

Amended  
CONDOMINIUM DECLARATION

OF

**THE CASITAS AT MORNINGSTAR  
CONDOMINIUMS**

DOÑA ANA COUNTY

CITY OF LAS CRUCES, NEW MEXICO

(This Condominium Declaration amends and supersedes the original declaration filed of record by the Declarant on January 7, 2005 in Book 578 Pages 695-763 of the Records of said County.)

Phase 1

Parcel -11, ALAMEDA PRESERVE, in the City of Las Cruces, Doña Ana County, New Mexico, as shown and designated on the Plat thereof, filed in the Office of the County Clerk of said County on December 10, 2001, in Book 19, Pages 783-788 of the Plat Records.

Phase 2

Parcel -13, ALAMEDA PRESERVE, in the City of Las Cruces, Dona Ana County, New Mexico, as shown and designated on the Plat thereof, filed in the office of the County Clerk of said County on December 10, 10, 2001, in Book 19 Pages 783-788 of Plat Records.

**TABLE OF CONTENTS**

PAGE

ARTICLE 1		
NAME .....		2
ARTICLE 2		
DEFINITIONS .....		2
SECTION 2.1	"ACT" .....	2
SECTION 2.2	"AGENCIES" .....	2
SECTION 2.3	"ALLOCATED INTEREST(S)" .....	2
SECTION 2.4	"ARTICLES OF INCORPORATION" OR "ARTICLES" .....	3
SECTION 2.5	"ANNUAL ASSESSMENTS" .....	3
SECTION 2.6	"ASSESSMENT(S)" .....	3
SECTION 2.7	"ASSOCIATION" .....	3
SECTION 2.8	"BOARD OF DIRECTORS" OR "BOARD" .....	3
SECTION 2.9	"BUILDING" .....	3
SECTION 2.10	"BYLAWS" .....	3
SECTION 2.11	"COMMON ELEMENTS" .....	3
SECTION 2.12	"COMMON EXPENSE(S)" .....	4
SECTION 2.13	"DECLARANT" .....	4
SECTION 2.14	"DECLARANT CONTROL PERIOD" .....	5
SECTION 2.15	"DECLARANT RIGHTS" .....	5
SECTION 2.16	"DECLARANT RIGHTS PERIOD" .....	5
SECTION 2.17	"ELIGIBLE MORTGAGEES" .....	5
SECTION 2.18	"GUEST" .....	5
SECTION 2.19	"LIMITED COMMON ELEMENTS" .....	5
SECTION 2.20	"MAJORITY" .....	5
SECTION 2.21	"MANAGING AGENT" .....	5
SECTION 2.22	"MORTGAGE" .....	6
SECTION 2.23	"MORTGAGEE" .....	6
SECTION 2.24	"OCCUPANT" .....	6
SECTION 2.25	"OWNER" OR "UNIT OWNER" .....	6
SECTION 2.26	"PARKING SPACE" .....	6
SECTION 2.27	"PERSON" .....	6
SECTION 2.28	"PHASE 1" .....	6
SECTION 2.29	"PHASE 2" .....	6
SECTION 2.30	"PLAT" .....	7
SECTION 2.31	"PROJECT" .....	7
SECTION 2.32	"PROJECT INSTRUMENTS" .....	7
SECTION 2.33	"PROPERTY" .....	7
SECTION 2.34	"RECORDS" .....	7
SECTION 2.35	"REIMBURSEMENT ASSESSMENT" .....	7

