

Please scan into
case 14-ZN-14.

THX,
CB

DECLARATION OF CONDOMINIUM

FOR

SOHO SCOTTSDALE CONDOMINIUM

PREPARED BY AND UPON
RECORDATION RETURN TO

John M. Randolph, Esq.
Sherman & Howard, LLC
201 East Washington Street, Suite 800
Phoenix, Arizona 85004-2327

TABLE OF CONTENTS

ARTICLE 1 DEFINITIONS.....	1
1.1 General Definitions	1
1.2 Defined Terms.....	1
ARTICLE 2 SUBMISSION OF PARCEL; UNIT BOUNDARIES; ALLOCATION OF PERCENTAGE INTERESTS, VOTES AND COMMON EXPENSE LIABILITIES	7
2.1 Submission of Parcel.....	7
2.2 Name of Condominium.....	8
2.3 Name of Association	8
2.4 Identifying Numbers of Units	8
2.5 Unit Boundaries.....	8
2.6 Allocation of Common Element Interest and Common Expense Liabilities	9
2.7 Allocation of Votes	10
2.8 Relocation of Boundaries Between Adjoining Units	12
2.9 Reallocation and Reconfiguration of Commercial Units	12
2.10 Combination of Units	12
2.11 Effect on Common Elements of Combination of Units	13
ARTICLE 3 EASEMENTS AND DEVELOPMENT RIGHTS	14
3.1 Utility Easement.....	14
3.2 Easements for Ingress and Egress	14
3.3 Other Easements.....	14
3.4 Unit Owners' Easements of Enjoyment.....	14
3.5 Declarant's Rights and Easements	15
3.6 Easement for Support	17
3.7 Easements and Rights of the Association	17
3.8 Common Elements Easement in Favor of Unit Owners	17
3.9 Units and Limited Common Elements Easement in Favor of Association.....	17
3.10 Easement for Unintended Encroachments	18
ARTICLE 4 USE AND OCCUPANCY RESTRICTIONS.....	18
4.1 Use of Units.....	18
4.2 Parking Spaces	19
4.3 Parking Garage.....	19
4.4 Antenna; Exterior Accessories	19
4.5 Utility Service	20
4.6 Improvements and Alterations	20
4.7 Trash Containers and Collection	22
4.8 Animals	22
4.9 Diseases and Insects	23
4.10 Motor Vehicles.....	23
4.11 Towing of Vehicles	23

4.12	Flags, Signs and Political Activity	23
4.13	Lawful Use	24
4.14	Nuisances and Offensive Activity	24
4.15	Window Coverings.....	24
4.16	Balconies and Roof Decks	24
4.17	Holiday Decorations.....	24
4.18	Rental of Units	24
4.19	Time Sharing	25
4.20	Weight and Sound Restriction in Loft Units.....	25
ARTICLE 5 MAINTENANCE AND REPAIR OF COMMON ELEMENTS AND UNITS.....		25
5.1	Duties of the Association	25
5.2	Duties of Unit Owners.....	26
5.3	Repair or Restoration Necessitated by Owner	26
5.4	Unit Owner's Failure to Maintain	26
5.5	Sprinkler System	26
ARTICLE 6 THE ASSOCIATION		26
6.1	Rights, Powers, and Duties of the Association	26
6.2	Directors and Officers	27
6.3	Rules.....	27
6.4	Identity of Members	27
6.5	Personal Liability	27
6.6	Utility Service	27
6.7	Building Services	28
6.8	Contracts with Others.....	28
ARTICLE 7 ASSESSMENTS.....		28
7.1	Preparation of Budget.....	28
7.2	Common Expense Assessment.....	29
7.3	Special Assessments.....	30
7.4	User Fee Assessment.....	30
7.5	Individual Expense Assessment	30
7.6	Enforcement Assessment	31
7.7	Effect of Nonpayment of Assessments: Remedies of the Association	31
7.8	Exemption of Unit Owner	32
7.9	Certificate of Payment.....	32
7.10	No Offsets	32
7.11	Initial Working Capital Fund	32
7.12	Reserve Contribution.....	33
7.13	Transfer Fee.....	33
7.14	Reserves	33
ARTICLE 8 INSURANCE.....		34
8.1	Scope of Coverage	34
8.2	Fidelity Bonds	36
8.3	Payment of Premiums	37

8.4	Insurance Obtained by Unit Owners	37
8.5	Payment of Insurance Proceeds.....	37
8.6	Certificate of Insurance	37
8.7	Annual Insurance Review	37
ARTICLE 9 DESTRUCTION OF IMPROVEMENTS		38
9.1	Automatic Reconstruction.....	38
9.2	Determination Not to Reconstruct Without Termination.....	38
9.3	Distribution of Insurance Proceeds in the Event of Termination of the Condominium	38
9.4	Negotiations with Insurer	38
9.5	Repair of Units	39
9.6	Priority.....	39
ARTICLE 10 EMINENT DOMAIN		39
10.1	Total Taking of a Unit.....	39
10.2	Partial Taking of a Unit.....	39
10.3	Taking of Common Elements	39
10.4	Taking of Entire Condominium	40
10.5	Priority and Power of Attorney	40
ARTICLE 11 DISCLOSURES AND OWNER ACKNOWLEDGEMENTS.....		40
11.1	Construction Issues and Characteristics of the Condominium.....	40
11.2	Economic Potential	41
11.3	Security.....	41
11.4	Proximity to Scottsdale Airport.....	41
11.5	Proximity to WestWorld and Horseman's Park.....	42
11.6	Proximity to Commercial and Recreational Uses	42
ARTICLE 12 DISPUTE RESOLUTION		42
12.1	Defined Terms.....	42
12.2	Agreement to Resolve Certain Disputes Without Litigation	43
12.3	Notice of Alleged Defect.....	43
12.4	Notice of Claim	43
12.5	Mediation	44
12.6	Binding Arbitration	44
12.7	Right to Enter, Inspect, and/or Replace.....	46
12.8	Use of Funds.....	47
12.9	Approval of Arbitration or Litigation.....	47
12.10	Statute of Limitations.....	47
12.11	Federal Arbitration Act	47
12.12	Conflicts	47
ARTICLE 13 GENERAL PROVISIONS		49
13.1	Enforcement	49
13.2	Severability.....	50
13.3	Duration.....	50
13.4	Termination of Condominium.....	50

13.5	Amendment	51
13.6	Notices.....	51
13.7	Gender	52
13.8	Topic Headings	52
13.9	Survival of Liability	52
13.10	Construction	52
13.11	Joint and Several Liability.....	52
13.12	Guests and Tenants.....	52
13.13	Attorneys' Fees	52
13.14	Number of Days	52
13.15	Declarant's Right to Use Similar Name.....	53
13.16	Mortgagee Protection Provisions	53
13.17	No Partition	55

**CONDOMINIUM DECLARATION
FOR
SOHO SCOTTSDALE CONDOMINIUM**

This Condominium Declaration for Soho Scottsdale, a condominium, is made this ___ day of March, 2015, by Bahia Live/Work Lofts and Townhomes, LLC, an Arizona limited liability company ("Declarant").

INTRODUCTION

A. Declarant is the owner of that certain real property situated in the City of Scottsdale, Arizona, which is more particularly described in Exhibit A (the "Parcel"). The Declarant desires to submit the Parcel to a condominium form of ownership pursuant to the Condominium Act.

B. Declarant intends that all Owners, Occupants, First Mortgagees and other Persons acquiring an interest in the Condominium shall at all times enjoy the benefits of, and shall hold their interest subject to this Declaration, which is Recorded in furtherance of establishing a general plan of condominium ownership for the Condominium, and for establishing rules for the use, occupancy, management, and enjoyment thereof, all for the purpose of enhancing and protecting the value, desirability and attractiveness of the Condominium and the quality of life for the Owners, Occupants and Lessees.

ARTICLE 1

DEFINITIONS

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

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

1.2.1. "Allocated Interests" means the undivided interests in the Common Elements, the Common Expenses Liability and the votes in the Association allocated to each Unit by this Declaration.

1.2.2. "Assessments" means the Common Expense Assessments, Special Assessments, Individual Expense Assessments, Enforcement Assessments, and User Fee Assessments levied pursuant to Article 7.

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

1.2.4. "Association" means The Soho Scottsdale Condominium Association, an Arizona nonprofit corporation, its successors and assigns.

1.2.5. "Balcony" means a portion of the Common Elements adjoining a Townhouse Unit or a Loft Unit located on (a) the second, third and/or fourth floors of a Townhouse Building and (b) the second, third and fourth floors of the Condominium Building as shown on the Plat that is a Limited Common Element allocated to the exclusive use of the Townhouse Unit or Loft Unit to which it is adjacent.

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

1.2.7. "Buildings" means the buildings located on the Parcel containing Units as shown on the Plat.

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

1.2.9. "City" means the City of Scottsdale, a municipal corporation.

1.2.10. "Collection Costs" means all costs, fees, charges and expenditures (including, without limitation, attorneys' fees, court costs, filing fees and recording fees) incurred by the Association in collecting and/or enforcing payment of Assessments, monetary penalties, late fees, interest or other amounts payable to the Association pursuant to this Declaration.

1.2.11. "Commercial Unit" means the Unit(s) located on the ground floor of the Condominium Building as shown on the Plat. *add mixed use*

1.2.12. "Common Elements" means all portions of the Condominium other than the Units. *See townhouse definition* *License to include and floor*

1.2.13. "Common Expenses" means the actual or estimated costs or expenses incurred or to be incurred by the Association or financial liabilities of the Association including, without limitation, the following:

(i) the cost of maintenance, management, operation, repair and replacement of the Common Elements and all other areas within the Condominium, which are maintained by the Association;

(ii) the cost of management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys, architects, engineers, other consultants and employees;

(iii) the cost of any utilities, trash pickup and disposal, elevator, landscaping, cleaning and other services benefitting the Unit Owners and their Units to the extent such services are paid for by the Association;

(iv) the cost of fire, casualty, liability, worker's compensation and other insurance maintained by the Association as provided in this Declaration;

(v) reasonable reserves as deemed appropriate by the Board or otherwise required pursuant to the Condominium Documents;

(vi) the cost of bonding of the directors, officers and employees of the Association, any professional managing agent or any other person handling the funds of the Association;

(vii) taxes paid by the Association;

(viii) amounts paid by the Association for the discharge of any lien or encumbrance levied against, the Common Elements or portions thereof;

(ix) the cost of any other item or items designated by, or in accordance with other expenses incurred by the Association for any reason whatsoever in furtherance of the purposes or the discharge of the obligations imposed on the Association by the Condominium Documents;

(x) any assessments or other amounts levied against or payable with respect to the Parcel pursuant to the Declaration except for assessments levied against the Units;

(xi) the cost of any valet services, doorman, concierge, security services, or other services as may from time to time be offered;

(xii) the cost of maintaining, repairing and replacing the landscaping and improvements in the medians in the adjoining rights-of-way as the City may require;

1.2.14. "Common Expense Assessment" means the assessment levied against the Units pursuant to Section 7.2.

1.2.15. "Common Expense Liability" means the liability for common expenses allocated to each Unit by Section 2.6.

1.2.16. "Condominium" means the Parcel, together with the Building and all other Improvements located thereon.

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

1.2.18. "Condominium Building" means the four and one half story retail live/work condominium building planned to be constructed at the northeast corner of the Parcel as shown on the plat

1.2.19. "Condominium Documents" means this Declaration and the Articles of Incorporation, Bylaws, and Rules adopted pursuant to this Declaration.

1.2.20. “Declarant” means Bahia Live/Work Lofts and Townhomes, LLC, an Arizona limited liability company, and its successors and any Person to whom it may transfer any Special Declarant Right by a Recorded instrument.

1.2.21. “Declaration” means this Declaration of Condominium for Soho Scottsdale Condominium, as Recorded in the Official Records of the Maricopa County, Arizona, and as amended from time to time.

1.2.22. “Development Rights” means any right or combination of rights to do any of the following:

- (i) Add real estate to the Condominium;
- (ii) Create easements, Units, Common Elements or Limited Common Elements within the Condominium;
- (iii) Subdivide Units, convert Units into Common Elements or convert Common Elements into Units;
- (iv) Withdraw real estate from the Condominium;
- (v) Make the Condominium part of a larger condominium or planned community;
- (vi) Amend the Declaration during the Period of Declarant Control to comply with the Condominium Act or any other applicable law or to correct any error or inconsistency in the Declaration if the amendment does not adversely affect the rights of any Unit Owner;
- (vii) Amend the Declaration during the Period of Declarant Control to comply with the rules or guidelines, in effect from time to time, of any governmental or quasi-governmental entity or federal corporation guaranteeing or insuring mortgage loans or governing transactions involving mortgage instruments.

1.2.23. “Enforcement Assessment” means an assessment levied pursuant to Section 7.6.

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

1.2.25. “First Mortgagee” means the holder of any First Mortgage.

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

1.2.27. "Individual Expense Assessment" means an assessment levied by the Association pursuant to Section 7.5.

1.2.28. "Invitee" means any person whose presence within the Condominium is approved by or is at the request of a particular Unit Owner, Lessee, or Occupant, including, without limitation, family members, guests, employees and contractors.

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

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

1.2.31. "Loft Unit" means each of the ten (10) Units located on the second, third and fourth floors of the Condominium Building as shown on the Plat.

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

1.2.33. "Occupant" means a person, other than a Unit Owner, in possession of a Unit at the request of or with the consent of the Unit Owner.

1.2.34. "Parcel" means the land described on Exhibit A attached hereto, together with all Improvements situated thereon and all easements and rights appurtenant thereto.

1.2.35. "Parking Space" means a portion of the Common Elements delineated and striped for the parking of a single motor vehicle including, but not limited to those spaces delineated and striped for parking in the Parking Garage.

1.2.36. "Parking Garage" means the subsurface parking structure located beneath (a) the Condominium Building and (b) the surface parking to the west of the Condominium Building which is a Limited Common Element appurtenant to the Condominium Building for the benefit of the Owners of the Loft Units and the Commercial Units and their licensees, invitees and customers.

1.2.37. "Period of Declarant Control" means the time period commencing on the date this Declaration is Recorded and ending on the earlier of: (a) ninety (90) days after the conveyance of the Units which may be created have been transferred to ninety percent (90%) of the Unit Owners other than the Declarant; (b) four (4) years after Declarant has ceased to offer Units for sale in the ordinary course of business; or (c) at such earlier time as Declarant may elect.

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

1.2.39. "Plat" means the Plat of Soho Scottsdale Condominium, as Recorded on _____, __, 2015 in Book ____ of Maps, Page __, of the Official Records of Maricopa County, Arizona, as amended, supplemented, or corrected from time to time.

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

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

1.2.42. "Roof Deck" means (i) a portion of the Common Elements on the roof above the top floor of a Townhouse Unit as shown on the Plat that is a Limited Common Element allocated to the exclusive use of the Unit to which it is adjacent and (ii) a portion of the Common Elements on the roof above the top floor of the Condominium Building that Declarant may allocate as a Limited Common Element for the use of one or more of the Commercial Units.

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

1.2.44. "Special Assessment" has that meaning set forth in Section 7.3.

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

(i) Construct Improvements provided for in this Declaration or shown on the Plat.

(ii) Exercise any Development Right;

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

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

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

(vi) Exercise the rights described in Section 3.5.

1.2.46. "Surface Parking Space" means any Parking Space located outside a Building at ground level of the Condominium.

1.2.47. "Townhouse Unit" means each of the sixty four (64) three and four story mixed use live/work Units as shown on the Plat.

1.2.48. “Units” means a portion of the Building designated for separate ownership or occupancy, the boundaries of which are described in Section 2.5 and shown on the Plat. The Units consist of: (i) the Townhouse Units for mixed use live/work residential, retail, office and other commercial uses as permitted by the terms of this Declaration; (ii) the Loft Units for mixed use live/work residential, retail, office and other commercial uses as permitted by the terms of this Declaration; and (iii) the Commercial Units for retail, office and other commercial uses as permitted by the terms of this Declaration, but not residential use.

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

1.2.50. “User Fee Assessment” means any assessment levied pursuant to Section 7.4.

