writing to sell the entire remaining Project as provided below. Any necessary Assessment made in connection with the repair and reconstruction shall be charged as an Assessment to each Owner during the course of reconstruction at the times deemed necessary or desirable by the Board.

(c) If at least eighty percent (80%) of the Owners agree in writing, the Project shall be sold by the Board, as attorney-in-fact for each of the Owners, free and clear of the provisions contained in this Declaration and the other Project Documents. In this case, the insurance proceeds payable as a result of the Casualty Event and the sale proceeds shall be apportioned among the Owners ratably according to their Fractional Interests, and all proceeds shall be paid into separate accounts, each account representing one Condominium Unit. Each account shall be in the name of the Association and shall be further identified by the Condominium Unit designation and the name of the Owner or Owners. As attorney-in-fact, the Board shall use and disburse the total amount of each separate account without contribution from one account to another as follows: (i) for payment of taxes and special assessment liens in favor of any assessing entity and customary expenses of sale; (ii) for payment of the entire balance of the lien of any First Mortgage encumbering the Ownership Unit; (iii) for payment of unpaid Assessments and all costs, expenses and fees incurred by the Association and owed by the Owner; (iv) for payment of valid junior liens and encumbrances in the order and to the extent of their priority; and (v) the balance remaining, if any, shall be paid to the Owner.

9.7 Information. All repair and reconstruction work shall be done by licensed contractors of good reputation. Payment bonds, performance bonds, and statutory lien bonds may be required in the discretion of the Board, but all work shall be done under written contracts.

9.8 Termination. If it is determined that none of the Buildings shall be repaired or reconstructed because of damage or destruction, this Project shall be terminated and all of the Owners and all of the Mortgagees and lienholders of record of all of the Units appoint the Board, and each of the members of the board, as their attorney-in-fact for the purpose of executing, acknowledging, and recording a declaration withdrawing the Property from the Condominium.

9.9 Non-Repair. If portions of the entire Condominium are not repaired or replaced, the following shall apply:

(a) The insurance proceeds attributable to the damaged Common Elements in proportion to their undivided percentage interests shall be used to restore the damaged area to a condition compatible with the remainder of the Condominium;

(b) The insurance proceeds attributable to Ownership Units and undivided percentage interests that are not rebuilt shall be distributed in proration to their undivided percentage interests to the Owners of those Ownership Units or to lienholders, as their respective interests may appear; and

(c) The remainder of the insurance proceeds shall be distributed to all of the Owners or lienholders as their interests may appear in proration to the Common Element interest of all of the Units.

## **ARTICLE 10**

### **RESERVATION OF EASEMENTS**

10.1 Public Utility Easements. There is a permanent and non-exclusive easement upon, across, over, and under those portions of the Common Elements depicted and described on the Plat as a public utility easement or p.u.e. for the installation and maintenance of utilities servicing the Project, including electricity, telephone, water, gas, cable television, drainage facilities, sanitary sewer, or other utility lines. All public utility easements depicted and described on the Plat may be used by the provider utility company and municipality without the necessity of any additional recorded easement instrument. The public utility easement described in this Section 10.1 shall not affect the validity of any other recorded easements affecting the Project, and the term of this public utility easement shall be perpetual. All utilities and utility lines shall be placed underground, but no provision of this Declaration shall be deemed to forbid the use of temporary power or telephone structures incident to the construction of buildings or structures as needed. Public or private sidewalks may be located in the public utility easements.

10.2 Easement for Encroachments. Each Unit and the Common Elements are subject to a reciprocal and appurtenant easement benefitting and burdening, respectively, the Unit or the Common Elements for minor encroachments created by construction, settling, and overhangs as originally designed or constructed by Declarant. This easement will remain in existence for so long as any encroachment of the type described in the proceeding sentence exists and will survive the termination of the Declaration or other Project Documents. This easement is non-exclusive of other validly created easements. This easement for encroachments and maintenance is reserved by virtue of the recordation of this Declaration for the benefit of the encroaching Unit and its Owner or the Association, as applicable.

10.3 Easements for Ingress and Egress. A perpetual and non-exclusive easement for pedestrian ingress and egress is created and reserved for the benefit of all Owners over, through, and across sidewalks, paths, driveways, roadways, walks, and lanes that from time to time may be constructed within the Project. The right of access described in this Section 10.3 is and will remain at all times an unrestricted right of ingress and egress.

10.4 Water and Sewer Easement. Without limiting any other provision of this Declaration or the Plat, there is granted to the City of Flagstaff a permanent, non-exclusive, and blanket easement across the Property for the purpose of installing, repairing, reading, and replacing water meter boxes and public water and sewer lines.