SECTION 2.36	"RULES AND REGULATIONS" .....	7
SECTION 2.37	"SEPARATE GARAGE" .....	7
SECTION 2.38	"SPECIAL ASSESSMENTS" .....	7
SECTION 2.39	"SPECIFIC ASSESSMENTS" .....	7
SECTION 2.40	"STATE" .....	7
SECTION 2.41	"UNIT" OR "CONDOMINIUM UNIT" .....	7
SECTION 2.42	"UNIT UTILITIES" .....	8
SECTION 2.43	"UNATTACHED GARAGE(S)" .....	8
ARTICLE 3		
	LOCATION, PROPERTY DESCRIPTION AND PLAT .....	8
ARTICLE 4		
	UNITS AND BOUNDARIES .....	8
SECTION 4.1	CREATION OF UNITS .....	8
SECTION 4.2	HORIZONTAL (UPPER AND LOWER) BOUNDARIES .....	9
SECTION 4.3	VERTICAL BOUNDARIES .....	9
SECTION 4.4	DESCRIPTION OF A CONDOMINIUM UNIT .....	9
SECTION 4.5	DURATION OF CONDOMINIUM OWNERSHIP .....	10
SECTION 4.6	OWNERSHIP INCLUDES APPURTENANCES .....	10
SECTION 4.7	PROPERTY TAXATION .....	10
SECTION 4.8	MECHANIC'S LIENS .....	11
ARTICLE 5		
	COMMON ELEMENTS .....	11
SECTION 5.1	DEFINITION OF COMMON ELEMENTS .....	11
SECTION 5.2	ALTERATION OF PERCENTAGE; NO SEPARATION OF INTEREST .....	11
SECTION 5.3	NO PARTITION; APPURTENANT USE OF COMMON ELEMENTS .....	11
ARTICLE 6		
	LIMITED COMMON ELEMENTS .....	12
SECTION 6.1	DESIGNATION .....	12
ARTICLE 7		
	DECLARANT AND OWNER RIGHTS .....	12
SECTION 7.1	RIGHT TO COMBINE, SUBDIVIDE, AND REDESIGNATE UNITS/CREATION OF UNITS, COMMON ELEMENTS, AND LIMITED COMMON ELEMENTS .....	12
(A)	DECLARANT RIGHTS .....	12
(1)	COMBINATION AND SUBDIVISION .....	12
(2)	CREATE AND CONVERT COMMON ELEMENTS .....	13
(3)	CONDOMINIUM PLAT SUPPLEMENTS AND OTHER PROCEDURES .....	13
(4)	RESERVATION OF RIGHTS FOR SALES AND MODELS .....	14
(5)	EXPIRATION OF RESERVED RIGHTS .....	14

(B)	UNIT OWNER RIGHTS .....	14
ARTICLE 8		
	ASSOCIATION MEMBERSHIP AND ALLOCATIONS .....	15
SECTION 8.1	MEMBERSHIP .....	15
SECTION 8.2	VOTES .....	15
SECTION 8.3	ALLOCATION OF LIABILITY FOR COMMON EXPENSES .....	15
SECTION 8.4	ELECTION OF BOARD DURING DECLARANT CONTROL PERIOD .....	16
ARTICLE 9		
	ASSOCIATION RIGHTS AND RESTRICTIONS .....	16
SECTION 9.1	RIGHT OF ENTRY .....	16
SECTION 9.2	RULES AND REGULATIONS .....	16
SECTION 9.3	RIGHT OF ENFORCEMENT .....	16
SECTION 9.4	PERMITS, LICENSES, EASEMENTS, ETC .....	17
SECTION 9.5	RIGHT OF MAINTENANCE .....	17
SECTION 9.6	PROPERTY RIGHTS .....	17
SECTION 9.7	CASUALTY LOSS .....	17
SECTION 9.8	GOVERNMENTAL ENTITIES .....	17
SECTION 9.9	MASTER OWNERS' ASSOCIATION .....	17
SECTION 9.10	COMMON ELEMENTS .....	17
ARTICLE 10		
	ASSESSMENTS .....	17
SECTION 10.1	PURPOSE OF ASSESSMENT .....	17
SECTION 10.2	CREATION OF THE LIEN AND PERSONAL OBLIGATION FOR ASSESSMENTS .....	18
SECTION 10.3	NOTICE TO LIEN HOLDERS .....	18
SECTION 10.4	LIEN/SECURITY INTEREST .....	18
SECTION 10.5	SUBORDINATION OF THE LIEN TO FIRST MORTGAGE .....	19
SECTION 10.6	DELINQUENT ASSESSMENTS .....	19
SECTION 10.7	COMPUTATION OF OPERATING BUDGET AND ANNUAL ASSESSMENT .....	20
SECTION 10.8	SPECIAL ASSESSMENTS .....	21
SECTION 10.9	SPECIFIC ASSESSMENTS .....	21
SECTION 10.10	ASSESSMENT RESERVES .....	21
SECTION 10.11	CAPITAL BUDGET AND CONTRIBUTION .....	21
SECTION 10.12	DATE OF COMMENCEMENT OF ASSESSMENTS .....	22
SECTION 10.13	STATEMENT OF ACCOUNT .....	22
SECTION 10.14	SURPLUS FUNDS AND COMMON PROFITS .....	22
ARTICLE 11		
	INSURANCE .....	22
SECTION 11.1	INSURANCE .....	22
SECTION 11.2	OWNERS' POLICIES .....	25
SECTION 11.3	NO IMPERILING OF INSURANCE .....	25
SECTION 11.4	OWNERS' POLICIES .....	26