1.2.51. “Visible From Neighboring Property” means, with respect to any given object, that such object, or any portion thereof, is or would be visible to a person six (6) feet tall standing on any portion of any adjoining Unit or adjoining Common Elements on the same base horizontal plane as the object being viewed.

ARTICLE 2

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

2.1 Submission of Parcel. The Declarant is the owner of fee title to the Parcel. Declarant hereby submits the Parcel to the provisions of the Condominium Act for the purpose of creating a condominium in accordance with the provisions of the Condominium Act and hereby declares that the Parcel shall be held and conveyed subject to the terms, covenants, conditions and restrictions set forth in this Declaration. Declarant further declares that all of the easements, restrictions, conditions and covenants in this Declaration shall run with the Parcel and shall be binding upon and inure to the benefit of the Declarant and all Unit Owners, Lessees and Occupants and all other Persons having or acquiring any right, title or interest in the Condominium or any part thereof, their heirs, successors, successors in title and assigns. Each Person who acquires any right, title, or interest in the Condominium, or any part thereof, agrees

to abide by all of the provisions of the Condominium Documents. This Declaration shall be binding upon and shall be for the benefit of and enforceable by the Association. Declarant makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of the Condominium Documents, or as to the compliance of any of the provisions of the Condominium Documents with public laws, ordinances and regulations applicable thereto.

2.2 Name of Condominium. The name of the Condominium created by this Declaration is Soho Scottsdale Condominium.

2.3 Name of Association. The name of the Association is The Soho Scottsdale Condominium Association.

2.4 Identifying Numbers of Units. The identifying numbers of the Units are:

For the Townhouse Units:

Units 1 through 64

For the Loft Units:

Units 201-2__, Second Floor

Units 301-3__ Third Floor

Units 401-4__, Fourth Floor

For the Commercial Units:

Unit 1__ First Floor

Unit 1__ First Floor

All as shown on the Plat.

X
2nd floor

2.5 Unit Boundaries.

2.5.1. The boundaries of each Unit are as follows:

(i) The horizontal boundaries of each Unit are the interior unfinished surfaces of the lowest floor and uppermost ceiling of the Unit. The vertical boundaries of each Unit are the unpainted exterior surface of any exterior wall(s), the centerline of any interior wall shared with another unit and the exterior doors and windows of the Unit. All lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other materials constituting any part of the finished surfaces of the walls, floor, and ceiling are part of the Unit.

(ii) Any air conditioning or heating unit, chute, flue, pipe, duct, wire, conduit, bearing wall, bearing column or other building component or utility fixture, whether located within or outside of the boundaries of a Unit, which serves only one Unit, is a Limited Common Element allocated exclusively to the Unit served, and any portion serving more than

one Unit is a Limited Common Element allocated to the Units served. And any portion serving the Common Elements is a part of the Common Elements.

(iii) Subject to the provisions of this Declaration, all spaces, interior partitions and other fixtures and improvements within the boundaries of a Unit are part of the Unit.

(iv) Any shutters, awnings, window boxes, doorsteps, stoops, porches, Balconies or Roof Decks, and all exterior doors and windows or other fixtures designed to serve a single Unit, but which are located outside the boundaries of the Unit, are Limited Common Elements allocated exclusively to the Unit served.

2.5.2. In interpreting deeds, plats, declarations, and plans, the existing physical boundaries of a Unit or a Unit reconstructed in substantial accordance with the original plans thereof shall be conclusively presumed to be its boundaries rather than the description expressed in the deed, plat, plan, or declaration, regardless of settling or lateral movement of the Building, and regardless of minor variances between the boundaries as shown on the plat or in the deed and declaration and those of the Unit.

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

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

2.6 Allocation of Common Element Interest and Common Expense Liabilities.

(i) Each Unit is allocated a percentage of undivided interest in the Common Elements and in the Common Expenses calculated by dividing the square footage of the Unit by the total square footage of the Units. The percentage of undivided interests in the Common Elements and except as provided below, in the Common Expenses, are set forth on Exhibit "C" attached hereto. The percentage of interest of each Unit in the Common Elements shall be an undivided interest, and the Common Elements shall be owned by the Unit Owners as tenants in common in accordance with their respective percentages of interest. The ownership of each Unit shall not be conveyed separate from the percentage of interest in the Common Elements allocated to the Unit. The undivided percentage of interest in the Common Elements allocated to any Unit shall always be deemed conveyed or encumbered with any conveyance or encumbrance of that Unit, even though the legal description in the instrument conveying or encumbering the Unit may refer only to the fee title to the Unit. Except as permitted by the Condominium Act, the Common Elements are not subject to partition, and any purported conveyance, encumbrance, judicial sale or other voluntary or involuntary transfer of an undivided interest in the Common Elements made without the Unit to which that interest is allocated is void.

(ii) Common Expenses that benefit only the Loft Units, the Townhouse Units or the Commercial Units shall be allocated only among the Loft Units, the Townhouse Units and

Provide all referenced exhibits

Commercial Units in accordance with a percentage obtained by dividing the square footage within each Loft Unit, Townhouse Unit or Commercial Unit by the total square footage within all of the Loft Units, Townhouse Units or Commercial Units as set forth on Exhibit "D." Utility services that are separately metered for any single Unit or to any Limited Common Element the use of which is exclusive to a single Unit shall be allocated only to such single Unit. Common Expenses that benefit any Limited Common Element the use of which is exclusive to a single Unit shall be allocated only to such single Unit.

(iii) Each Owner acknowledges and agrees that the square footage used solely for the purposes of establishing the percentage undivided interests in the Common Elements and in the Common Expenses and are not intended for any other purpose and shall not be subject to modification on the basis of any actual measurement and constitute no representation or warranty regarding the actual square footage within the Unit. The allocation of Common Expenses shall be determined by the Board in accordance with its sole discretion, absent manifest error.

2.7 Allocation of Votes. The total votes in the Association shall be equal to the number of Units. The votes in the Association shall be allocated equally among the Units with each Unit being allocated one (1) vote. No action shall be taken by the Association that would materially and adversely affect the use, ownership or operation of any of the, Loft Units, the Townhouse Units or the Commercial Units or any Common Elements, whether general or limited, benefitting such Units without the vote of the Owners of each class of Units affected by such amendment equal to the percentage of overall votes required to pass the amendment.

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

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

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

(iii) Each Townhouse Unit is allocated the Balcony or Balconies adjoining the Unit as shown on the Plat. The boundaries of each Balcony shall be as follows: (a) the lower boundary shall be the unfinished surface of the floor of the Balcony; (b) the upper horizontal boundary shall be the prolongation of the underside surface of the next floor of the Unit above the Balcony; and (c) the vertical boundaries shall be vertical planes corresponding to the exterior wall of the Building and the inside surface of the railing of the Balcony extended to the upper and lower boundaries.

(iv) Each Townhouse Unit is allocated a Roof Deck located on the roof of the Unit as shown on the Plat. The boundaries of each Roof Deck on the Townhouse Units shall be as follows: (a) the lower boundary shall be the unfinished surface of the floor of the Roof Deck; (b) the upper horizontal boundary shall be a horizontal plane ___ feet above the floor of the Roof Deck; and (c) the vertical boundaries shall be vertical planes corresponding to the interior walls constructed around the Roof Deck and the inside surface of any railings constructed around the Roof Deck extended to the upper and lower boundaries.

(v) The Roof Deck located on the roof of the Condominium Building as shown on the Plat shall be a Limited Common Element to be assigned by Declarant to some or all of the Loft Units and/or the Commercial Units to be used and enjoyed by the Owners of such Units on such terms as upon such conditions as may be specified by Declarant at the time of assignment. The boundaries of the Roof Deck on the Condominium Building shall be as follows: (a) the lower boundary shall be the unfinished surface of the floor of the Roof Deck; (b) the upper horizontal boundary shall be a horizontal plane ___ feet above the floor of the Roof Deck; and (c) the vertical boundaries shall be vertical planes corresponding to the interior walls constructed around the Roof Deck and the inside surface of any railings constructed around the Roof Deck extended to the upper and lower boundaries.

(vi) Any water, sewer, or electrical power pipe, line, or conduit that serves more than one Unit shall be a Limited Common Element allocated to the Units served;

(vii) The Parking Spaces in the Parking Garage from time to time allocated to a Loft Unit or Commercial Unit by Declarant pursuant to Section 2.7.4 shall be a Limited Common Element of the Loft Unit or Commercial Unit.

(viii) Any shutters, awnings, window boxes, doorsteps, stoops, porches, entryways and exterior doors and windows or other fixtures designed to serve a single Unit, but which are located outside the boundaries of the Unit, are Limited Common Elements allocated exclusively to the Unit served and their use is limited to that Unit.

(ix) The swimming pool, pool deck, and associated equipment are Limited Common Elements solely for the use of the Loft Units and the Townhouse Units.

(x) The ground floor elevator lobby, the elevators including the elevator from the Parking Garage and refuse containers or facilities designated for use by the Units in the Condominium Building are Limited Common Elements for the use and benefit of the Loft Units and the Commercial Units. The interior corridors on levels where the Loft Units are located are Limited Common Elements exclusively for the use and benefit of the Loft Units.

(xi) The elevator shafts, elevators, stairways, ramps, lighting and ventilation facilities, and other fixtures and equipment to the extent they serve only the Parking Garage shall be Limited Common Elements, respectively of the Loft Units and the Commercial Units. The ground floor elevator lobby for the elevator serving the Parking Garage is a Limited Common Element of the Commercial Units.

2.7.2. Each Unit Owner shall have the right to the exclusive use and possession of the Limited Common Elements allocated to his Unit, subject to the rights granted to the

Declarant or the Association by the Condominium Documents. All Units must be used in accordance with the Declaration and the Rules.

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

2.7.4. The Declarant shall have the right to allocate as a Limited Common Element any part of the Common Elements, including, but not limited to, the Parking Spaces, which has not previously been allocated as a Limited Common Element. Any such allocation shall be made by an amendment to this Declaration executed by the Declarant. After the Declarant no longer owns any Unit, the Board of Directors shall have the right, with the approval of Members holding at least fifty percent (50%) of the total number of votes entitled to be cast by Members, to allocate as a Limited Common Element any portion of the Common Elements not previously allocated as a Limited Common Element. Any such allocation by the Board of Directors shall be made by an amendment to this Declaration and an amendment to the Plat if required by the Condominium Act.

2.8 Relocation of Boundaries Between Adjoining Units. *remove language* The boundaries between or among adjoining Loft Units and Commercial Units may be relocated by an amendment to this Declaration. The Unit Owners of the Units affected by the relocation of boundaries shall prepare an amendment to this Declaration and the Plat that identifies the Units involved, specifies the outer boundaries of the Units and their dimensions and includes the Units' identifying numbers. If the Unit Owners of the adjoining Loft Units and Commercial Units have specified a reallocation between their Units of the allocated interests in the Common Elements and in the Common Expenses, the amendment shall state the proposed reallocation in a reasonable manner. The amendment shall be executed by the Unit Owners of those Units, shall contain words of conveyance between or among them and, before recording the amendment, shall be submitted to the Board of Directors. Unless the Board of Directors determines within thirty (30) days that the proposed amendment is unreasonable, which determination shall be in writing and specifically state the reasons for disapproval, the Association shall execute its approval and record the amendment.

2.9 Reallocation and Reconfiguration of Commercial Units. Declarant or Owner may further subdivide the Commercial Unit(s) into two or more Units as Declarant or Owner may deem appropriate.

2.10 Combination of Units. If the Declarant conveys two adjoining Loft Units or Commercial Units to the same Person, then the demising wall between the adjoining Units, as shown on the Plat, may not be constructed and the adjoining Units may be used as a single Unit. If the Declarant does not convey adjoining Loft Units or Commercial Units to the same Person and, therefore, the demising wall between the Units is constructed by Declarant but the adjoining

Units are subsequently conveyed to the same Person, the Owner of the adjoining Units may remove all or a portion of the demising wall between the adjoining Units provided the removal of a portion or all of the demising wall is approved by the Board of Directors prior to removal. The provisions of Subsection 4.7.4 shall apply to any request by an Owner of adjoining Loft Units or Commercial Units to remove all or a portion of the demising wall between the Units. The Board of Directors shall not approve the request unless the Board of Directors is satisfied that the removal of the demising wall will not adversely affect the structural integrity of the Building and will not endanger the Building or any Unit Owner, Lessee, Occupant or Invitee. The fact that a demising wall between adjoining Loft Units or Commercial Units is either not constructed by the Declarant or is subsequently removed with approval of the Board of Directors shall not affect the Units' percentage undivided interest in the Common Elements or the Units' Common Expense Liability. A demising wall between adjoining Loft Units or Commercial Units which is either not constructed by the Declarant or which is subsequently removed with approval of the Board of Directors may be constructed or reconstructed with the prior written approval of the Board of Directors. The Board of Directors shall not approve the request unless the Board of Directors is satisfied that the construction or reconstruction of the demising wall will not adversely affect the structural integrity of the Building and will not endanger the Building or any Unit Owner, Lessee, Occupant or Invitee. If two adjoining Loft Units or Commercial Units are combined pursuant hereto, the combined Unit shall have the Allocated Interests of the Units that have been combined.

2.11 Effect on Common Elements of Combination of Units. If the Declarant conveys two adjoining Loft Units or Commercial Units to the same Person as described in Section 2.10 above, certain Common Elements may, be converted to Limited Common Elements for so long as the two adjoining Units are owned by one Person and are utilized as one single Unit. During the period of time the combined Loft Units or Commercial Units are owned by a single Person, the Owner of the combined Units shall be responsible for all costs, expenses of modifying the Common Elements as necessary and to establish private Limited Common Elements. Further, the Owner of the combined Loft Units or Commercial Units shall be responsible for all maintenance, repair and replacement of any or all Improvements, fixtures, finishes and furnishings within the Limited Common Elements for so long as those Limited Common Elements are enclosed as a part of the combined Units. In the event the Owner of two combined Loft Units or Commercial Units desires to separate the combined Units, the Owner must obtain the prior written approval of the Board of Directors as set forth in Section 2.10. The Board of Directors shall not approve the request unless the Board of Directors is satisfied that: (i) the reconstruction or restoration of the Limited Common Elements to Common Elements will not adversely affect the structural integrity of the Building and will not endanger the Building or any Unit Owner, Lessee, Occupant or Invitee; (ii) the separation of the two Units will return the Units and the Limited Common Elements to their original configuration; (iii) any or all costs and expenses of the reconstruction and restoration will be paid in full by the Owner seeking the Board's approval; and (iv) all administrative costs of the Association incurred as a result of the request and the reconstruction are borne by the Owner of the combined Units. All pertinent provisions of this Declaration shall apply to any request by an Owner of adjoining Loft Units or Commercial Units to combine or enclose any Limited Common Elements or to construct or remove any Improvements, fixtures or furnishings within a Limited Common Element and any request by an Owner of combined Units to separate the combined Units.

ARTICLE 3

EASEMENTS AND DEVELOPMENT RIGHTS

3.1 Utility Easement. There is hereby granted and created an easement upon, across, over and under the Common Elements and the Units for the installation, replacement, repair or maintenance of utility lines and systems, including, but not limited to, natural gas, water, sewer, telephone, electricity and cable television or other fiber optic communication lines and systems. By virtue of this easement, it shall be expressly permissible for the providing utility or service company, the Association or the Declarant to install and maintain the necessary utility lines, pipes, facilities and equipment on the Common Elements and the Units, but no sewer lines, electrical lines, water lines, or other utility or service lines or facilities may be installed or located on the Common Elements or the Units except as initially designed, approved and constructed by the Declarant or as approved by the Board of Directors. This easement shall in no way affect any other Recorded easements or the Common Elements.

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

3.3 Other Easements. To the extent not specifically provided above, the Declarant has an easement through the Common Elements as may be reasonably necessary for the purpose of discharging the Declarant's obligations or Special Declarant's Rights arising under the Condominium Act or reserved in this Declaration.

3.4 Unit Owners' Easements of Enjoyment.

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

(i) The right of the Association to adopt reasonable rules and regulations governing the use of the Common Elements. Such rules and regulations may include rules and regulations to control surface parking on the Parcel and parking in the Parking Garage.