10.5 Repair Easement. To the extent necessary to complete any maintenance repairs authorized or required under this Declaration and the other Project Documents, the Association and the Owners, as the case may be, are granted a non-exclusive easement during the term of this



Declaration for the maintenance, repair, or replacement of the items authorized or required; however, the maintaining or repairing party shall be responsible for any damage done to the Common Elements or the Units as a result of the acts or omissions of the repairing party or its agents or contractors.

## **ARTICLE 11**

### **GENERAL PROVISIONS**

11.1 **Enforcement.** The Association, or any Owner, shall have the right (but not the obligation) to enforce by any proceeding at law or in equity all covenants and restrictions now or hereafter imposed by the provisions of this Declaration, or the other Project Documents. Failure of the Association or any Owner to enforce any covenant and reservation in this Declaration or in the other Project Documents shall not be deemed a waiver of the right to do so thereafter. No act or omission by the Declarant shall act as a waiver or defense to the enforcement of this Declaration by the Association or any Owner. Deeds of conveyance of the Property, or any part of the Property, may incorporate the covenants and restrictions by reference to this Declaration; however, each and every covenant and restriction shall be valid and binding upon the respective grantees whether or not any specific or general reference is made in the deed or conveying instrument. Violators of any one or more of the covenants and restrictions may be restrained by any court of competent jurisdiction and damages awarded against the violators. The remedies established in this Declaration may be exercised jointly, severally, cumulatively, successively, and in any order. A suit to recover a money judgment for unpaid Assessments, interest, rent, costs, attorneys' fees, or another amount due, to obtain specific performance, or to obtain injunctive relief may be maintained without the foreclosing, waiving, releasing, or satisfying the liens created under this Declaration.

11.2 **Severability.** Invalidation of any one or any portion of these covenants and restrictions by judgment or court order shall not affect the validity of any other provisions of the Project Documents, which shall remain in full force and effect.

11.3 **Term.** The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date the Original Declaration was recorded, after which time they shall be automatically extended for successive periods of ten (10) years for so long as the Units continue to be used for Single Family Residential Uses or unless terminated under Article 12 below.

11.4 **Amendment.** This Declaration and/or the Plat may be amended as provided in this Declaration. Amendments shall be made by a recorded instrument approved at a duly called regular or special meeting by the affirmative vote (in person or by absentee ballot) of Owners holding sixty-seven percent (67%) of the total number of votes in the Association, and the amendment shall be executed on behalf of the Association by an officer of the Association designated for the purpose or, in the absence of designation, by the President of the Association.

11.5 **Construction.** This Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan and scheme for the development of a residential condominium project consisting of Units and Common Elements with maintenance as provided

in this Declaration and the other Project Documents. Section and Article headings have been inserted for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction. All terms and words used in this Declaration (including any defined terms), regardless of the number and gender in which they are used, shall be deemed and construed to include any other number and any other gender as the context or sense of this Declaration may require, with the same effect as if such number and words had been fully and properly written in the required number and gender. Whenever the words and symbol “and/or” are used in this Declaration, it is intended, if consistent with the context, that this Declaration be interpreted and the sentence, phrase, or other part be construed in both its conjunctive and disjunctive sense, and as having been written twice, once with the word “and” inserted, and once with the word “or” inserted, in the place of words and symbol “and/or.” Any reference to this Declaration shall automatically be deemed to include all amendments to this Declaration.

11.6 Notices. Any notice that is permitted or required under this Declaration may be delivered either personally, by mail, or by express delivery service. If delivery is made by mail, it shall be deemed to have been delivered and received two (2) business days after a properly addressed copy of the notice has been deposited in the United States mail, postage prepaid. If delivery is made by express delivery service, it shall be deemed to have been delivered and received on the next business day after a copy of the notice has been deposited with an “overnight” or “same-day” delivery service, properly addressed. If an Owner fails to provide the Association with an address for purposes of receiving notices, the address of any Condominium Unit owned by the Owner will be sufficient to comply with the requirements of this Paragraph 11.6. For purpose of notice to the Association or the Board, notice must be sent to both the principal office of the Association, as specified in the Articles, and to the statutory agent for the Association. The address for delivery of any notice to an Owner or the Association may be changed from time to time by written notice delivered to the other party specifying the new notice address.

11.7 Management Agreements. Any management agreement entered into by the Association may be made with a third-party manager and, in any event, shall be terminable by the Association with or without cause and without penalty upon thirty (30) days written notice. The term of any management agreement entered into by the Association may not exceed one (1) year and may be renewable only by affirmative agreement of the parties for successive periods of one year or less. Any property manager for the Property or the Association will be deemed to have accepted these limitations, and no contrary provision of any management agreement will be enforceable.