ARTICLE 12

REPAIR AND RECONSTRUCTION ..... 26  
SECTION 12.1 CASUALTY DESTRUCTION OF COMMON ELEMENTS ..... 26  
SECTION 12.2 TAKING OF COMMON ELEMENTS ..... 27  
SECTION 12.3 CASUALTY DESTRUCTION OF CONDOMINIUM UNIT ..... 27  
SECTION 12.4 TAKING OF CONDOMINIUM UNIT ..... 27

ARTICLE 13

ARCHITECTURAL CONTROL ..... 28  
SECTION 13.1 ARCHITECTURAL STANDARDS ..... 28  
SECTION 13.2 ARCHITECTURAL REVIEW BOARD ..... 28  
SECTION 13.3 CONDITION OF APPROVAL; DELIVERY OF INSURANCE ..... 29  
SECTION 13.4 LIMITATION OF LIABILITY ..... 29  
SECTION 13.5 NO WAIVER OF FUTURE APPROVALS ..... 29  
SECTION 13.6 ENFORCEMENT ..... 29  
SECTION 13.7 DECLARANT EXCEPTION ..... 30

ARTICLE 14

USE RESTRICTIONS ..... 30  
SECTION 14.1 UNITS ..... 30  
SECTION 14.2 NO BUSINESS OR TRADE ..... 31  
SECTION 14.3 ALTERATION OF UNITS ..... 31  
    (A) ALTERATIONS OF THE INTERIORS OF THE UNITS ..... 31  
    (B) RELOCATION OF BOUNDARIES ..... 31  
        SUBDIVISION OF UNITS ..... 31  
SECTION 14.4 USE OF COMMON ELEMENTS ..... 32  
SECTION 14.5 USE OF LIMITED COMMON ELEMENTS ..... 32  
SECTION 14.6 PROHIBITION OF DAMAGE, NUISANCE AND NOISE ..... 32  
SECTION 14.7 FIREARMS AND FIREWORKS ..... 33  
SECTION 14.8 PETS ..... 33  
SECTION 14.9 PARKING ..... 33  
SECTION 14.10 ABANDONED PERSONAL PROPERTY ..... 34  
SECTION 14.11 HEATING OF UNITS IN COLDER MONTHS ..... 35  
SECTION 14.12 SIGNS ..... 35  
SECTION 14.13 RUBBISH, TRASH, AND GARBAGE ..... 35  
SECTION 14.14 IMPAIRMENT OF UNITS AND EASEMENTS ..... 35  
SECTION 14.15 UNSIGHTLY OR UNKEMPT CONDITIONS ..... 35  
SECTION 14.16 GARAGE SALES ..... 36  
SECTION 14.17 WINDOW TREATMENTS ..... 36  
SECTION 14.18 ANTENNAS AND SATELLITE EQUIPMENT ..... 36  
SECTION 14.19 TIME SHARING ..... 36  
SECTION 14.20 HARDWOOD OR TILE FLOORS ON UPPER FLOORS ..... 36

ARTICLE 15	
LEASING .....	36
SECTION 15.1 DEFINITION .....	36
SECTION 15.2 LEASING PROVISIONS .....	37
(A) GENERAL .....	37
(B) COMPLIANCE WITH DECLARATION, BYLAWS, AND RULES AND REGULATIONS, USE OF COMMON ELEMENTS, AND LIABILITY FOR ASSESSMENTS .....	37
(1) COMPLIANCE WITH DECLARATION. BYLAWS, AND RULES AND REGULATIONS .....	37
(2) USE OF COMMON ELEMENTS .....	38
(3) LIABILITY FOR ASSESSMENTS .....	38
ARTICLE 16	
TERMINATION OF CONDOMINIUM .....	38
SECTION 16.1 APPROVAL OF TERMINATION .....	38
SECTION 16.2 TERMINATION AGREEMENT .....	38
SECTION 16.3 SALE OF CONDOMINIUM .....	38
SECTION 16.4 PROCEEDS OF SALE .....	39
SECTION 16.5 INTEREST IN PROCEEDS .....	39
SECTION 16.6 FORECLOSURE OF ENTIRE CONDOMINIUM .....	39
SECTION 16.7 FORECLOSURE OF PRIOR LIEN .....	39
ARTICLE 17	
MAINTENANCE RESPONSIBILITY .....	39
SECTION 17.1 BY THE OWNER .....	39
SECTION 17.2 BY THE ASSOCIATION .....	40
SECTION 17.3 FAILURE TO MAINTAIN .....	42
SECTION 17.4 MAINTENANCE STANDARDS AND INTERPRETATION .....	42
SECTION 17.5 MEASURES RELATED TO INSURANCE COVERAGE .....	42
SECTION 17.6 PERFORMANCE OF WORK BY ASSOCIATION .....	42
SECTION 17.7 ASSOCIATION RIGHT OF ENTRY .....	43
ARTICLE 18	
PARTY WALLS .....	43
SECTION 18.1 GENERAL RULES OF LAW TO APPLY .....	43
SECTION 18.2 SHARING OF REPAIR AND MAINTENANCE .....	43
SECTION 18.3 DAMAGE AND DESTRUCTION .....	43
SECTION 18.4 RIGHT TO CONTRIBUTION RUNS WITH LAND .....	43
ARTICLE 19	
MORTGAGEE RIGHTS .....	43
SECTION 19.1 LIABILITY OF FIRST MORTGAGEES .....	43
SECTION 19.2 MORTGAGEE NOTICE .....	44
SECTION 19.3 FINANCIAL STATEMENTS .....	44
SECTION 19.4 ADDITIONAL MORTGAGEE RIGHTS .....	44