(ii) The right of the Association to convey the Common Elements or subject the Common Elements to a mortgage, deed of trust, or other security interest, if such action is approved by Unit Owners entitled to cast at least ninety percent (90%) of the votes in the Association. Any such action by the Association shall be done in the manner and subject to the limitations set forth in the Condominium Act.

(iii) The right of the Association to grant non-exclusive easements over all or a portion of the Common Elements if the Board of Directors determines that the granting

of the easement is necessary for the development or maintenance of the Common Elements or beneficial to the Unit Owners and Occupants.

(iv) All rights and easements set forth in this Declaration including, but not limited to, the rights and easements granted to the Declarant by Article 4.

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

3.4.2. Notwithstanding the provisions of this Declaration to the contrary, if a Unit is leased or rented, the Lessee and the members of his family residing with the Lessee shall have the right to use the Common Elements during the term of the lease, and the Unit Owner shall have no right to use the Common Elements until the termination or expiration of the lease.

3.4.3. The guests of any Unit Owner, Lessee or Occupant entitled to use the Common Elements pursuant to this Section 3.4 may use the Common Elements provided they are accompanied by a Member, Lessee or Occupant entitled to use the Common Elements. The Board of Directors shall have the right to limit the number of guests who may use the Common Elements at any one time and may restrict the use of the Common Elements by guests to certain specified times.

3.4.4. The easement of enjoyment in and to the Common Elements shall not be conveyed, transferred, alienated or encumbered separate and apart from a Unit. Such right and easement of enjoyment in and to the Common Elements (including, without limitation, any Parking Spaces assigned as Limited Common Elements) shall be deemed to be conveyed, transferred, alienated or encumbered upon the sale of any Unit, notwithstanding that the description in the instrument of conveyance, transfer, alienation or encumbrance may not refer to such right and easement.

3.4.5. The provisions of this Section 3.4 shall not apply to any of the Limited Common Elements that are allocated to the exclusive use of one or more but less than all of the Units or to those portions of the General Common Elements that are converted to Limited Common Elements in connection with the combination of a Unit as set forth above.

3.5 Declarant's Rights and Easements.

3.5.1. Declarant shall have the right and an easement to maintain sales or leasing offices, management offices, storage areas, models and related facilities throughout the Condominium and to maintain one or more marketing, directional or advertising signs on the Common Elements so long as the Declarant is marketing Units in the Condominium. Declarant reserves the right to maintain models, management offices, storage areas and sales and leasing offices in any Units owned or leased by Declarant and on any portion of the Common Elements in such number, of such size and in such locations as Declarant deems appropriate. Declarant may from time to time relocate models, storage areas, management offices and sales and leasing offices to different locations within the Condominium. Declarant shall have the right and an easement to post signs, flags and banners on the Common Elements in connection with its marketing of Units.

3.5.2. So long as Declarant is marketing Units in the Condominium, Declarant shall have the right to restrict the use of the Parking Spaces that have not been assigned as a Limited Common Element to a particular Unit. Such right shall include reserving such Parking Spaces for use by prospective Unit purchasers, Declarant's employees and others engaged in sales, leasing, maintenance, construction or management activities.

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

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

3.5.5. The Declarant and its employees, agents, contractors and subcontractors shall have an easement through the Units for the purpose of completing any renovations, warranty work or modifications to be performed by Declarant.

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

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

3.5.8. The Declarant shall have the right to the exclusive use, without charge, of any portion of any of the facilities within the Common Elements on a short term basis for employee meetings, administrative purposes, special events or any other purpose, subject to the following: (a) the availability of the facilities at the time a request is submitted by Declarant to the Association; (b) the Declarant shall indemnify the Association against any loss or damage resulting from Declarant's use thereof; and (c) the Declarant shall return the facilities to the Association in the same condition as existed prior to Declarant's use thereof.

3.5.9. In the event of any conflict or inconsistency between this Section 3.5 and any other provision of the Condominium Documents, this Section 3.5 shall control and prevail over such other provisions. The rights of the Declarant set forth in this Section 3.5 shall be enforceable by injunction, by any other remedy available at law or in equity and/of by any means provided in this Declaration.

3.6 Easement for Support. There is hereby granted and reserved to each Unit a nonexclusive easement for structural support over every other Unit in the Building, the Common Elements and the Limited Common Elements and each Unit and the Common Elements shall be subject to a non-exclusive easement for structural support in favor of every other Unit in the Building, the Common Elements and the Limited Common Elements.

3.7 Easements and Rights of the Association.

3.7.1. The Common Elements and the Units shall be subject to an easement in favor of the Association and its agents, employees, contractors and subcontractors for the purpose of: (a) making emergency repairs to the Common Elements and those components of the Unit the Association is obligated to maintain pursuant to this Declaration; (b) inspection, upkeep, maintenance, repair and replacement of the Common Elements and those components of the Units which the Association is obligated to maintain pursuant to this Declaration; and (c) exercising all rights and powers of the Association and discharging all duties and obligations of the Association.

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

3.8 Common Elements Easement in Favor of Unit Owners. The Common Elements, except the Parking Garage, shall be subject to the following easements in favor of the Units benefitted:

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

(ii) For driving and removing household nails, screws, bolts into the Unit side surface of the wall, such nails, screws, bolts and other attachment devices may encroach into part of a Common Element adjacent to such Unit and for the installation, repair, maintenance, use, removal or replacement of lighting fixtures, electrical receptacles, panel boards and other electrical installations which are a part of or serve any Unit but which encroach into a part of a Common Element adjacent to such Unit; provided that the installation, repair, maintenance, use, removal or replacement of any such item does not unreasonably interfere with the common use of any part of the Common Elements, adversely affect either the thermal or acoustical character of the Building or impair or structurally weaken the Building.

(iii) For the performance of the Unit Owners' obligation to maintain, repair, replace and restore those portions of the Limited Common Elements that the Unit Owner is obligated to maintain under the Declaration.

3.9 Units and Limited Common Elements Easement in Favor of Association. The Units and the Limited Common Elements are hereby made subject to the following easements in

favor of the Association and its direct directors, officers, agents, employees and independent contractors:

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

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

(iii) For correction of emergency conditions in one or more Units or Limited Common Elements or casualties to the Common Elements, the Limited Common Elements or the Units;

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

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

3.10 Easement for Unintended Encroachments. To the extent that any Unit or Common Element encroaches on any other Unit or Common Element as a result of original construction, reconstruction, shifting, settlement or movement of any improvement or alteration or restoration authorized by this Declaration or any reason other than an encroachment created by the intentional conduct of gross negligence of a Unit Owner, a valid easement for the encroachment, and for the maintenance thereof, is hereby granted.

ARTICLE 4

USE AND OCCUPANCY RESTRICTIONS

4.1 Use of Units. The City of Scottsdale has designated a primary land use for the Condominium of "live/work." The Commercial Units shall be used, improved and devoted exclusively to those restaurant, office, commercial trade or business uses set forth on Exhibit "E" attached hereto as may from time to time be permitted under applicable zoning ordinances and requirements of the City of Scottsdale. The Loft Units and the Townhouse Units shall be used, improved and devoted to both residential use by a Single Family and those office, commercial trade or business uses set forth on Exhibit "F" attached hereto as may from time to time be permitted under applicable zoning ordinances and requirements of the City of Scottsdale. Any office, commercial, trade or business conducted within a Loft Unit shall (a) not be apparent or detectable by sight, sound, vibration or smell from outside the Loft Unit; (b) conform to all applicable zoning ordinances and requirements of the City of Scottsdale; (c) be conducted entirely within the Unit; (d) not involve persons coming to the Unit or the door-to-door solicitation of any other Unit Owners, Lessees or Occupants in the Condominium; and (e) be

Provide exhibit 4s
S/F

consistent with the mixed use character of the Condominium and not constitute a nuisance or a hazardous or offensive use or threaten security or safety of other Unit Owners, Lessees or Occupants, as may be determined from time to time in the sole discretion of the Board of Directors. Any office, commercial, trade or business uses conducted within a Townhouse Unit shall be conducted upon the first and second floors of the Townhouse Units exclusive of any portion of the ground floor devoted to use as a garage. No portion of the ground floor of any Townhouse Unit shall at any time be used for residential purposes provided, however, that nothing contained herein shall prevent a Townhouse Unit Owner from using any ground floor storage room or the garage for such Owner's personal storage. The terms "business" and "trade" as used in this Section shall be construed to have ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether: (a) such activity is engaged in full or part time; (b) such activity is intended or does generate a profit; or (c) a license is required for such activity. The leasing of a Unit by the Unit Owner thereof shall not be considered a trade or business within the meaning of this Section.

4.2 Parking Spaces. The Parking Spaces will be used by the Owners solely for the purposes of parking a motor or non-motorized vehicle. Declarant may assign surface Parking Spaces to any of the Units at the time of the conveyance of such Units by Declarant, which spaces, when so assigned, will become Limited Common Elements appurtenant to the Units to which they are assigned. Notwithstanding anything contained herein to the contrary, The Association shall have the right to use any or all of the surface Parking Spaces for special events conducted or sponsored by the Association and to restrict or prohibit the use of such parking spaces by the Owners during such special events. No Owner shall make any structural or nonstructural alteration to any Parking Space, nor restripe, paint, resurface, identifying or otherwise add to or modify any Parking Space. The Association shall be responsible for striping, maintaining and identifying each Parking Space in a uniform manner. Each Owner, however, at the Owner's cost, shall maintain any Parking Space assigned to such Owner's Unit as a Limited Common Element free of any debris, spills or foreign substances and immediately clean and remove any gas, oil or other automotive spill and dispose of any solvents, fluids, dangerous, hazardous or toxic substances or waste or refuse in accordance with applicable laws. In no event shall any Parking Space be used for storage, including refuse, boxes, gas, oil, or other fluid, automotive parts, or otherwise.

4.3 Parking Garage. The Parking Garage will be used solely for parking motor vehicles for the benefit and use of the Loft Unit Owners, the Commercial Unit Owners and their licensees, invitees and customers. Declarant shall assign Parking Spaces in the Parking Garage to the Loft Units and the Commercial Units at the time of the conveyance of such Units, which spaces, when so assigned, will become Limited Common Elements appurtenant to the Units to which they are assigned. In no event shall Restricted Vehicles (as defined in Section 4.11), construction or commercial vehicles other than pickup truck or van no larger than one half (1/2) ton be parked in the Parking Garage.

4.4 Antenna; Exterior Accessories. No antenna, satellite receiving station or other device for the transmission or reception of television or radio signals or any other form of

electromagnetic radiation shall be erected, used or maintained outdoors on any area in the Condominium (whether attached to a building or structure or otherwise) so as to be Visible From Neighboring Property, unless approved by the Board; provided, however, with respect to antennas and other devices for the reception of video programming signals covered by 47 CFR part 1, Subpart S, Section 1.4000 (or any successor provision promulgated under the Telecommunications Act of 1996, as amended from time to time) (collectively the "**Permitted Antenna**"), an Owner may install a Permitted Antenna on or within such Owner's Unit if written notice identifying the type of Permitted Antenna is given to the Association, and, to the extent the following can be done without precluding the reception of an acceptable quality signal, the Permitted Antenna is installed so as to be inconspicuous from adjacent Units and the Common Elements in a manner that is architecturally compatible with the overall theme of the Condominium. This provision shall be interpreted in a manner to be consistent with the Telecommunications Act of 1996, as amended from time to time, and the regulations promulgated thereunder. The Board may permit the placement and operation of one or more aerial satellite dishes or satellite communication systems, and/or other apparatus and equipment for an antenna or cable system for the benefit of all or portions of the Condominium.

4.5 Utility Service. No lines, wires, solar energy devices or other devices for communication or transmission of electric current or power, including telephone, television, and radio signals, except those installed by Declarant, shall be erected, placed or maintained anywhere in or upon the Condominium unless they are installed and maintained underground or concealed in, under or on Units, Buildings or other structures so as not to be Visible From Neighboring Property. No provision hereof shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of Buildings or structures permitted under this Declaration.

4.6 Improvements and Alterations.

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

4.6.2. Notwithstanding the foregoing, no addition, alteration or improvement within a Unit, whether structural or not, which would be Visible From Neighboring Property, shall be made without the prior written approval of the Board of Directors, which approval shall only be granted if the Board of Directors affirmatively finds that the proposed addition, alteration or improvement is aesthetically pleasing and in harmony with the surrounding Improvements. No addition, alteration or improvement shall be made that penetrates the exterior of the Building or jeopardizes the water tightness of the building envelope in anyway. Notwithstanding anything

herein contained to the contrary, no Unit Owner shall be permitted to enclose any Balcony. No Unit Owner shall make any addition, alteration or improvement to the Common Elements without the prior written approval of the Board of Directors. Except as expressly permitted by this Section, no Improvement situated within a Unit shall be constructed, installed or modified without the prior written approval of the Board of Directors. No Unit Owner shall overload the electric wiring in the Building, or operate office equipment, machines, appliances, accessories or equipment in such manner as to cause, in the judgment of the Board of Directors, an unreasonable disturbance to others or connect any office equipment, machines, appliances, accessories or equipment to the heating or plumbing system, without the prior consent of the Board of Directors. No Unit Owner shall overload the floors of any Unit. Safes, waterbeds, furniture, machinery and other finishes and equipment that may cause floor overloads shall not be placed, kept or used in any Unit, except with advance written approval of the Board of Directors. Upon submitting a request for approval, the Owner must have the prior written approval of a consultant or engineer satisfactory to the Board stating that the waterbeds, furniture or other items will not exceed the allowable dead load limit, without appropriate measurements, testing and calculations.

4.6.3. The Board of Directors may condition the approval of any proposed additions, alterations or improvements to a Unit or the Common Elements in any manner, including, without limitation: (a) retaining approval rights of the contractor to perform the work; (b) restricting the time during which such work may be performed; (c) requiring the placement of a security deposit in an amount determined by the Board of Directors in an account controlled by the Board of Directors; (d) requiring the provision to the Board of Directors of plans and specifications prepared and sealed by a professional engineer or architect duly licensed by the State of Arizona; and (e) requiring that the Unit Owner requesting the change obtain, prior to commencing any work, and maintain until completion of such work, comprehensive general liability insurance and builders' risk insurance in such amounts as may be required by the Board of Directors. The Unit Owner shall be obligated to designate Declarant, the Association, the Board of Directors and any other Person designated by the Board of Directors as additional insurers under the policies. The Unit Owner shall be responsible for all costs incurred by the Board of Directors in connection with the Board of Director's review of the Unit Owner's proposed changes to such Unit Owner's Unit, including, without limitation, all costs of architects, engineers and other professionals that may be retained by the Board of Directors to assist in their review. Any such costs not timely paid by the Unit Owner shall be deemed an Individual Expense Assessment.

4.6.4. The proposed additions, alterations and improvements by any Unit Owner shall be made in compliance with all laws, rules, ordinances and regulations of all governmental authorities having jurisdiction, may only be made once all required permits have been obtained and must be in compliance with any conditions imposed by the Association with respect to design, structural integrity, sound attenuation, water-proofing, construction details, lien protection or otherwise. A Unit Owner making or causing to be made such additions, alterations or improvements agrees, and shall be deemed to have agreed, for such Unit Owner, and such Unit Owner's heirs, personal representatives, successors and assigns, as appropriate, to hold the Association, Declarant and all other Unit Owners harmless from and to indemnify them for, from and against any and all liability or damage to the Condominium and expenses arising therefrom, and shall be solely responsible for the maintenance, repair and insurance of such

additions, alterations and improvements from and after their date of installation or construction as may be required by the Association.