11.8 No Partition. There shall be no partition of any Condominium Unit and no Owner or other Person acquiring any interest in any Condominium Unit shall seek any partition.

11.9 Joint and Several Liability. In the case of joint ownership of an Ownership Unit, the liabilities and obligations of each of the joint Owners set forth in or imposed by the Declaration and the other Project Documents shall be joint and several.

11.10 Conflicts. In the event of any discrepancies, inconsistencies, or conflicts between the provisions of this Declaration and the Articles, Bylaws, Plat, Association Rules, the provisions of this Declaration shall prevail in all instances.

11.11 Survival of Liability. The termination of membership in the Association shall not relieve or release any former Member from any liability or obligation incurred under or in any way connected with the Association during the period of membership or impair any rights or remedies that the Association may have against the former Member arising out of or in any way connected with the membership and the covenants and obligations incident to the membership.

11.12 Waiver. The waiver of or failure to enforce any breach or violation of the Project Documents shall not be deemed a waiver or abandonment of any provision of the Project Documents or a waiver of the right to enforce any subsequent breach or violation of the Project Documents. The foregoing shall apply regardless of whether any Person affected by the Project Documents (or having the right to enforce the Project Documents) has or had knowledge of the breach or violation.

11.13 Costs of Enforcement. If the Association takes any action to enforce the provisions of the Project Documents, whether or not a lawsuit is filed, the Association shall be entitled to recover from the Owner against whom enforcement is sought (or against whose Permittees the action is taken) all costs of enforcement, including but not limited to attorneys' fees incurred by the Association. Such amounts shall be levied as an Individual Expense Assessment against the applicable Owner's Ownership Unit. If, however, a lawsuit is filed, and the Owner is the prevailing party in such lawsuit, the Owner shall not be required to pay the Association's attorneys' fees, court costs, costs of investigation and other related expenses incurred therewith.

11.14 Security. Any entry gate features or common security measures that may be used at the Project will commence and be maintained by the Association solely in the discretion of the Board, and each Owner understands that any entry gate features or security measures that are in effect at the time he or she accepts a deed for a Unit (or otherwise becomes an Owner) may be abandoned, terminated, or modified the Board. The commencement of security devices or controls shall not be deemed to be an assumption of any duty on the part of the Association with respect to the Project and its Owners.

11.15 Interpretation. Except for judicial construction, the Association, by its Board, shall have the exclusive right to construe and interpret the provisions of the Project Documents. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions of the Project Documents shall be final, conclusive and binding as to all Persons and property benefitted or bound by the provisions of the Project Documents.

11.16 Attorneys' Fees in Administrative Proceedings. In the event the Association incurs legal expenses and costs, including, but not limited to, attorneys' fees, in bringing claims against Owners or defending claims brought by Owners in an administrative action or proceeding, including but not limited to, proceedings before an Administrative Law Judge, the

Association shall be entitled to recover its attorneys' fees and costs from the Owner involved in the administrative proceeding if the Association is the prevailing party.

11.17 Termination of Condominium. Except in the case of Taking of all the Units by eminent domain, this Condominium may be terminated only as set forth in the Act.

CERTIFICATION

IN WITNESS WHEREOF, the President of the Association hereby certifies that the provisions contained with this Amended and Restated Declaration have been approved by the required percentage of the Members.

DATED this 21<sup>st</sup> day of October, 2013.

SUMMIT PARK CONDOMINIUM ASSOCIATION, INC.

By: Randall J Wensman  
Its: President

STATE OF ARIZONA        )  
  ) ss.  
County of Coconino        )

On this 21 day of October, 2013, before me personally appeared Randall J Wensman, whose identity was proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to this document, and who acknowledged that he/she signed this document.

Cristina Leiva  
Notary Public



**EXHIBIT "A"**

**Legal Description of the Property**

1. All property described on the Condominium Plat for The Summit Park Condominiums, recorded in Case 6, Map 90, Official Records of Coconino County, Arizona;
2. All property described on the Condominium Plat for The Summit Park Condominiums Unit 2, recorded in Case 7, Map 50, Official Records of Coconino County, Arizona;
3. All property described on the Condominium Plat for The Summit Park Condominiums Unit 3, recorded in Case 7, Map 51, Official Records of Coconino County, Arizona;
4. All property described on the Condominium Plat for The Summit Park Condominiums Unit 4, recorded in Case 7, Map 94, Official Records of Coconino County, Arizona.