SECTION 19.5	MORTGAGEE'S CONSENT .....	44
SECTION 19.6	NOTICE TO ASSOCIATION .....	45
SECTION 19.7	FAILURE OF MORTGAGEE TO RESPOND .....	45
SECTION 19.8	CONSTRUCTION OF ARTICLE .....	45
 ARTICLE 20		
	ADDITIONAL DECLARANT RIGHTS .....	45
SECTION 20.1	SALE AND LEASING OF UNITS .....	45
SECTION 20.2	CONSTRUCTION AND SALE PERIOD .....	46
SECTION 20.3	FURTHER DECLARANT'S RIGHTS .....	46
SECTION 20.4	EXPIRATION OF RESERVED RIGHTS .....	47
 ARTICLE 21		
	EASEMENTS .....	47
SECTION 21.1	USE AND ENJOYMENT .....	47
SECTION 21.2	UTILITIES .....	48
SECTION 21.3	PEST CONTROL .....	48
SECTION 21.4	DECLARANT EASEMENTS .....	48
 ARTICLE 22		
	GENERAL PROVISIONS .....	49
SECTION 22.1	SECURITY .....	49
SECTION 22.2	IMPLIED RIGHTS .....	49
SECTION 22.3	AMENDMENT .....	49
(A)	BY DECLARANT .....	49
(B)	BY MEMBERS .....	49
SECTION 22.4	COMPLIANCE .....	50
SECTION 22.5	SEVERABILITY .....	50
SECTION 22.6	CAPTIONS .....	50
SECTION 22.7	NOTICES .....	50
SECTION 22.8	PERPETUITIES .....	50
SECTION 22.9	INDEMNIFICATION .....	50
SECTION 22.10	STORAGE SPACES .....	51
SECTION 22.11	SUPPLEMENTAL TO LAW .....	51
SECTION 22.12	NUMBERS AND GENDERS .....	51
SECTION 22.13	SUCCESSORS AND ASSIGNS .....	51
SECTION 22.14	NO WAIVER .....	51
SECTION 22.15	CONFLICT .....	51
SECTION 22.16	ASSIGNMENT OF DECLARANT RIGHTS .....	52
SECTION 22.17	ADAPTABILITY OF UNITS FOR THE HANDICAPPED .....	52
SECTION 22.18	DISCLAIMER OF WARRANTIES .....	52
SECTION 22.19	LIABILITY .....	52

EXHIBIT "A"  
LEGAL DESCRIPTIONS ..... 55

EXHIBIT "B"  
THE CASITAS AT MORNINGSTAR HOMEOWNERS' ASSOCIATION  
SCHEDULE OF PERCENTAGE OF OWNERSHIP

EXHIBIT "C"  
SITE PLATS FOR UNITS AND UNIT NUMBERS

345



AMENDED CONDOMINIUM DECLARATION  
OF  
THE CASITAS AT MORNINGSTAR CONDOMINIUMS

THIS DECLARATION is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2007, by Morningstar Living, Inc., and a New Mexico corporation (successor in interest of Rog/Mill, LLC the original Declarant) and Morningstar II, Inc. (hereinafter collectively called the "Declarant"), having its principal place of business located at Las Cruces, New Mexico.