4.6.5. The Association shall have the right to stop any work that is not in compliance with the terms contained in this Section 4.7 or any rules of the Association governing improvements by Unit Owners. The Association's rights of review and approval of plans and other submissions under this Declaration are intended solely for the benefit of the Association. Neither Declarant, the Association nor any of the officers, directors, employees, agents, contractors, consultants or attorneys shall be liable to any Unit Owner or any other Person by reason of mistake in judgment, failure to point out or correct deficiencies in any plans or other submissions, negligence, or any other misfeasance, malfeasance or nonfeasance arising out of or in connection with the approval or disapproval of any plans or submissions. Anyone submitting plans under this Declaration, by the submission of same, and any Unit Owner, by acquiring title to same, agrees not to seek damages or equitable relief from Declarant and/or the Association arising out of the Association's review of any plans under this Declaration. Without limiting the generality of the foregoing, the Association shall not be responsible for reviewing, nor shall its review of any plans be deemed approval of, any plans from the standpoint of structural safety, soundness, workmanship, materials, usefulness, conformity with building or other codes or industry standards, or compliance with governmental requirements. Further, each Unit Owner (including the successors and assigns) agrees to indemnify and hold Declarant and the Association harmless from and against any and all costs, claims (whether rightfully or wrongfully asserted), damages, expenses or liabilities whatsoever (including, without limitation, reasonable attorneys' fees and court costs at all trial and appellate levels), arising out of any review of plans by the Association.

4.7 Trash Containers and Collection. No garbage or trash shall be placed or kept on the Common Elements except within designated refuse facilities located in the areas shown for such facilities on the Plat. In no event shall Owners be entitled to place cardboard boxes or oversize garbage bags outside any Unit. The Rules may contain provisions governing the disposal of trash and refuse in the Condominium.

4.8 Animals. Except as expressly permitted by this Section, no animals, birds, reptiles, fowl, poultry or livestock shall be maintained or kept in any Unit or on any other portion of the Condominium. A reasonable number of Permitted Pets may be kept or maintained in a Loft Unit or a Townhouse Unit if they are kept, bred or raised solely as domestic pets and not for commercial purposes. For purposes of this Section, a "Permitted Pet" shall mean a dog, cat or bird of a variety commonly kept as a household pet. No Permitted Pet shall be allowed to make an unreasonable amount of noise, cause an odor, or to become a nuisance. All Permitted Pets shall be kept on a leash or confined in an appropriate carrier when outside a Unit and all Permitted Pets shall be directly under the Unit Owner's control at all times. Any person bringing a Permitted Pet onto the Common Elements shall immediately remove any feces deposited on the Common Elements by the Permitted Pet. Any Unit where a Permitted Pet is kept or maintained shall at all times be kept in a neat and clean condition. No structure for the care, housing, confinement, or training of any Permitted Pet shall be maintained on any portion of the Common Elements or in any Unit so as to be visible from the Common Elements or any other Unit. Upon the written request of any Unit Owner, the Board of Directors shall determine whether, for the purposes of this Section, a Permitted Pet is a nuisance or is making an unreasonable amount of

noise or causing an odor and the Board's decision shall be final. The Board of Directors shall have the right to adopt reasonable rules and regulations governing the keeping of Permitted Pets in the Condominium, and such rules and regulations may include limitations on the height and/or weight of Permitted Pets.

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

4.10 Motor Vehicles. Except for emergency repairs, no automobile, sport utility vehicle, van, truck, recreational vehicle, motorcycle, motorbike, or other motor vehicle shall be constructed, reconstructed, serviced or repaired on any portion of the Condominium or in the Parking Garage and no inoperable vehicle may be stored or parked on any portion of the Condominium. No automobile, motorcycle, motorbike or other motor vehicle shall be parked upon any part of the Condominium, other than in a garage that is part of a Townhouse Unit or a Parking Space. The Owner of a Unit for which a Parking Space has been assigned as a Limited Common Element shall not park any vehicle except in such assigned Parking Space. No truck (except pick-up trucks or van not exceeding a manufacturer's payload rating of ½ ton), vehicle over the applicable height limit for the Parking Garage, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, recreational vehicle, boat, boat trailer, or other similar equipment or vehicle (collectively, "Restricted Vehicles") may be parked or kept on any part of the Condominium. No mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, recreational vehicle, boat, boat trailer, or other similar equipment or vehicle may be maintained, constructed, reconstructed or repaired on any part of the Condominium.

4.11 Towing of Vehicles. The Board of Directors shall have the right to have any automobile, sport utility vehicle, van, truck, recreational vehicle, motorcycle, motorbike, or other motor vehicle parked, kept, maintained, constructed, reconstructed or repaired in violation of the Condominium Documents towed away at the sole cost and expense of the owner of the vehicle. Any expense incurred by the Association in connection with the towing of any vehicle shall be paid to the Association upon demand by the owner of the vehicle.

4.12 Flags, Signs and Political Activity. With the exception of for sale, for rent, for lease and political signs specifically permitted under A.R.S. §33-1261 and signs approved by the Board, no signs shall be permitted on the exterior of any Building or in the interior of any Unit which would be visible from the exterior of any Building, or on any other portion of the Condominium. The Board of Directors shall adopt a master sign program for all signs and shall obtain approval of the same by the City of Scottsdale Development Review Board prior to the installation of any signs other than parking and directional signs within the Condominium. With the exception of flags specifically permitted under A.R.S. §33-1261, no flags, banners, bunting, fans, pulldowns or similar materials shall be permitted on the exterior of any Building or in the interior of any Unit that would be Visible From Neighboring Property. Any flagpoles installed on any portion of the Condominium shall be one piece conical tapered type which fully complies with all City of Scottsdale requirements. Subject to the provisions of A.R.S. §33-1261, the Board of Directors shall have the right to regulate door to door political activity within the

condominium by (i) prohibiting such activity from sunset to sunrise and (ii) requiring a prominent identification tag for each person engaged in the activity, along with a prominent identification of the candidate or ballot issue that is the subject of the support or opposition. The Board shall adopt reasonable rules and regulations that are consistent with A.R.S. §33-1261 regarding the flags and signs displayed and political activity conducted within the Condominium.

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

4.14 Nuisances and Offensive Activity. No nuisance shall be permitted to exist or operate upon the Condominium, and no activity shall be conducted upon the Condominium which is offensive or detrimental to any portion of the Condominium or any Unit Owner, Lessee or Occupants or is an annoyance to any Unit Owner, Lessee or Occupant or which interferes with quiet enjoyment of a Unit by the Unit Owner or Occupants. No exterior speakers, horns, whistles, bells or other sound devices shall be located, used or placed on the Condominium without the prior written approval of the Board of Directors.

4.15 Window Coverings. No reflective materials, including, but without limitation, aluminum foil, reflective screens or glass, neon lights, mirrors or similar items, shall be installed or placed upon the outside or inside of any windows of a Unit without the prior written approval of the Board of Directors. No enclosures, drapes, blinds, shades, screens or other items affecting the exterior appearance of a Unit shall be constructed or installed without the prior written consent of the Board of Directors. Except for tinting which is part of the original construction of the Building, window tinting is prohibited.

4.16 Balconies and Roof Decks. Furniture, furnishings, umbrellas, plants, equipment or other materials located on any Balcony or Roof Deck (i) shall be of a neutral solid color harmonious with and not in conflict with the color scheme of the exterior walls of the Building and (ii) must be approved in writing by the Board of Directors unless expressly permitted by the Rules. In addition, no Astro-turf, carpet, tile, pavers or other floor covering shall be installed on any Balcony without the prior written approval of the Board of Directors. No barbeque grill or other cooking device may be kept or used on any Balcony. No linens, blankets, rugs, swimsuits or similar articles may be hung from any Balcony or Roof Deck.

4.17 Holiday Decorations. Owners may display holiday decorations subject to the Rules and Regulations.

4.18 Rental of Units. No Owner may lease less than an entire Unit. All leases must be in writing and must provide that the terms of the lease are subject in all respects to the provisions of this Declaration and the Rules and that any violation of this Declaration or the Rules by the Lessee or the other occupants shall be a default under the lease. There shall be no subleasing of Units or assignments of leases. No Unit may be leased for a term of less than one hundred eighty (180) consecutive days. At least ten (10) days before commencement of the lease term, the Unit Owner shall provide the Association with a copy of the signed lease and the following information: (a) the commencement date and expiration date of the lease term; (b) the

names of each of the Lessees and each other person who will reside in the Unit during the lease term; (c) the address and telephone number at which the Unit Owner can be contacted by the Association during the lease term; and (d) the name, address and telephone number of a person whom the Association can contact in the event of an emergency involving the Unit. Any Unit Owner who leases his Unit must provide the Lessee with copies of this Declaration and the Rules. The Unit Owner shall be liable for any violation of this Declaration or the Rules by the Lessees or other persons residing in the Unit and their guests or invitees and, in the event of any such violation, the Unit Owner, upon demand of the Association, shall immediately take all necessary actions to correct any such violations. Nothing contained herein shall prohibit the Owner of a Commercial Unit from renting or leasing rooms or space by the hour, day, week or month for events, meetings and conferences consistent with the primary use of such Commercial Unit

4.19 Time Sharing. A Unit may not be divided or conveyed on a time increment basis (commonly referred to as “time sharing”) or measurable chronological periods. The term “time sharing” as used herein shall be defined to include, but shall not be limited to, any agreement, plan, program or arrangement under which the right to use, occupy or possess the Unit, or any portion thereof, rotates among various Persons on a periodically recurring basis for value exchanged, whether monetary or like-kind use privileges, according to a fixed or floating interval or period of time of one hundred eighty (180) consecutive calendar days or less.

4.20 Weight and Sound Restriction in Loft Units. No Owner (other than Declarant) shall install any hard and/or heavy surface floor coverings on the floor of any Loft Unit, including, without limitation, tile, marble, wood and the like, without the prior written approval of the Board of Directors. Any flooring to be installed in a Loft Unit (other than by the Declarant) must use a sound control underlayment system. Installation of such sound control underlayment system shall include provisions for a perimeter insulation material which will ensure that impact noises are not transmitted into the Condominium Unit below the floor either directly through the floor or by going around the floor and through the surrounding walls.

ARTICLE 5

MAINTENANCE AND REPAIR OF COMMON ELEMENTS AND UNITS

5.1 Duties of the Association. The Association shall maintain, repair and replace all Common Elements, except for the Limited Common Elements or any portions thereof, which the Unit Owners are expressly obligated to maintain, repair and replace pursuant to Section 5.2. The Association shall also maintain, repair and replace the Balconies, the exteriors of the Buildings, including but not limited to the walls, roofs, exteriors of windows, common corridors, elevators, stairs and stairwells. The cost of all such maintenance, repairs and replacements shall be a Common Expense and shall be paid for by the Association. The Board of Directors shall be the sole judge as to the appropriate maintenance, repair and replacement of all Common Elements, but all Common Elements shall be maintained in good condition and repair at all times. No Owner, Lessee, Occupant or other Person shall construct or install any Improvements on the Common Elements or alter, modify or remove any Common Elements without the prior written approval of the Board of Directors. No Owner, Lessee, Occupant or other Person shall obstruct

or interfere with the Association in the performance of the Association's maintenance, repair and replacement of the Common Elements.

5.2 Duties of Unit Owners. Each Unit Owner shall maintain, repair and replace, at his own expense, all portions of his Unit in a good, clean and sanitary condition. In addition, each Unit Owner shall be responsible for the maintenance and repair of the Limited Common Elements allocated to his Unit pursuant to Sections 2.7.1 (i) and (ii), the interior of the Balcony allocated to the Unit by Section 2.7.1 (iii) in a good, clean and sanitary condition.

5.3 Repair or Restoration Necessitated by Owner. Each Unit Owner shall be liable to the Association for any damage to the Common Elements or the Improvements, landscaping or equipment thereon which results from the negligence or willful misconduct of the Unit Owner, Lessee or Occupant of a Unit or their Invitees. The cost to the Association of any such repair, maintenance or replacements required by such act of a Unit Owner or of the Unit Owner's Invitees shall be assessed against the Unit Owner pursuant to Subsection 7.2.4.

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

5.5 Sprinkler System. In accordance with the requirements of the City, the Building will be equipped with a sprinkler system. The heads of the sprinkler system will intrude into the Unit. All pipes, heads and other parts of the sprinkler system (whether located within or outside of the Unit) shall be part of the Common Elements and shall be maintained, repaired and replaced by the Association. If a Unit Owner, Lessee or Occupant of a Unit or their Invitees, negligently or intentionally causes the sprinkler system to be activated (except in the case of a fire or other purely accidental activation) or damages or destroys any part of the sprinkler system, the Unit Owner shall be responsible for the cost of any repairs to the sprinkler system made by the Association and for all other losses or damages resulting from such actions. No Unit Owner may paint or otherwise modify the sprinkler heads, sprinkler head-covers or any other part of the sprinkler system.

ARTICLE 6

THE ASSOCIATION

6.1 Rights, Powers, and Duties of the Association. No later than the date on which the first Unit is conveyed to a Purchaser, the Association shall be organized as a nonprofit Arizona corporation. The Association shall be the entity through which the Unit Owners shall act. The Association shall have such rights, powers and duties as are prescribed by law and as are set forth in the Condominium Documents together with such rights, powers and duties as may be reasonably necessary in order to effectuate the objectives and purposes of the Association as set forth in this Declaration and the Condominium Act. The Association shall

have the right to finance capital improvements in the Condominium by encumbering future Assessments if such action is approved by the affirmative vote of Unit Owners holding more than two-thirds (2/3) of the votes in the Association. Unless the Condominium Documents or the Condominium Act specifically require a vote of the Members, the Board of Directors may act in all instances on behalf of the Association.

6.2 Directors and Officers.

6.2.1. During the Period of Declarant Control, the Declarant shall have the right to appoint and remove the members of the Board of Directors and the officers of the Association, who do not have to be Unit Owners. Upon the termination of the Period of Declarant Control, the Unit Owners shall elect the Board of Directors which must consist of at least three members, all of whom must be Unit Owners. The Board of Directors elected by the Unit Owners shall then elect the officers of the Association.

6.2.2. The Declarant may voluntarily surrender the right to appoint and remove the members of the Board of Directors and the officers of the Association before termination of the Period of Declarant Control, and in that event the Declarant may require, for the duration of the Period of Declarant Control, that specified actions of the Association or the Board of Directors, as described in a Recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

6.3 Rules. The Board of Directors, from time to time and subject to the provisions of this Declaration and the Condominium Act, may adopt, amend, and repeal reasonable and non-discriminatory Rules. The Rules may, among other things, restrict and govern the use of the Units and the Common Elements. In no event shall any such Rules limit in any way the time or manner of access or use of the Parking Garage or any of the Parking Spaces within the Parking Garage.

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

6.5 Personal Liability. No director or officer of the Association, no member of any committee of the Association, and no other person acting on behalf of the Board of Directors shall be personally liable to any Member, or to any other Person for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence in the discharge of such person's duties and responsibilities under the Condominium Documents provided such person acted in good faith and without intentional misconduct.

6.6 Utility Service. The Association shall acquire and pay for the following: (a) water, sewer, electrical, natural gas and other utility service for the Common Elements; (b) refuse and rubbish collection for the Common Elements and the Units; and (c) water, sewer, and

natural gas for the Units and may sub-meter or employ a service to sub-meter such water, sewer, and natural gas and charge the Owner of such Unit for the utilities consumed within such Unit. Notwithstanding anything herein contained to the contrary, the Common Expense Assessment shall include each Owner's pro rata share of the utility services that serve the portions of the Common Elements and amenities available to or utilized by all Owners.

6.7 Building Services. The Association shall also be entitled to engage security services for the Condominium as the Board may from time to time deem appropriate (the "Security Services"). Notwithstanding the foregoing, the Board is under no obligation to engage such services and if it elects to do so, it is not guaranteeing the safety of person or property. Each Owner hereby releases and waives any claim for liability present or future, known or unknown, in any way arising from or in connection with property damage or loss or personal injury or death arising from criminal or third-party negligent or intentional acts that may occur within the Parking Garage, any Building, any Unit or Common Element. The costs and expenses of the Security Services shall be deemed Common Expenses.