WITNESSETH

WHEREAS, Rog/Mill, LLC, and then its successor Morningstar Living, Inc. was the fee simple owner of that certain tract or parcel of land lying and being in the City of Las Cruces, County of Doña Ana, New Mexico, as more particularly described in Exhibit "A," parcel 1 and by assignment and purchase, Morningstar II, Inc. was the fee simple owner of land lying and being in the City of Law Cruces, County of Dona Ana, New Mexico, as more particularly described in Exhibit "A" parcel 2 attached hereto and incorporated herein by reference (hereinafter called the "Property"); and

WHEREAS, certain improvements have been constructed and completed on the Property as shown on the Plat which is referenced in Article 3 hereof which includes Phase 2; and

WHEREAS, Declarant has duly incorporated The Casitas at Morningstar Homeowners' Association, Inc. (the "Association") as a nonprofit membership corporation under the laws of the State; and

WHEREAS, Declarant by this Declaration is including parcel 2 (Phase 2) of this condominium regime, and thus amending and reprinting originally filed Condominium Declaration filed of record to reflect the inclusion of Phase 2; and

WHEREAS, Declarant desires to create a horizontal property regime and submit the Property to the condominium form of ownership pursuant to the provisions of the New Mexico Condominium Act (New Mexico Statutes Annotated 1978, 47-7A-1 to 47-7D-20), as amended (the "Act"), as the same is in effect on the date hereof and the terms and conditions hereinafter set out; and

WHEREAS, this Declaration is executed to constitute the Condominium Declaration for The Casitas at Morningstar Condominiums and is executed pursuant to and in furtherance of a common and general plan (a) to protect and enhance the quality, value, desirability and attractiveness of all property which may be subject to this Declaration; (b) to provide for an association, as a vehicle to act as the condominium association of The Casitas at Morningstar Condominiums and to perform certain functions for the benefit of owners of Condominium Units which are to become subject to this Declaration; (c) to define duties, powers and rights of the Association; and (d) to define certain duties, powers and rights of owners of property which may become subject to this Declaration with respect to the Association and with respect to the functions undertaken by the Association; and

3114

WHEREAS, Declarant desires to reserve certain Declarant Rights, as hereafter defined, to itself and its successors and assigns as Declarant, as hereinafter more particularly described;

NOW, THEREFORE, Declarant, for itself, its successors and assigns, hereby declare that the property described in Exhibit A, attached hereto, is hereby made subject to this Declaration, and each part of such property shall, from and after the date of recording of this Declaration, be owned, held, transferred, conveyed, sold, leased, rented, hypothecated, encumbered, used, occupied, maintained, altered and improved subject to the covenants, conditions, restrictions, limitations, reservations, exceptions, equitable servitudes and other provisions set forth in this Declaration, all of which shall run with the title to such property and be binding upon all parties having any right, title or interest in said property or any part thereof and upon their heirs, personal representatives, successors and assigns and shall inure to the benefit of each party having any such right, title or interest in said property or any part thereof. This Declaration is subject to the provisions of the Act.

#### ARTICLE 1 NAME

The name of the condominium development is The Casitas at Morningstar Condominiums (hereinafter referred to as the "Project"), which shall refer to the entire Property and all improvements thereon, and rights thereto, as outlined in this Declaration.

#### ARTICLE 2 DEFINITIONS

The terms used in this Declaration, the Bylaws, and the Articles of Incorporation shall have their normal, generally accepted meanings except as may be otherwise defined in the Act or this Declaration. Certain terms used in this Declaration, the Bylaws, the Articles of Incorporation, and Rules and Regulations promulgated from time-to-time, shall be defined as follows:

Section 2.1 "Act" shall be defined as the New Mexico Condominium Act (New Mexico Statutes Annotated 1978, 47-7A-1 to 47-7D-20), as amended from time-to-time.

Section 2.2 "Agencies" shall be defined as and collectively refers to the Federal National Mortgage Association ("FNMA"), the Government National Mortgage Association ("GNMA"), the Federal Home Loan Mortgage Corporation ("FHLMC"), the Department of Housing and Urban Development ("HUD"), the Veterans Administration ("VA"), and any other governmental or quasi-governmental agency and any other public, quasi-public, or private entity which performs (or may perform in the future) functions similar to those currently performed by such entities.

Section 2.3 "Allocated Interest(s)" shall be defined, with respect to each Condominium Unit, as the appurtenant undivided interest in the Common Elements, the Common Expense liability, and votes in the Association, as the ownership percentage interest allocated to said Condominium Unit in accordance with this Declaration. The Allocated Interest of Each Unit, is shown on Exhibit "B" attached to this Declaration and incorporated herein by this reference. The percentage ownership of each Unit and thus the Allocated Interest is based upon the square footage of heated floor

space of the Unit divided by the heated floor space of all the Units in both Phase 1 and 2, which was determined by the licensed project architect, which square footage may or may not be the exact square footage of the Unit.

Section 2.4 "Articles of Incorporation" or "Articles" shall be defined as the Articles of Incorporation of The Casitas at Morningstar Homeowners' Association, Inc. filed with the New Mexico Public Regulations Commission, as amended from time-to-time.

Section 2.5 "Annual Assessments" shall be annual assessments imposed on owners of Units other than Units owned by the Declarant as authorized by the provisions of Article 10 hereof.

Section 2.6 "Assessment(s)" shall be defined to mean and include all assessments for Common Expenses provided for in this Declaration.

Section 2.7 "Association" shall be defined as The Casitas at Morningstar Homeowners' Association, Inc., a New Mexico nonprofit corporation, its successors and assigns.

Section 2.8 "Board of Directors" or "Board" shall be defined as the governing body responsible for management and operation of the Association as further described hereinafter and in the Bylaws.

Section 2.9 "Building" shall be defined as each building structure erected on the Property, and "Buildings" shall refer to such buildings collectively.

Section 2.10 "Bylaws" shall be defined as the Bylaws of The Casitas at Morningstar Homeowners' Association, Inc.

Section 2.11 "Common Elements" shall be defined as all of the Property except the portions thereof which constitute Units, and shall include, without limitation, all parts of the Buildings or any facilities, improvements, and fixtures located within a Unit which are or may be necessary or convenient to the support, existence, use, occupation, operation, maintenance, repair, or safety of the Buildings or any part thereof or any other Unit therein. Without limiting the generality of the foregoing, the following shall constitute Common Elements:

- (a) all of the land, appurtenances, and beneficial easements which are part of the Real Estate, including, without limitation, all access easements, utility easements and other easements benefitting the Property;
- (b) all foundations, columns, girders, beams, and supports of any Building;
- (c) all deck areas, balconies, patios, fireplaces, doors and windows (subject to reservation for individual Owner use as Limited Common Elements, as hereafter defined and provided);

- (d) the exterior walls of any Building, the main or bearing walls within any Building, the main or bearing sub-flooring, and the roof of any Building;
- (e) the unfinished surfaces of the floors, ceilings, and perimeter walls of the Units, as well as non-weight bearing walls and building structures within the Units;
- (f) all entrances, exits, vestibules, halls, corridors, lobbies, lounges, swimming pool and related facilities, stairways and fire escapes, if any, not within any Unit;
- (g) all driveways and parking areas;
- (h) all other parts of the Property necessary in common use or convenient to its existence, maintenance, and safety;
- (I) the roof decks;
- (j) all landscaping;
- (k) equipment, piping, conduits, and installations used in connection with the provision of sewer, water, electrical, and any other common utilities serving the Property; fixtures and decorating in common areas; and any and all sprinkler, fire, alarm, and security system components now or hereafter existing;
- (l) any other areas shown as "Common Elements" on the Plat; and
- (m) those areas and things within the definition of "Common Elements" as set forth in the Act.

Section 2.12 "Common Expense(s)" shall be defined as the expenses incurred or anticipated to be incurred by the Association for the general benefit of all Units, including, but not limited to (a) those expenses incurred for administration, management, maintenance, repair, alteration, replacement, renovation, reconstruction, restoration, and operation of the Common Elements; (b) expenses determined by the Association to be Common Expenses and which are lawfully assessed against Owners; (c) expenses declared to be Common Expenses by the Act or any of the Project Instruments; (d) reasonable reserves established for the payment of any of the foregoing; and (e) lawful expenditures made by, or financial liabilities of, the Association as determined by the Board of Directors. Common Expenses may include, without limitation, the cost of a master antenna television system or cable or satellite television service or broadband or internet service obtained pursuant to a bulk contract.

Section 2.13 "Declarant" shall mean and refer to Rog/Mill, LLC ("Rog/Mill") and its successor Morningstar Living, Inc. ("Morningstar Living") and Morningstar II, Inc. ("Morningstar II") their successors and assigns as the terms "successors and assigns" are herein limited. A party shall be deemed a "successor or assign" of Declarants only if specifically designated in an executed (by both the assignors and assignee), written and duly recorded instrument as a successor or assign of

Declarant under this Declaration and shall be deemed a successor or assign of Declarant under this Declaration only as to the particular rights or interests of Declarant under this Declaration which are specifically designated in the written instrument except that a party acquiring all or substantially all of the right, title and interest of Declarant in the Property by foreclosure, judicial sale, bankruptcy proceedings or by other similar involuntary transfer, shall automatically be deemed a successor and assign of Morningstar Living and Morningstar II, as Declarant under this Declaration. To the extent that any such successor or assign assumes the liabilities and obligations of Declarant, Morningstar Living and Morningstar II shall be released from such assumed obligations and liabilities, to the extent allowed by applicable law.