6.8 Contracts with Others. The Association may enter into contracts with others, including Declarant or its affiliate, and expend funds for facilities, services, and activities which benefit the Condominium. The Association may provide, or provide for, such services and facilities for the Unit Owners and the Units, and the Association is authorized to enter into and terminate contracts or agreements with other entities, including Declarant or its affiliate, to provide such services and facilities. By way of example, some services and facilities which may be provided include, without limitation, pest control service, cable television service, security, caretaker, fire protection, utilities, and utility sub-metering and reading. The Association may charge the Owners use or service fees for any such services and facilities provided, but may also include all or a portion of the cost thereof as a Common Expense and assess it as part of the Common Expense Assessment. In any contracts or agreements with third parties for the provision of services within the Condominium, the Association may assign to the service provider the right to bill the Owners directly for the cost of such services and to pursue all legal or equitable remedies otherwise available to the Association for the collection thereof.

ARTICLE 7

ASSESSMENTS

7.1 Preparation of Budget.

7.1.1. At least thirty (30) days before the beginning of each fiscal year of the Association commencing with the fiscal year in which the first Unit is conveyed to a Purchaser, the Board of Directors shall adopt a budget for the Association containing an estimate of the total amount of funds which the Board of Directors believes will be required during the ensuing fiscal year to pay all Common Expenses including, but not limited, to: (a) the amount required to pay the cost of maintenance, management, operation, repair and replacement of the Common Elements and those parts of the Units, if any, which the Association has the responsibility of maintaining, repairing and replacing; (b) the cost of wages, materials, insurance premiums, services, supplies and other expenses required for the administration, operation, maintenance and repair of the Condominium; (c) the amount required to render to the Unit Owners all services

required to be rendered by the Association under the Condominium Documents; and (d) such amounts as may be necessary to provide general operating reserves and reserves for contingencies and replacements. The budget shall separately reflect any Common Expenses to be assessed against less than all of the Units pursuant to Subsection 7.2.4 or 7.2.5 or Section 7.4.

7.1.2. At least ten (10) days before the beginning of each fiscal year of the Association (except for the first fiscal year), the Board of Directors shall send to each Unit Owner a summary of the budget and a statement of the amount of the Common Expense Assessment assessed against the Unit of the Unit Owner in accordance with Section 7.2. The failure or delay of the Board of Directors to prepare or adopt a budget for any fiscal year shall not constitute a waiver or release in any manner of a Unit Owner's obligation to pay his allocable share of the Common Expenses as provided in Section 7.2, and each Unit Owner shall continue to pay the Common Expense Assessment against his Unit as established for the previous fiscal year until notice of the Common Expense Assessment for the new fiscal year has been given to the Unit Owners by the Board of Directors.

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

7.2 Common Expense Assessment.

7.2.1. For each fiscal year of the Association commencing with the fiscal year in which the first Unit is conveyed to a Purchaser, the total amount of the estimated Common Expenses set forth in the budget adopted by the Board of Directors (except for the Common Expenses which are to be assessed against less than all of the Units pursuant to Subsections 7.2.4 and 7.2.5 or Section 7.4 and except for charges for electrical service which will be billed to each Unit Owner as provided in Section 6.6) shall be assessed against each Unit in proportion to the Unit's Common Expense Liability as set forth in Section 2.6. The amount of the Common Expense Assessment assessed pursuant to this Subsection 7.2.1 shall be in the sole discretion of the Board of Directors. If the Board of Directors determines during any fiscal year that its funds budgeted or available for that fiscal year are, or will, become inadequate to meet all Common Expenses for any reason, including, without limitation, nonpayment of Assessments by Members, the Board of Directors may increase the Common Expense Assessment for that fiscal year and the revised Common Expense Assessment shall commence on the date designated by the Board of Directors.

7.2.2. The Common Expense Assessments shall commence as to all Units on the first day of the month following the conveyance such Unit to a Purchaser. The Board of Directors may require that the Common Expense Assessments or Special Assessments be paid in monthly installments or as otherwise determined by the Board.

7.2.3. Except as otherwise expressly provided for in this Declaration, all Common Expenses including, but not limited to, Common Expenses associated with the maintenance, repair and replacement of a Limited Common Element, shall be assessed against all of the Units in accordance with Subsection 7.2.1. As provided in Section 2.6, Common

Expenses that benefit only the Loft Units, the Townhouse Units or the Commercial Units shall be allocated solely against the Loft Units, the Townhouse Units or the Commercial Units.

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

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

7.2.6. All Assessments, monetary penalties and other fees and charges levied against a Unit shall be the personal obligation of the Unit Owner of the Unit at the time the Assessments, monetary penalties or other fees and charges became due. The personal obligation of a Unit Owner for Assessments, monetary penalties and other fees and charges levied against his Unit shall not pass to the Unit Owner's successors in title unless expressly assumed by them.

7.2.7. The Common Expense Assessments for any Unit owned by the Declarant on which construction has not been substantially completed shall be an amount equal to twenty-five percent (25%) of the Common Expense Assessment for Units which have been substantially completed. For purposes of this Subsection, a Unit shall be deemed substantially completed when the City of Scottsdale issues a Certificate of Occupancy permitting the Unit to be occupied and used for its intended purposes. So long as any Unit owned by the Declarant qualifies for the reduced Common Expense Assessment provided for in this Subsection, the Declarant shall be obligated to pay to the Association any deficiency in the monies of the Association due to the Declarant having paid a reduced Common Expense Assessment and necessary for the Association to be able to timely pay all Common Expenses.

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

7.4 User Fee Assessment. The Association may establish and charge fees for the use of certain facilities in the Condominium. All such fees shall be assessed to the Unit Owners as a User Fee Assessment which shall be payable within fifteen (15) days after notice of the User Fee Assessment is given to the Unit Owner.

7.5 Individual Expense Assessment. The Association may contract with various suppliers of goods or services to provide to the Unit Owners, Lessees and Occupants goods or services which the Association is not required to provide under the Condominium Documents.

Such goods or services may include, without limitation, dry-cleaning and laundry services, catering or other food service, housecleaning, shoe repair, car washing or repair or personal training. Any such contract may either provide that the Association shall pay for the cost and expense of the goods or services provided to the Unit Owners, Lessees or Occupant under the contract or that the cost and expense shall be billed directly to the Unit Owner, Lessee or Occupant receiving such goods or services. Any such costs and expenses paid by the Association shall be assessed to the Unit Owner receiving such goods and services as an Individual Expense Assessment.

7.6 Enforcement Assessment. The Association may assess against a Unit Owner as an Enforcement Assessment any of the following expenses: (a) any Collection Costs incurred by the Association in attempting to collect Assessments or other amounts payable to the Association by the Unit Owner; (b) any attorneys' fees (whether or not a lawsuit is filed) incurred by the Association with respect to any violation of the Condominium Documents by the Unit Owner or the Unit Owner's Lessees or Invites; (c) any monetary penalties levied against the Unit Owner; or (d) any amounts (other than Common Expense Assessments, Special Assessments, Individual Assessments and User Fee Assessments) which become due and payable to the Association by the Unit Owner or the Unit Owner's Lessees or Invites pursuant to the Condominium Documents.

7.7 Effect of Nonpayment of Assessments: Remedies of the Association.

7.7.1. Any Assessment, or any installment of an Assessment, which is not paid within fifteen (15) days after the Assessment first became due shall be deemed delinquent and shall bear interest from the date of delinquency at the rate of interest established from time to time by the Board of Directors. If any Assessment, or any installment thereof, is not paid within fifteen (15) days after the Assessment first became due, the Association may assess against the delinquent Unit Owner a late fee in the amount established from time to time by the Board of Directors.

7.7.2. All Assessments, monetary penalties and other fees and charges imposed or levied against any Unit or Unit Owner shall be secured by the Assessment Lien as provided in the Condominium Act. The recording of this Declaration constitutes record notice and perfection of the Assessment Lien, and no further recording of any claim of lien shall be required. Although not required in order to perfect the Assessment Lien, the Association shall have the right but not the obligation, to record a notice setting forth the amount of any delinquent assessments, monetary penalties or other fees or charges imposed or levied against a Unit or the Unit Owner which are secured by the Assessment Lien.

7.7.3. The Assessment Lien shall have priority over all liens or claims except for: (a) tax liens for real property taxes; (b) assessments in favor of any municipal or other governmental body; and (c) the lien of any First Mortgage. Any First Mortgagee or any other Person acquiring title or coming into possession of a Unit through foreclosure of a First Mortgage, purchase at a foreclosure sale or trustee's sale, or through any equivalent proceedings, including, but not limited to, the taking of a deed in lieu of foreclosure shall acquire title free and clear of any claims for unpaid assessments and charges against the Unit which became payable prior to the acquisition of such Unit by the First Mortgagee or other Person. Any assessments

and charges against the Unit that accrue prior to such sale or transfer shall remain the obligation of the defaulting Unit Owner.

7.7.4. The Association shall not be obligated to release the Assessment Lien until all delinquent Assessments, interest, lien fees, fines, reasonable attorneys' fees, court costs, collection costs and all other sums payable to the Association by the Unit Owner of the Unit have been paid in full.

7.7.5. The Association shall have the right, at its option, to enforce collection of any delinquent Assessments, monetary penalties and all other fees and charges owed to the Association in any manner allowed by law including, but not limited to: (a) bringing an action at law against the Unit Owner personally obligated to pay the delinquent amounts and such action may be brought without waiving the Assessment Lien securing any such delinquent amounts; or (b) bringing an action to foreclose the Assessment Lien against the Unit in the manner provided by law for the foreclosure of a realty mortgage. The Association shall have the power to bid at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any and all Units purchased at such sale.

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

7.9 Certificate of Payment. The Association on written request shall furnish to a lienholder, Unit Owner or person designated by a Unit Owner a recordable statement setting forth the amount of unpaid Assessments against his Unit. The statement shall be furnished within fifteen (15) days after receipt of the request and is binding on the Association, the Board of Directors, and every Unit Owner. The Association may charge a reasonable fee in an amount established by the Board of Directors for each such statement.

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

7.11 Initial Working Capital Fund. To provide the Association with initial operating funds, each Purchaser of a Unit from the Declarant shall pay to the Association, immediately upon becoming the Unit Owner of the Unit, a sum equal to the monthly installments of the Common Expense Assessment for the Unit (or such amount as Declarant may determine is necessary). Such amount shall be non-refundable and shall not be considered as an advance payment of any Assessments levied by the Association pursuant to this Declaration.

7.12 Reserve Contribution.

7.12.1. Except as provided in Subsection 7.12.2, each Person who purchases or otherwise becomes the Owner of a Unit shall pay to the Association, immediately upon becoming the owner of the Unit, a Reserve Contribution equal to the product of the gross purchase price of the Unit multiplied by _____. The amount of the Reserve Contribution may be increased by the Board of Directors from time to time after _____, 201_.

7.12.2. No Reserve Contribution shall be payable with, respect to: (a) the transfer or conveyance of a Unit by devise or intestate succession; (b) a transfer or conveyance of a Unit to a family trust, family limited partnership or other Person for bona fide estate planning purposes; (c) a transfer or conveyance of a Unit to a corporation, partnership or other entity in which the grantor owns a majority interest unless the Board determines, in its sole discretion, that a material purpose of the transfer or conveyance was to avoid payment of the Reserve Contribution in which event a Reserve Contribution shall be payable with respect to such transfer or conveyance; (d) the conveyance of a Unit by a trustee's deed following a trustee's sale under a deed of trust unless the purchaser at such sale proceeds to occupy, lease or otherwise use the Unit; or (e) a conveyance of a Unit as a result of the foreclosure of a realty mortgage or the forfeiture or foreclosure of a purchaser's interest under a Recorded contract for the conveyance of real property subject to A.R.S. §33 -741, et seq. unless the person to whom the Unit is conveyed proceeds to occupy, lease or otherwise use the Unit;

7.12.3. All Reserve Contributions shall be deposited in the Reserve Account established pursuant to Section 7.14. Reserve Contributions shall be non-refundable and shall not be considered as an advance payment of Assessments.

7.13 Transfer Fee. Each Purchaser of a Unit from a Person other than the Declarant shall pay to the Association immediately upon becoming the Owner of the Unit a transfer fee in the amount set from time to time by the Board of Directors to compensate the Association for the administrative cost resulting from the transfer of a Unit. The transfer fee is not intended to compensate the Association for the costs incurred in the preparation of the statement that the Association is required to mail or deliver to a purchaser under A.R.S. § 33-1260(A) and, therefore, the transfer fee shall be in addition to the fee that the Association is entitled to charge pursuant to A.R.S. § 33-1260(C).

7.14 Reserves. The Assessments shall include reasonable amounts as determined by the Board of Directors collected as reserves for the future periodic maintenance, repair and replacement of all or a portion of the Common Elements, or any other purpose as determined by the Board of Directors. All amounts collected as reserves, whether pursuant to this Section or otherwise, shall be deposited by the Board of Directors in a separate bank account (the "Reserve Account") to be held in trust for the purposes for which they are collected and are to be segregated from and not commingled with any other funds of the Association. Such reserves shall be deemed a contribution to the capital account of the Association by the Members. The Board of Directors shall not expend funds designated as reserve funds for any purpose other than those purposes for which they were collected. Withdrawal of funds from the Association's Reserve Account shall require the signatures of either (a) two (2) members of the Board of Directors, or (b) one (1) member of the Board of Directors and an officer of the Association who

is not also a member of the Board of Directors. After the termination of the Period of Declarant Control, the Board of Directors shall obtain a reserve study at least once every five years, which study shall at a minimum include: (a) identification of the major components of the Common Elements which the Association is obligated to repair, replace, restore or maintain that, as of the date of the study, have a remaining useful life of less than thirty (30) years; (b) identification of the probable remaining useful life of the identified major components as of the date of the study; (c) an estimate of the cost of repair, replacement, restoration, or maintenance of the identified major components during and at the end of their useful life; and (d) an estimate of the total annual contribution necessary to defray the cost to repair, replace, restore, or maintain the identified major components during and at the end of their useful life, after subtracting total reserve funds as of the date of the study. The Board of Directors shall modify the budget in accordance with the findings of the reserve study.

ARTICLE 8

INSURANCE

8.1 Scope of Coverage.

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

(i) A blanket causes of loss - special form policy of property insurance with sprinkler leakage, debris removal and water damage endorsements, insuring the entire Condominium, except for: (1) additions, alterations and improvements supplied or installed by the Unit Owners; and (2) furniture, furnishings or other personal property of the Unit Owners. Such property insurance shall cover the interests of the Association, the Board of Directors and all Unit Owners and their mortgagees, as their interests may appear (subject, however, to the loss payment adjustment provisions in favor of the Insurance Trustee), in an amount equal to one hundred percent (100%) of the then current replacement cost of the Condominium (exclusive of the land, excavations, foundations and other items normally excluded from such coverage), without deduction for depreciation. The Board of Directors shall review the replacement cost annually with the assistance of the insurance company providing such coverage. The Board of Directors shall also obtain and maintain such coverage on all personal property owned by the Association.

(ii) Broad form comprehensive general liability insurance, for a limit to be determined by the Board, but not less than \$2,000,000.00 for any single occurrence with an aggregate of \$2,000,000.00. Such insurance shall cover all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Common Elements. Such policy shall include: (1) a cross liability clause to cover liabilities of the Unit Owners as a group to a Unit Owner, (2) medical payments insurance and contingent liability coverage arising out of the use of hired and non-owned automobiles, (3) coverage for any legal liability that results from lawsuits related to employment contracts in which the Association is a party, and (4) a waiver of the contractual liability exclusion for personal injury.

(iii) Flood Hazard Insurance in an amount not less than the minimum federal limits established under the National Flood Insurance Program administered by the Federal Emergency Management Agency.

(iv) Workmen's compensation insurance to the extent necessary to meet the requirements of the laws of Arizona and a policy of employer's liability insurance with coverage limits determined by the Board of Directors.

(v) Directors' and officers' liability insurance in an amount not less than \$5,000,000.00 covering all the directors and officers of the Association in such limits as the Board of Directors may determine from time to time.

(vi) Such other insurance as the Association shall determine from time to time to be appropriate to protect the Association, the members of the Board of Directors, the members of any committee or the Board of Directors or the Unit Owners, including, without limitation, umbrella general liability insurance which would provide general liability coverage in excess of the coverage provided by policy to be obtained pursuant to Subsection 8.1.1 (ii).