Section 2.14 "Declarant Control Period" shall be defined to mean the period of time commencing on the date of recording of this Declaration and ending on the earlier of: (I) one hundred eighty (180) days after conveyance of ninety percent (90%) of the Units to Owners other than Declarant; (ii) two (2) years after Declarant has ceased to offer Units for sale in the ordinary course of business; or (iii) five (5) years after the date of recording of this Declaration.

Section 2.15 "Declarant Rights" shall mean and refer to those rights reserved to Declarant pursuant to this Declaration, including, without limitation, the provisions of Article 7 and Article 20.

Section 2.16 "Declarant Rights Period" shall be defined to mean the period of time commencing on the date of recording of this Declaration and ending on the earlier of: (I) the sale of all of the Condominium Units within the Project to third-party purchasers; (ii) the date that is seven (7) years after the date of Declarant's recording of this Declaration; or (iii) the date that Declarant waives all remaining Declarant Rights pursuant to an express written waiver executed and acknowledged by Declarant and recorded in the Records.

Section 2.17 "Eligible Mortgagees" are those holders of First Mortgages secured by Units in the Project who have requested notice of certain items as set forth in this Declaration.

Section 2.18 "Guest" shall be defined to mean any tenant of a Unit Owner, and any family member, guest, or invitee of such Owner or of such tenant, provided that the Association Board reserves the right to exclude from the Property any non-Owner as hereinafter provided.

Section 2.19 "Limited Common Elements" shall be defined as a portion of the Common Elements reserved for the exclusive use of those entitled to occupy one (1) or more, but less than all, Units, as more particularly set forth in this Declaration.

Section 2.20 "Majority" shall be defined as those eligible votes, Owners, or other group as the context may indicate totaling fifty one percent (51 %) or more of the total eligible number.

Section 2.21 "Managing Agent" shall be defined to mean any person or entity selected by the Board to perform the management and operational functions of the Association, and so designated.

Section 2.22 "Mortgage" shall be defined as any mortgage, deed to secure debt, deed of trust, or other transfer or conveyance encumbering any Unit for the purpose of securing the performance of an obligation. A "First Mortgage" shall be defined to mean and include a Mortgage on a Unit which is duly recorded and has first and paramount priority under applicable law over all other Mortgages or other liens encumbering said Unit.

Section 2.23 "Mortgagee" shall be defined as the holder of any Mortgage, and "First Mortgagee" shall be defined as a holder of any First Mortgage.

Section 2.24 "Occupant" shall be defined as any Person occupying all or any portion of a Unit for any period of time, regardless of whether such Person is a tenant, the Owner of such property, or a Guest of either. "Occupancy" shall be defined to mean the actual occupancy of any Unit in a manner consistent with the normal usage and purposes of the Unit or the right to so occupy the Unit, regardless of whether such right is ever exercised. It shall be presumed from the exercise of rights of a landlord even though actual occupancy is by a tenant or licensee. The terms "occupy," "occupancy," and "use" are synonymous for the purposes of this Declaration and any other Project Instruments.

Section 2.25 "Owner" or "Unit Owner" shall be defined as each record title holder of a Unit within the Project, but not including any Mortgagee.

Section 2.26 "Parking Space" shall be defined generally as any parking space located on the Property, as reconfigured by the Association from time to time. Parking Space shall be further defined as "Assigned Parking Space" and "Covered Parking Space." Assigned Parking Spaces are those parking spaces assigned to an Owner, which will be assigned on purchase of a Unit except for Owners purchasing Units with Attached Garages who will not have an Assigned Parking Space. Covered Parking Space are the Parking Spaces initially built in the construction which will be assigned first to the initial Owners on a "first come first serve" basis. Unit Owners with Attached Garages may not, based on available space, be eligible for either Assigned Parking Space or a Covered Parking Space.

Section 2.27 "Person" shall be defined as any individual, corporation, limited liability company, firm, association, partnership, trust, or other legal entity.

Section 2.28 "Phase 1" is the initial construction and sale of the original 122 Units on the real property described in the original filing of the condominium declaration more particularly set out in this condominium declaration as Parcel 1 in Exhibit "A."