8.1.2. The insurance policies purchased by the Association shall, to the extent reasonably available, contain the following provisions:

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

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

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

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

(v) A "severability of interest" endorsement that precludes the insurer from denying the claim of a Unit Owner because of the negligent acts of the Association or other Unit Owners.

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

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

8.1.4. Any Insurance Trust Agreement shall be recognized by the insurer.

8.1.5. If applicable, pressured, mechanical and electrical equipment coverage on a comprehensive form in an amount not less than \$500,000 per accident per location.

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

8.1.7. The Board of Directors may select reasonable deductibles applicable to the insurance coverage to be maintained by the Association pursuant to this Section 8.1 in order to reduce the premiums payable for such insurance. The deductible, if any, on any insurance policy obtained by the Association shall be a Common Expense, but the Association may assess to a Unit Owner any deductible amount necessitated by the negligence, misuse or neglect for which such Unit Owner is responsible.

8.1.8. Notwithstanding any of the other provisions of this Article to the contrary, there may be named as an insured, on behalf of the Association, the Association's authorized representative, including any trustee with whom the Association may enter into any Insurance Trust Agreement or any successor to such trustee who shall have exclusive authority to negotiate losses under any policy providing such property or liability insurance and to perform such other functions as are necessary to accomplish such purpose. Each Unit Owner appoints the Association, or any insurance trustee or substitute insurance trustee designated by the Association, as attorney-in-fact for the purpose of purchasing and maintaining such insurance, including: (a) the collection and appropriate disposition of the proceeds thereof, (b) the negotiation of losses and execution of releases of liability; (c) the execution of all documents; and (d) the performance of all other acts necessary to accomplish such purpose.

8.2 Fidelity Bonds.

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

- (i) The fidelity bonds shall name the Association as an obligee;
- (ii) The bonds shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expressions; and

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

8.2.2. The Association shall require any management agent of the Association to maintain its own fidelity bond in an amount equal to or greater than the amount of the fidelity bond to be maintained by the Association pursuant to Subsection 8.2.1. The fidelity bond maintained by the management agent shall cover funds maintained in bank accounts of the management agent and need not name the Association as an obligee.

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

8.4 Insurance Obtained by Unit Owners. Each Unit Owner shall be responsible for: (a) physical damage insurance on the personal property in his Unit and elsewhere on the Condominium, and any additions, alterations and improvements to his Unit (whether installed by such Unit Owner or any prior Unit Owner or whether originally in his Unit; (b) his personal liability to the extent not covered by the policies of liability insurance obtained by the Board of Directors for the benefit of all of the Unit Owners in an amount not less than \$500,000.00 per occurrence; and (c) his additional living expense. All policies of property insurance carried by each Unit Owner shall be without contribution with respect to the policies of property insurance obtained by the Board of Directors for the benefit of all of the Unit Owners. For the purposes of this Section 8.4, "additions, alterations and improvements" shall mean any property (excluding personal property readily removable without damage to the Unit) attached to the Unit, including without limitation, carpeting, flooring, wall covering, paint and paneling. Owner shall remain obligated for maintaining and repairing the Unit and keeping place all insurance even if the Unit is leased.

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

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

8.7 Annual Insurance Review. The Board of Directors shall determine annually whether the amounts and types of insurance it has obtained provide adequate coverage in light of increased construction costs, inflation, practice in the area in which the Condominium is located, or any other factor which tends to indicate that either additional insurance policies or increased

coverage under existing policies are necessary or desirable to protect the interests of the Owners and of the Association.

ARTICLE 9

DESTRUCTION OF IMPROVEMENTS

9.1 Automatic Reconstruction. Any portion of the Condominium for which insurance is maintained by the Association which is damaged or destroyed shall be repaired or replaced promptly by the Association unless: (a) the Condominium is terminated; (b) repair or replacement would be illegal under any state or local health or safety statute or ordinance; or (c) eighty percent (80%) of the Unit Owners, including every Owner of a Unit or allocated Limited Common Element which will not be rebuilt, vote not to rebuild. The cost of repair or replacement of the damaged or destroyed portion of the Condominium in excess of insurance proceeds and reserves shall be a Common Expense and shall be assessed to the Members as a Special Assessment pursuant to Section 7.3.

9.2 Determination Not to Reconstruct Without Termination. If eighty percent (80%) of the Unit Owners (including every Owner of a Unit or an allocated Limited Common Element which will not be rebuilt) vote not to rebuild, and the Condominium is not terminated in accordance with the Act, the insurance proceeds shall be distributed in proportion to their interests in the Common Elements to the Owners of those Units and the Owners to which those Limited Common Elements were allocated, or to lienholders as their interests may appear. The remainder of the proceeds shall be distributed to all Unit Owners or lienholders as their interests may appear in proportion to Common Element interests of all the Units. If the Unit Owners vote not to rebuild any Unit, that Unit's allocated interests in the Common Elements and in the Common Expenses shall be automatically reallocated as if the Unit had been condemned under A.R.S. §33-1206(A), and the Association shall prepare, execute and record an amendment to this Declaration reflecting the reallocation. The other Unit Owners shall be entitled subsequently to reconstruct the Building or otherwise develop the Parcel.

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

9.4 Negotiations with Insurer. The Association shall have full authority to negotiate in good faith with representatives of the insurer of any totally or partially destroyed building or any other portion of the Common Elements, and to make settlements with the insurer for less than full insurance coverage on the damage to such building or any other portion of the Common Elements. Any settlement made by the Association in good faith shall be binding upon all Owners and First Mortgagees. Insurance proceeds for any damage or destruction of any part of the Condominium covered by property insurance maintained by the Association shall be paid to the Association and not to any First Mortgage holder or other lienholder. The Association shall hold any proceeds in trust for the Unit Owners and lienholders as their interests may appear. Except as otherwise provided in Sections 9.1 and 9.2, all insurance proceeds shall be disbursed

first for the repair or restoration of the damaged Common Elements, and Unit Owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the damaged or destroyed Common Elements have been completely repaired or restored or the Condominium is terminated.

9.5 Repair of Units. Installation of improvements to, and repair of any damage to, the interior of a Unit not covered by property insurance maintained by the Association shall be made by and at the individual expense of the Owner of that Unit and shall be completed as promptly as practicable and in a lawful and workmanlike manner.

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

ARTICLE 10

EMINENT DOMAIN

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

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

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

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

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

ARTICLE 11

DISCLOSURES AND OWNER ACKNOWLEDGEMENTS

11.1 Construction Issues and Characteristics of the Condominium. By acceptance of a deed for a Unit within the Condominium, each Owner shall be deemed to have acknowledged, agreed to, and accepted the following: (i) that in all likelihood, the Units contain variations and deviations from the plans and specifications, including but not limited to, minor variations as to the location of the walls of a Unit; (ii) that there may be minor deviations in the Common Elements, Limited Common Elements, and in a Unit from Declarant's model Units located within the Condominium and from illustrations and designs shown in promotional materials; (iii) that floor plans, maps, landscaping and elevation renderings included within promotional brochures and Condominium information may not have been drawn to scale, and any square footage or dimensions shown in such materials are only approximations; (iv) that the as-built location of utility lines, utility improvements (such as but not limited to junction boxes, transformers or pedestals) and sewer taps, may vary from locations shown on site layout plans; (v) that the character and uses of property surrounding and in the vicinity of the Condominium may change; (vi) construction activity (including but not limited to noise and the transportation of labor, material and equipment) will continue in the Condominium until all Units are completed and may cause varying degrees of increased traffic, dust, noise, and other inconveniences to the Owners and Occupants; and (vii) in any multi-family dwelling, sound may be audible between Units (particularly where the sound level of the source is sufficiently high and the background noise in an adjacent Unit is very low) and each Owner and Occupant agrees to accept their Unit subject to sound impacts from adjacent Units and properties, to accept responsibility for minimizing noise transmission from their Unit, and adhere to any Rules that are designed to minimize noise transmission. Declarant disclaims and shall have no liability or responsibility in connection with the foregoing and by acceptance of a deed each Owner for itself and its respective Occupants and guests, or invitees releases Declarant from any and all responsibility, obligation or liability resulting from the existence or effect of any of the foregoing items.

11.2 Views. No representation or warranty is made by Declarant, or any of its representatives or agents, with respect to the presence or continued existence of any view or scene from any portion of a Unit or the Condominium. The particular view, if any, that a Unit or

the Condominium currently enjoys may be impaired and may be obstructed by the construction of other Buildings, Improvements, or facilities within or outside of the Condominium.

11.2 Economic Potential. Neither Declarant, nor any of its members, employees, agents or representatives has made any representation concerning potential for future profit, rental income potential, tax advantages, or investment potential of any Unit.

11.3 Security. From time to time the Association may, but shall not be required to, provide measures or take actions that directly or indirectly are intended to improve safety within the Condominium; provided, however, the Association is not a provider of security services and shall have no duty to provide security within the Condominium. It shall be the responsibility of each Owner to protect his/her person and property and all responsibility to provide such security shall be solely with each Owner. Neither Declarant nor the Association shall be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of safety measures undertaken at the Parcel.

11.4 Proximity to Scottsdale Airport. The Condominium is located approximately 5,200 feet northeast of the nearest Scottsdale Airport (the "Airport") runway, putting it within the Airport Influence Area identified in Chapter 5 of the Scottsdale Revised Code. By acceptance of a deed to a Unit, each Owner acknowledges that:

(i) The Condominium is close to the Airport located generally between Frank Lloyd Wright Boulevard on the north, Pima Road on the east, Thunderbird Road on the south and Scottsdale Road on the west.

(ii) The Airport is operated as a general aviation reliever/commercial service airport for Scottsdale and North Phoenix, and used generally for airplanes, jets and helicopters.

(iii) Aircraft using the Airport may fly over the Condominium and adjacent properties at altitudes that vary for several reasons, including weather conditions, aircraft type, aircraft performance and pilot proficiency.

(iv) The majority of takeoffs and landings occur between 6:00 a.m. and 11:00 p.m., but the Airport is open 24 hours each day, so takeoffs and landings may occur at any time.

(v) The number of takeoffs and landings at the Airport average approximately 400 each day, but that number varies and may increase.

(vi) Aircraft using the Airport will generate noise, the volume, pitch, amount and frequency of which will vary for several reasons, including weather conditions, aircraft type, aircraft altitude and aircraft number.

(vii) Airport management attempts to minimize aircraft noise and its influence on Lots in the Airport Influence Zone, but there is no guarantee that such attempts will be effective or remain in place.

Each Owner acknowledges that it has given due consideration to the location of the Condominium in the vicinity of the Airport, accepts and assumes any and all risks, burdens and inconvenience caused by or associated with the Airport and its operations (including noise), and agrees not to assert or make any claim arising out of the Airport and its operations against the City of Scottsdale, its elected and appointed officials, officers, directors, commissioners, representatives, employees, and agents. Each Owner further releases Declarant from any and all responsibility, obligation or liability resulting from the existence or effect the Scottsdale Airport may have upon the Condominium, such Owner's Unit and such Owner's Occupants, guests and invitees.

11.5 Proximity to WestWorld and Horseman's Park. The Condominium is located approximately 500 feet north of WestWorld and approximately 1,200 feet northeast of Scottsdale Horseman's Park. WestWorld a nationally recognized special event and equestrian center located on 326 acres. By acceptance of a deed, each Owner acknowledges that it has given due consideration to the location of the Condominium in the vicinity of WestWorld and Horseman's Park and releases Declarant from any and all responsibility, obligation or liability resulting from the existence or effect WestWorld and Horseman's Park may have upon the Condominium, such Owner's Unit and such Owner's Occupants, guests and invitees. OK

11.6 Proximity to Commercial and Recreational Uses. The Condominium is located in a well-established commercial and recreational area. Surrounding uses presently include office, warehouse, recreational and light industrial. There is presently no other residential development in the area. By acceptance of a deed, each Owner acknowledges that it has given due consideration to the location of the Condominium in the vicinity of such office, warehouse and industrial uses and releases Declarant from any and all responsibility, obligation or liability resulting from the existence or effect such office, warehouse and industrial uses may have upon the Condominium, such Owner's Unit and such Owner's Occupants, guests and invitees. OK

ARTICLE 12

DISPUTE RESOLUTION

12.1 Defined Terms. As used in this Article 12, the following terms shall the meaning set forth below:

(a) **"Alleged Defect"** means any alleged defect or deficiency in the planning, design, engineering, grading, construction or development of the Common Elements or any Unit by a Declarant Party (as hereafter defined) including, without limitation, any failure to comply with applicable building codes or federal, state or local laws, ordinances or regulations or any failure to comply with any express or implied warranty or standard of workmanship.

(b) **"Declarant Party"** means: (i) the Declarant and its members, managers, officers and employees; (ii) the entity which platted the Condominium if different from but affiliated with Declarant; (iii) the general contractor for the Condominium; (iv) the subcontractors, material suppliers, labor suppliers, architects, engineers and consultants of any of the said contractors, including but not limited to their respective members, managers, directors,

officers, partners, employees, agents and independent contractors; or (v) any employee or other representative of the Declarant who serves as a director or officer of the Association.

(c) **“Claim”** means: (i) any claim or cause of action by a Claimant against a Declarant Party arising out of or related in any way to an Alleged Defect, including, without limitation, any claim or cause of action for breach of express or implied warranties, negligence or that a Declarant Party was negligent in the planning, design, engineering, grading, construction or development of the Condominium; and (ii) any claim or cause of action against a Declarant Party arising out of or in any way related to the development of the Condominium or the management or operation of the Association, including, without limitation, any claim for negligence, fraud, intentional misconduct or breach of fiduciary duty.

12.2 Agreement to Resolve Certain Disputes Without Litigation. The Association, all Unit Owners and all Declarants agree that all Claims shall be resolved exclusively in accordance with the dispute resolution procedures set forth in this Article 12.

12.3 Notice of Alleged Defect. The Association or any Unit Owner who becomes aware of any Alleged Defect which could be the basis for a Claim against any Declarant Party shall give written notice (the “Notice of Alleged Defect”) promptly to each Declarant Party who could be responsible for the Alleged Defect. The Notice of Alleged Defect shall state plainly and concisely: (a) the nature and location of the Alleged Defect; (b) the date on which the Association or Unit Owner giving the Notice of Alleged Defect first became aware of the Alleged Defect; and (c) whether the Alleged Defect has caused any damage to any persons or property. Following the receipt by a Declarant Party of a Notice of Alleged Defect, the Declarant Party and any of its employees, agents, contractors, subcontractors and consultants shall have the right, upon reasonable notice to the Association or Unit Owner giving the Notice of Alleged Defect to enter onto or into, as applicable, the Common Elements or any Unit for the purposes of inspecting and/or conducting testing to determine the existence, nature and extent of the Alleged Defect and, if deemed necessary by the Declarant Party, to correct, repair and/or replace the Alleged Defect. In conducting such inspection, testing, repairs and/or replacement, the Declarant Party shall be entitled to take any actions it deems reasonable and necessary under the circumstances. Nothing set forth in this Section 12.3 shall be construed to impose any obligation on any Declarant Party to inspect, test, repair or replace any item or Alleged Defect for which the Declarant Party is not otherwise obligated under applicable law or any warranty provided by the Declarant or any other Declarant Party. The right of a Declarant Party and its employees, agents, contractors, subcontractors and consultants to enter, inspect, test, repair and/or replace under this Section shall be irrevocable and may not be waived or otherwise terminated, except by written document, in recordable form, executed and Recorded by the Declarant Party. In no event shall any statute of limitations be tolled during the period in which a Declarant Party conducts any inspection, testing, repair or replacement of the Alleged Defect. If the Alleged Defect is not repaired or replaced to the satisfaction of the Association or Unit Owner giving the Notice of Alleged Defect within sixty (60) days after the Notice of Alleged Defect is given to the Declarant Party, then the Association or Unit Owner may proceed with the preparation of the delivery of a Notice of Claim as provided in Section 12.4.

12.4 Notice of Claim. The Association or any Unit Owner who contends or alleges to have a Claim (a “Claimant”) against any Declarant Party (a “Respondent”) shall notify each

Respondent in writing of the Claim (the "Claim Notice"), stating plainly and concisely: (a) the nature of Claim, including, date, time, location, Persons involved, and Respondent's role in the Claim; (b) the factual and legal basis of the Claim; and (c) what Claimant wants Respondent to do or not do to resolve the Claim. In the event the Claimant is the Association and the Claim involves an Alleged Defect, the Association must provide written notice to all Members prior to delivering a Claim Notice to a Declarant Party or initiating any legal action, cause of action, proceeding, or arbitration against any Declarant Party which notice shall (at a minimum) include: (a) a description of the Claim; (b) a description of the attempts of Declarant or any other Declarant Party to correct such Alleged Defect and the opportunities provided to Declarant or any other Declarant Party to correct such Alleged Defect; (c) a certification from an engineer licensed in the State of Arizona that such Alleged Defect exists along with a description of the scope of work necessary to cure such Alleged Defect and a resume of such engineer; (d) the estimated cost to repair such Alleged Defect; (e) the name and professional background of the attorney retained by the Association to pursue the Claim and a description of the relationship between such attorney and member(s) of the Board of Directors (if any); (f) a description of the fee arrangement between such attorney and the Association; (g) the estimated attorneys' fees and expert fees and costs necessary to pursue the Claim and the source of the funds which will be used to pay such fees and expenses; (h) the estimated time necessary to conclude the action; and (i) an affirmative statement from the Board of Directors that the action is in the best interests of the Association and its Members. If the Alleged Defect is alleged to be the result of an act or omission of a person licensed by the State of Arizona under Title 20 or Title 32 of the Arizona Revised Statutes (a "Licensed Professional"), then the Claim Notice from the Association must be accompanied by an affidavit from a Licensed Professional in the same discipline as the Licensed Professional alleged to be responsible for the Alleged Defect. The affidavit must contain the information required to be contained in a preliminary expert opinion affidavit submitted pursuant to Section 12-2602(B) of the Arizona Revised Statutes.

12.5 Mediation. The Claimant and the Respondent shall negotiate in good faith in an attempt to resolve the claim. If the Parties do not resolve the Claim through negotiation within thirty (30) days after the date of the Claim Notice or within such longer period as may be agreed upon by the Parties ("Termination of Negotiations"), Claimant shall have thirty (30) additional days within which to submit the Claim to mediation by the American Arbitration Association ("AAA") or such other independent mediation service selected by mutual agreement of the Claimant and the Respondent. If Claimant does not submit the Claim to mediation within thirty (30) days after Termination of Negotiations, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim. If the Parties do not settle the Claim within thirty (30) days after submission of the matter to the mediation process, or within such time as determined reasonable or appropriate by the mediator, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation Notice"). The Termination of Mediation Notice shall set forth when and where the Parties met, that the Parties are at an impasse, and the date that mediation was terminated.

12.6 Binding Arbitration. In the event a Claim is not resolved by mediation, the Claimant shall have ninety (90) days after the date of the Termination of Mediation Notice to submit the Claim to binding arbitration in accordance with this Section 12.6. If the Claimant fails to timely submit the Claim to arbitration, then the Claim shall be deemed waived and

abandoned and the Respondent shall be relieved of any and all liability to Claimant arising out of the Claim. A Claimant may only submit a Claim in arbitration on its own behalf. No Claimant may submit a Claim in arbitration as a representative or member of a class, and no Claim may be arbitrated as a class action. The Association, the Unit Owners and all Declarant Parties agree that all Claims that are not resolved by negotiation or mediation shall be resolved exclusively by arbitration conducted in accordance with this Section 12.6. The Association, the Unit Owners and all Declarant Parties waive their right to have a Claim resolved by a court, including, without limitation, the right to file a legal action as the representative or member of a class or in any other representative capacity. The Claimant and Respondent shall cooperate in good faith to assure that all Declarant Parties who may be liable to the Claimant or Respondent with respect to the Claim are made parties to the arbitration. If the Claimant submits the Claim to binding arbitration in accordance with this Section 12.6, the arbitration shall be conducted in accordance with the following rules:

(a) Initiation of Arbitration. The arbitration shall be initiated by either party delivering to the other a Notice of Intention to Arbitrate as provided for in the AAA Commercial Arbitration Rules or such other rules as the AAA may determine to be applicable (the "AAA Rules").

(b) Governing Procedures. The arbitration shall be conducted in accordance with the AAA Rules and A.R.S. § 12-1501, et seq. In the event of a conflict between the AAA Rules and this Section 12.6, the provisions of this Section 12.6 shall govern.

(c) Appointment of Arbitrator. The parties shall appoint a single Arbitrator by mutual agreement. If the parties have not agreed within ten (10) days of the date of the Notice of Intention to Arbitrate on the selection of an arbitrator willing to serve, the AAA shall appoint a qualified Arbitrator to serve. Any arbitrator chosen in accordance with this Subsection (c) is referred to in this Section 12.6 as the "Arbitrator".

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

(e) Disclosure. Any candidate for the role of Arbitrator shall promptly disclose to the parties all actual or perceived conflicts of interest involving the dispute or the parties. No Arbitrator may serve if such person has a conflict of interest involving the subject matter of the dispute or the parties. If an Arbitrator resigns or becomes unwilling to continue to serve as an Arbitrator, a replacement shall be selected in accordance with the procedure set forth in Subsection 12.6(c).

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

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

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

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

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

(k) Final Award. The Arbitrator shall promptly (but, in no event later than sixty (60) days following the conclusion of the proceedings or such longer period as the parties mutually agree) determine the claims of the parties and render a final award in writing. The Arbitrator shall award the prevailing party in the proceeding all or a part of such party's reasonable attorneys' fees, expert witness fees and costs including, but not limited to, all compensation paid or payable to the arbitrator, taking into account the final result of arbitration, the conduct of the parties and their counsel in the course of the arbitration, and other relevant factors. The Arbitrator shall not award any punitive damages. The Arbitrator shall not award indirect, consequential or special damages regardless of whether the possibility of such damage or loss was disclosed to, or reasonably foreseen by the party against whom the claim is made. The Arbitrator shall assess the costs of the proceedings (including, without limitation, the fees of the Arbitrator) against the non-prevailing party.

12.7 Right to Enter, Inspect, and/or Replace. Following the receipt by a Declarant Party of a Claim Notice with respect to an Alleged Defect, the Declarant Party and its employees, agents, contractors, subcontractors and consultants shall have the right, upon reasonable notice to Claimant and during normal business hours, to enter onto or into, as applicable, the Common Elements and any Unit for the purposes of inspecting and/or conducting testing to determine the validity of the Claim and, if deemed necessary by the Declarant Party, to

correct, repair and/or replace the Alleged Defect. In conducting such inspection, testing, repairs and/or replacement, the Declarant Party shall be entitled to take any actions as it shall deem reasonable and necessary under the circumstances. Nothing set forth in this Section 12.7 shall be construed to impose any obligation on any Declarant Party to inspect, test, repair, or replace any item or Alleged Defect for which the Declarant Party is not otherwise obligated. The right of a Declarant Party and its employees, agents, contractors, subcontractors and consultants to enter, inspect, test, repair and/or replace reserved hereby shall be irrevocable and may not be waived or otherwise terminated except by a written document, in recordable form, executed and Recorded by the Declarant Party. In no event shall any statutes of limitations be tolled during the period in which a Declarant Party conducts any inspection, testing, repair or replacement of any Alleged Defects.

12.8 Use of Funds. Any judgment, award or settlement received by a Claimant in connection with a Claim involving an Alleged Defect shall first be used to correct and/or repair such Alleged Defect or to reimburse the Claimant for any costs actually incurred by such Claimant in correcting and/or repairing the Alleged Defect. If the Claimant receiving the judgment, award or settlement is the Association, any excess funds remaining after repair of such Alleged Defect shall be paid into the Association's Reserve Account.

12.9 Approval of Arbitration or Litigation. The Association shall not deliver a Claim Notice to any Declarant Party or commence any legal action or arbitration proceeding or incur legal expenses (including without limitation, attorneys' fees) in connection with any Claim without the written approval of Unit Owners entitled to cast more than eighty percent (80%) of the total votes in the Association, excluding the votes of any Unit Owner who would be a defendant in such proceedings. The Association must pay for any such legal action or mediation or arbitration proceeding with monies that are specifically collected for such purposes and may not borrow money or use reserve funds or other monies collected for specific Association obligations other than legal fees. In the event that the Association commences any legal action or arbitration proceeding involving a Claim, all Unit Owners must notify prospective purchasers of their Unit of such legal action or arbitration proceeding and must provide such prospective purchasers with a copy of the notice received from the Association in accordance with Section 12.4.

12.10 Statute of Limitations. All statutes of limitations applicable to Claims shall apply to the commencement of arbitration proceedings under Section 12.6. If the arbitration proceedings are not initiated within the time period provided by Arizona law for the filing of a legal action with respect to the Claim, the Claim shall forever be barred.

12.11 Federal Arbitration Act. Because many of the materials and products incorporated into the Condominium are manufactured in other states, the development and conveyance of the Units evidences a transaction involving interstate commerce and the Federal Arbitration Act (9 U.S.C. §1, et seq.) now in effect or as it may be hereafter amended, will govern the interpretation and enforcement of the arbitration provisions of this Declaration.

12.12 Conflicts. In the event of any conflict between this Article 12 and any other provision of the Condominium Documents, this Article 12 shall control.

BY ACCEPTANCE OF A DEED OR BY ACQUIRING A UNIT, EACH PERSON, FOR HIMSELF, HIS HEIRS, PERSONAL REPRESENTATIVES, SUCCESSORS, TRANSFEREES AND ASSIGNS, AGREES TO HAVE ANY CLAIM RESOLVED ACCORDING TO THE FEDERAL ARBITRATION ACT, THE ARIZONA REVISED STATUTES PERTAINING TO THE ARBITRATION OF DISPUTES TO THE EXTENT NOT INCONSISTENT WITH THE FEDERAL ARBITRATION ACT AND THE PROVISIONS OF THIS ARTICLE 12 AND WAIVES THE RIGHT TO PURSUE ANY DECLARANT PARTY IN ANY MANNER OTHER THAN AS PROVIDED IN ARTICLE 12. THE ASSOCIATION, EACH UNIT OWNER AND DECLARANT ACKNOWLEDGE THAT BY AGREEING TO RESOLVE ALL CLAIMS AS PROVIDED IN THIS ARTICLE 12, THEY ARE GIVING UP THEIR RESPECTIVE RIGHTS TO HAVE SUCH CLAIM TRIED BEFORE A JURY. THE ASSOCIATION, EACH UNIT OWNER AND DECLARANT FURTHER WAIVE THEIR RESPECTIVE RIGHTS TO AN AWARD OF PUNITIVE AND CONSEQUENTIAL DAMAGES RELATING TO A CLAIM. BY ACCEPTANCE OF A DEED OR BY ACQUIRING A UNIT, EACH UNIT OWNER VOLUNTARILY ACKNOWLEDGES THAT HE IS GIVING UP ANY RIGHTS HE MAY POSSESS TO PUNITIVE AND CONSEQUENTIAL DAMAGES OR THE RIGHT TO A TRIAL BEFORE A JURY RELATING TO A CLAIM.

IF A UNIT OWNER OR THE ASSOCIATION FILES A CIVIL ACTION ASSERTING ANY CLAIM AGAINST ANY DECLARANT PARTY INSTEAD OF COMPLYING WITH THE DISPUTE RESOLUTION PROVISIONS OF THIS ARTICLE 12 (OR THE OTHER DISPUTE RESOLUTION PROVISIONS, AS APPLICABLE), THE PARTY AGGRIEVED BY THE FILING MAY APPLY TO THE MARICOPA COUNTY SUPERIOR COURT FOR AN ORDER DISMISSING THE CIVIL ACTION AND COMPELLING THE FILING PARTY TO SUBMIT THE CLAIM TO THE DISPUTE RESOLUTION PROVISIONS APPLICABLE THERETO. THE APPLYING PARTY SHALL BE ENTITLED TO IMMEDIATE ENTRY OF AN ORDER OF DISMISSAL AND A MANDATORY AWARD OF ATTORNEY'S FEES AND TAXABLE COSTS INCURRED IN COMPELLING COMPLIANCE WITH THE APPLICABLE DISPUTE RESOLUTION PROVISION.

IN THE EVENT THE ARBITRATION PROVISIONS OF THIS ARTICLE 12 ARE HELD NOT TO APPLY OR ARE HELD INVALID OR UNENFORCEABLE FOR ANY REASON, ALL DISPUTES SHALL BE TRIED BEFORE A JUDGE IN A COURT OF COMPETENT JURISDICTION WITHOUT A JURY. EACH OWNER IN THE ASSOCIATION, BY ACCEPTING A DEED TO ANY PORTION OF THE PROPERTY, HEREBY WAIVE AND COVENANT NOT TO ASSERT THEIR CONSTITUTIONAL RIGHT TO TRIAL BY JURY OF ANY DISPUTES, INCLUDING, BUT NOT LIMITED TO, DISPUTES RELATING TO CONSTRUCTION DEFECTS, MISREPRESENTATION OR DECLARANT'S FAILURE TO DISCLOSE MATERIAL FACTS. THIS MUTUAL WAIVER OF JURY TRIAL SHALL BE BINDING UPON THE RESPECTIVE SUCCESSORS AND ASSIGNS OF SUCH PARTIES AND UPON ALL PERSONS AND ENTITIES ASSERTING RIGHTS OR CLAIMS OR OTHERWISE ACTING ON BEHALF OF DECLARANT, ANY OWNER, THE ASSOCIATION OR THE RESPECTIVE SUCCESSORS AND ASSIGNS.

ARTICLE 13

GENERAL PROVISIONS

13.1 Enforcement. The Association may enforce the Condominium Documents in any manner provided for in the Condominium Documents or by law or in equity, including, but not limited to:

(i) imposing reasonable monetary penalties after notice and an opportunity to be heard is given to the Unit Owner or other violator. A Unit Owner shall be responsible for payment of any fine levied or imposed against a Lessee or Occupant of the Unit Owner's Unit or by any Invitee of the Unit Owner or any Lessee or Occupant;

(ii) suspending a Unit Owner's right to vote;

(iii) suspending any Person's right to use any facilities within the Common Elements; provided, however, nothing herein shall authorize the Board to limit ingress or egress to or from a Unit;

(iv) suspending any services provided by the Association to a Unit Owner or the Unit Owner's Unit if the Unit Owner is more than fifteen (15) days delinquent in paying any assessment or other charge owed to the Association;

(v) exercising self-help of taking action to abate any violation of the Condominium Documents in a non-emergency situation;

(vi) requiring a Unit Owner, at the Unit Owner's expense, to remove any structure or Improvement on such Owner's Unit in violation of this Declaration and to restore the Unit to its previous condition and, upon failure of the Unit Owner to do so, the Board of Directors or its designee shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as previously existed and any such action shall not be deemed a trespass;

(vii) without liability to any person, prohibiting any contractor, subcontractor, agent, employee or other invitee of a Unit Owner who fails to comply with the terms and provisions of the Condominium Documents from continuing or performing any further activities of the Condominium;

(viii) towing vehicles which are parked in violation of this Declaration or the Rules;

(ix) filing a suit at law or in equity to enjoin a violation of the Condominium Documents, to compel compliance with the Condominium Documents, to recover monetary penalties or money damages or to obtain such other relief as to which the Association may be entitled;

(x) recording a written notice of a violation by any Unit Owner of any restriction or provision of the Condominium Documents. The notice shall be executed and

acknowledged by an officer of the Association and shall contain substantially the following information: (1) the name of the Unit Owner; (2) the legal description of the Unit against which the notice is being Recorded; (3) a brief description of the nature of the violation; (4) a statement that the notice is being Recorded by the Association pursuant to this Declaration; and (5) a statement of the specific steps which must be taken by the Unit Owner to cure the violation. Recordation of a Notice of Violation shall serve as a notice to the Unit Owner and to any subsequent purchaser of the Unit that there is a violation of the provisions of the Condominium Documents.

The Association shall not be obligated to take any enforcement action if the Board of Directors determines, in its sole discretion, that because of the strength of the Association's possible defenses, the time and expense of litigation or other enforcement action, the likelihood of a result favorable to the Association, or other facts deemed relevant by the Board of Directors, enforcement action would not be appropriate or in the best interests of the Association.

Any Unit Owner may enforce the Condominium Documents in any manner provided for in this Declaration or at law or in equity, except that a Unit Owner may not exercise any remedy provided to the Association by this Declaration or enforce payment of any Assessments or other amounts payable to the Association pursuant to the Condominium Documents.

All rights and remedies of the Association under the Condominium Documents or at law or in equity are cumulative, and the exercise of one right or remedy shall not waive the Association's right to exercise another right or remedy. The failure of the Association or a Unit Owner to take enforcement action with respect to a violation of the Condominium Documents shall not constitute or be deemed a waiver of the right of the Association or any Unit Owner to enforce the Condominium Documents in the future. If any lawsuit is filed by the Association or any Unit Owner to enforce the provisions of the Condominium Documents or in any other manner arising out of the Condominium Documents or the operations of the Association, the prevailing party in such action shall be entitled to recover from the other party all attorneys' fees and all other related legal fees incurred by the prevailing party in the action.

13.2 Severability. Invalidation of anyone of these covenants or restrictions by judgment or court order shall in no way affect any other provisions that shall remain in full force and effect.

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

13.4 Termination of Condominium. Except in the case of a taking of all the Units by eminent domain or the exercise by Declarant of a Special Declarant Right, the Condominium may be terminated only by the agreement of Unit Owners of Units to which at least eighty percent (80%) of the votes in the Association are allocated. An agreement to terminate the Condominium must be evidenced by the execution or ratifications of a termination agreement, in the same manner as a deed by the requisite number of Unit Owners.

13.5 Amendment.

13.5.1. Except in cases of amendments that may be executed by a Declarant in the exercise of its Development Rights or under Section 33-1220 of the Condominium Act, by the Association under Section 33-1206 or 33-1216(D) of the Condominium Act, or by certain Unit Owners under Section 33-1218(B), Section 33-1222, Section 33-1223 or Section 33-1228(B) of the Condominium Act, the Declaration, including the Plat, may be amended only by a vote of the Unit Owners to which at least sixty-seven percent (67%) of the votes in the Association are allocated.

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

13.5.3. An amendment to the Declaration shall not terminate or decrease any unexpired Development Right, Special Declarant Right or Period of Declarant Control unless the Declarant approves the amendment in writing. In addition, no amendment to Article 12 shall be effective unless the Declarant approves the amendment in writing even if the Declarant no longer owns any Unit at the time of such amendment.

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

13.5.5. Any amendment adopted by the Unit Owners pursuant to Subsection 13.5.1 shall be signed by the President or Vice President of the Association and shall be Recorded. Any such amendment shall certify that the amendment has been approved as required by this Section. Any amendment made by the Declarant pursuant to Subsection 13.5.4 or the Condominium Act shall be executed by the Declarant and shall be Recorded.

13.6 Notices. All notices, demands, statements or other communications required to be given to or served on a Unit Owner under this Declaration shall be in writing and shall be deemed to have been duly given and served if delivered personally or sent by United States mail, postage prepaid, return receipt requested, addressed to the Unit Owner, at the address which the Unit Owner shall designate in writing and file with the Association or, if no such address is designated, at the address of the Unit of such Unit Owner. A Unit Owner may change his address on file with the Association for receipt of notices by delivering a written notice of change of address to the Association pursuant to this Section. A notice given by mail, whether

regular, certified, or registered, shall be deemed to have been received by the person to whom the notice was addressed on the earlier of the date the notice is actually received or three days after the notice is mailed. If a Unit is owned by more than one person, notice to one of the Unit Owners shall constitute notice to all Unit Owners of the same Unit. Each Unit Owner shall file his correct mailing address with the Association, and shall promptly notify the Association in writing of any subsequent change of address.

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

13.8 Topic Headings. The marginal or topical headings of the sections contained in this Declaration are for convenience only and do not define, limit or construe the contents of the sections or of this Declaration. Unless otherwise specified, all references in this Declaration to Articles of Sections refer to Articles and Sections of this Declaration.

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

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

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

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

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

13.14 Number of Days. In computing the number of days for purposes of any provision of the Condominium Documents, all days shall be counted including Saturdays, Sundays and holidays; provided, however, that if the final day of any time period falls on a

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

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

13.16 Mortgagee Protection Provisions.

13.16.1. Upon receipt by the Association of a written request from a First Mortgagee or insurer or governmental guarantor of a First Mortgage informing the Association of its correct name and mailing address and number or address of the Unit to which the request relates, the Association shall provide such First Mortgagee (an "Eligible Mortgage Holder") or insurer or governmental guarantor (an "Eligible Insurer or Guarantor") with timely written notice of the following: (a) any condemnation loss or any casualty loss which affects a material portion of the Condominium or any Unit on which there is a First Mortgage held, insured or guaranteed by such Eligible Mortgage Holder or Eligible Insurer Or Guarantor; (b) any delinquency in the payment of Assessments or charges owed by a Unit Owner subject to a First Mortgage held, insured or guaranteed by such Eligible Mortgage Holder or Eligible Insurer Or Guarantor or any other default in the performance by the Unit Owner of any obligation under the Condominium Documents, which delinquency or default remains uncured for the period of sixty (60) days; (c) any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; (d) any proposed action which requires the consent of a specified percentage of Eligible Mortgage Holders as set forth in Subsection 13.16.2; (e) any proposed termination of the Condominium; or (f) any proposed amendment to the Condominium Documents effecting a change in (1) the boundaries of any Unit or the exclusive easement rights appertaining thereto, (2) the interests in the Common Elements or Limited Common Elements appertaining to any Unit or the liability for Common Expenses appertaining thereto, (3) the number of votes in the Association appertaining to any Unit, or (4) the purposes to which any Unit or the Common Elements are restricted.

13.16.2. The approval of Eligible Mortgage Holders holding First Mortgages on Units the Unit Owners of which have at least fifty-one percent (51%) of the votes in the Association allocated to Unit Owners of all Units subject to First Mortgages shall be required to add or amend any material provisions of the Declaration, Articles or Bylaws which establish, provide for, govern or regulate any of the following: (a) voting rights; (b) assessments, assessment liens or subordination of assessment liens; (c) reserves for maintenance, repair and replacement of Common Elements; (d) insurance or fidelity bonds; (e) responsibility for maintenance and repairs; (f) expansion or contraction of the Condominium, or the addition or annexation of property to the Condominium; (g) boundaries of any Unit; (h) reallocation of

interests in the Common Elements or Limited Common Elements or rights to their use; (i) convertibility of Units into Common Elements or of Common Elements into Units; (j) leasing of Units; (k) imposition of any restrictions on a Unit Owner's right to sell or transfer his Unit; (l) a decision by the Association to establish self management when professional management had been required previously by an Eligible Mortgage Holder; (m) restoration or repair of the Condominium (after a hazard damage or partial condemnation) in a manner other than that specified in the Condominium Documents; (n) any action to terminate the legal status of the Condominium after substantial destruction or condemnation occurs; or (o) rights to use the Common Elements. The consent of Unit Owners of Units to which at least sixty-seven percent (67%) of the votes in the Association are allocated and the approval of Eligible Mortgage Holders holding First Mortgages on Units to which at least fifty-one percent (51%) of the votes of Units subject to a mortgage shall be required to amend any provisions of the Condominium Documents which are for the express benefit of Eligible Mortgage Holders or Eligible Insurers or Guarantors. Any action to terminate the legal status of the Condominium for reasons other than substantial destruction or condemnation of the Condominium must be approved by Eligible Mortgage Holders holding mortgages on Units the Unit Owners of which have at least sixty-seven percent (67%) of the votes in the Association allocated to Unit Owners of all Units subject to First Mortgages held by Eligible Mortgage Holders. Any First Mortgagee who receives a written request to approve additions or amendments to the Declaration, Articles or Bylaws, which additions, or amendments are not material, who does not deliver or mail to the requesting party a negative response within thirty (30) days shall be deemed to have approved such request.

Any addition or amendment to the Declaration, Articles or Bylaws shall not be considered material if it is for the purpose of correcting technical errors or for clarification only.

13.16.3. The right of a Unit Owner to sell, transfer, or otherwise convey his Unit shall not be subject to any right of first refusal or similar restriction.

13.16.4. Any Unit Owner, First Mortgagee or Eligible Insurer or Guarantor will, upon written request, be entitled to: (a) inspect the current copies of the Condominium Documents and the books, records and financial statements of the Association during normal business hours; (b) receive within ninety (90) days following the end of any fiscal year of the Association, an audited financial statement of the Association for the immediately preceding fiscal year of the Association, free of charge to the requesting party; and (c) receive written notice of all meetings of the Members of the Association and be permitted to designate a representative to attend all such meetings. Upon written request of any Eligible Mortgagee Holder or Eligible Insurer or Guarantor, the Association shall prepare and furnish within a reasonable time an audited financial statement of the Association.

13.16.5. Except as provided by statute in case of condemnation or substantial loss to the Units or the Common Elements, unless at least two-thirds (2/3) of all First Mortgagees (based upon one vote for each First Mortgage owned) or Unit Owners (other than the Declarant or other sponsor, developer or builder of the Condominium) of the Units have given their prior written approval, the Association shall not be entitled to: (a) by act or omission, seek to abandon or terminate this Declaration or the Condominium; (b) change the pro rata interest or obligations of any individual Unit for the purpose of levying Assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, determining the pro rata

share of ownership of each Unit in the Common Elements, or partitioning or subdividing any Unit; (c) by act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Elements, except for the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements; or (d) use Hazard insurance proceeds for losses to any Units or the Common Elements for any purpose other than the repair, replacement or reconstruction of such Units or the Common Elements.

13.16.6. All taxes, assessments, and charges that may become liens prior to the First Mortgage under local law shall relate only to the individual Unit and not to the Condominium as a whole. No Unit Owner, or any other party, shall have priority over any rights of any First Mortgagee of the Unit pursuant to its mortgage in the case of a distribution to such Unit Owner of insurance proceeds or condemnation awards for losses to or a taking of Units and/or Common Elements. No Unit shall be partitioned or subdivided without the prior written approval of the Holder of any First Mortgage on such Unit. Any restoration or repair of the Condominium after a partial condemnation or change due to an insurable hazard shall be substantially in accordance with this Declaration and the original plans and specifications unless the approval of Eligible Mortgage Holders holding mortgages on Units to which at least fifty-one percent (51%) of the votes in the Association allocated to Units subject to First Mortgages held by Eligible Mortgage Holders is obtained.

13.17 No Partition. No Unit Owner shall be entitled to partition any part or all of the Condominium.

[Signature and Acknowledgement on Following Page]

BAHIA LIVE/WORK LOFTS AND TOWNHOMES,
LLC, an Arizona limited liability company

By: Huclar Investments, LLC, an Arizona limited
liability company
Its: Manager

By: Catclar Investments, LLC, an Arizona limited
liability company

By: The Clary Family Trust

By: _____
Irene Catsibris Clary
Its Trustee

State of Arizona)
)
County of Maricopa)

The foregoing instrument was acknowledged before me this ___ day of _____,
2015, by Irene Catsibris Clary, Trustee of The Clary Family Trust, the member/manager of
Catclar Investments, LLC, an Arizona limited liability company, the manager of Huclar
Investments, LLC, an Arizona limited liability company, the manager of Bahia Live/Work Lofts
and Townhomes, an Arizona limited liability company, on behalf of the company.

Notary Public

My Commission Expires: _____.

**FIRST AMENDMENT TO
DECLARATION OF CONDOMINIUM**

FOR

SOHO SCOTTSDALE CONDOMINIUM

PREPARED BY AND UPON
RECORDATION RETURN TO

John M. Randolph, Esq.
Sherman & Howard, LLC
201 East Washington Street, Suite 800
Phoenix, Arizona 85004-2327

**FIRST AMENDMENT TO
DECLARATION OF CONDOMINIUM
FOR SOHO SCOTTSDALE CONDOMINIUM**

This First Amendment to Declaration of Condominium for Soho Scottsdale Condominium (this "Amendment"), is made as of the ___ day of March, 2016, by Bahia Live/Work Lofts and Townhomes, LLC, an Arizona limited liability company ("Declarant").

RECITALS:

A. A Declaration of Condominium for Soho Scottsdale Condominium, dated February 2, 2016, was executed by Declarant and recorded on February 12, 2016 as Instrument No. 20160091255 (the "Declaration").

B. Capitalized terms used in this Amendment without definition shall have the meanings given to such terms in the Declaration.

C. Declarant is the owner of all of the Units in the Condominium and desires to amend the Declaration pursuant to Section 13.5.2 to change the use restrictions of the Commercial Units and the Loft Units in the Condominium.

NOW, THEREFORE, the Declaration is amended as follows:

1. Section 4.1 of the Declaration is hereby amended to provide that only the first floor of the Townhouse Units will be accessible to the public and that although the second floor of a Townhouse unit is zoned for office, trade or business purposes as provided in this Section 4.1, such second floor shall not under any circumstances be accessible to the public for business purposes.

2. Section 4.18 of the Declaration and is hereby amended to permit the leasing or rental of any of the Loft Units by the hour, day, week or month for events, meetings, overnight accommodation and other transient purposes not inconsistent with applicable City of Scottsdale zoning ordinances.

3. Exhibit D and Exhibit E attached to the Declaration are hereby deleted in their entirety and Exhibit D and Exhibit E attached hereto are hereby substituted in their place.

4. Except as expressly amended by this Amendment, the Declaration shall remain in full force and effect.

IN WITNESS WHEREOF, this Amendment has been executed by the Declarant as of the date first set forth above.

[Signature and Acknowledgement on Following Page]

BAHIA LIVE/WORK LOFTS AND TOWNHOMES, LLC,
an Arizona limited liability company

By: Huclar Investments, LLC, an Arizona limited liability
company
Its: Manager

By: Catclar Investments, LLC, an Arizona limited
liability company
Its: Manager

By: Irene Catsibris Clary

Its: Manager

State of Arizona)
)
County of Maricopa)

The foregoing instrument was acknowledged before me this __ day of February, 2016, by Irene Catsibris Clary, the manager of Catclar Investments, LLC, an Arizona limited liability company, the manager of Huclar Investments, LLC, an Arizona limited liability company, the manager of Bahia Live/Work Lofts and Townhomes, LLC, an Arizona limited liability company, on behalf of the company.

Notary Public

My Commission Expires: _____

EXHIBIT D

Permitted Uses for the Commercial Units

There shall be allowed those uses permitted by the City of Scottsdale in a PCP-AMU-R District with the exception of the following uses which shall be prohibited:

1. Civic and Social Organization.
2. Cultural Institution.
3. Day Care Center.
4. Dwelling.
5. Live Entertainment.
6. Medical Marijuana Cultivation or Dispensary.
7. Any Retail Sales other than as approved in writing by the Declarant during the period of Declarant Control and, thereafter, by the Association.

In addition to the permitted uses set forth above, Declarant may in connection with the sale of the Commercial Units grant exclusive restaurant, commercial trade or business uses for such Commercial Units and such uses shall not be permitted to operate in any Unit in the Condominium other than the permitted Unit so long as such uses continue in the permitted Unit.

EXHIBIT E

Permitted Uses for the Loft Units and the Townhouse Units

There shall be allowed in the Loft Units and the Townhouse Units those uses permitted by the City of Scottsdale in a PCP-AMU-R District with the exception of the following uses which shall be prohibited:

1. Civic and Social Organization.
2. Cultural Institution.
3. Day Care Center.
4. Live Entertainment.
5. Medical Marijuana Cultivation or Dispensary.
6. Any Retail Sales other than as approved in writing by the Declarant during the period of Declarant Control and, thereafter, by the Association.

In addition to the permitted uses set forth above, Declarant may in connection with the sale of the Loft Units and Townhouse Units grant exclusive commercial trade or business uses for such Units and such uses shall not be permitted to operate in any Unit in the Condominium other than the permitted Unit so long as such uses continue in the permitted Unit.