Section 2.29 "Phase 2" is the second part of the construction of Units and which is the construction and sale of 149 Units on the real property described more particularly set out as Parcel 2 in Exhibit "A." Declarant originally had an option to purchase an addition 9.3 acres of land adjacent to the Phase 1 property which Declarant has now built an additional 149 Units, all of which are considered an addition part of the Property.

Section 2.30 "Plat" shall be defined as that certain Plat for The Casitas at Morningstar Condominiums filed in the Records which Plat is incorporated into this Declaration by reference and made a part of this Declaration as legally specified in Exhibit "A" and the Units more particularly shown in Exhibits "C" thru "F" herein, and which includes both Phase 1 and Phase 2.

Section 2.31 "Project" shall be defined as The Casitas at Morningstar Condominiums created by this Declaration, including any supplements or amendments to this Declaration. The Project had two Phases, with Phase 1 being the construction and sale of the original 122 units, and Phase 2 being the construction and sale of 149 additional Units of Phase 2.

Section 2.32 "Project Instruments" shall be defined as this Declaration and all exhibits to this Declaration, as well as the Bylaws, the Articles of Incorporation, the Rules and Regulations of the Association, and the Plats, all as may be supplemented or amended from time-to-time.

Section 2.33 "Property" shall be defined as the real property described on Exhibit "A."

Section 2.34 "Records" shall be defined to mean the real property records of Doña Ana County, New Mexico, and any and all other official public records relating to the ownership, use, and transfer of real estate located in Doña Ana County, New Mexico.

Section 2.35 "Reimbursement Assessment" shall be defined as set forth in Article 10 hereof.

Section 2.36 "Rules and Regulations" shall be defined to mean the content of any instrument, however denominated, which is adopted and/or promulgated by the Association pursuant to the Project Instruments or the Act and relating directly or indirectly to the operation and management of the Property, the Project, or the affairs of the Association.

Section 2.37 "Separate Garage" Is the garages unattached to any Unit, and which is to be sold to Unit Owners by separate deed. The Separate Garage will be subject to the provisions of this Declaration and must be owned by Unit Owners only.

Section 2.38 "Special Assessments" shall mean special assessments imposed on Units under the provisions of Article 10 hereof.

Section 2.39 "Specific Assessments" shall mean specific assessments imposed on Units under the provisions of Article 10 hereof.

Section 2.40 "State" shall mean the State of New Mexico.

Section 2.41 "Unit" or "Condominium Unit" shall be defined as that portion of the Project intended for separate ownership and use and depicted as such on the Plats and shall include the undivided ownership in the Common Elements assigned to the Unit by this Declaration. Notwithstanding anything herein, no Common Elements or Limited Common Elements located within a Unit as described herein shall be considered part of the Unit. For purposes of definition, the Unit or Con-

dominium Unit shall also include a Garage Unit if the Unit Owner has also purchased a Garage Unit and the Attached Garage if a Unit includes an Attached Garage.

Section 2.42 "Unit Utilities" shall be defined as the electricity, telephone, gas, cable and any other utilities which may be used by each Unit. Currently, each Unit is designed with an electric meter, or a gas meter or both to meter the electricity or gas consumed for each Unit. **It will be the responsibility of each Unit Owner to pay the utilities consumed by each Unit and the contractual obligations for telephone and cable or other utilities made by the Unit Owner or occupant and not the responsibility of the Declarant or the Association. The Unit Utilities used by each Unit will not be part of the Common Expenses.**

Section 2.43 "Unattached Garage(s)" shall be defined as the Unattached Garages intended to be sold to and owned by Unit Owners only. Such Unattached Garages are depicted as such on the Plats. Such Unattached Garages will be taxed separately to the Unit Owner. The definition of "Boundaries," as specified in this Declaration will also include an Unattached Garage.

### ARTICLE 3 LOCATION, PROPERTY DESCRIPTION AND PLAT

The Project subject to the Act and the Declaration which is located in the City of Las Cruces, Doña Ana County, New Mexico, the real property being more particularly described in Exhibit "A" attached to this Declaration, which exhibit is specifically incorporated herein by this reference. Additional information on the floor plans for each Unit, as well as the descriptions of the boundaries of each Unit, are contained in the Plat, which documents are specifically incorporated herein by this reference. The Declarant shall have the right to file additional plats from time-to-time as necessary or appropriate to further describe the Project, Common Elements, Limited Common Elements, or Units, or to comply with the Act. Further, the Declarant shall have the right to file additional plats which modify or adjust a previously filed plat as deemed necessary and appropriate by Declarant. The Plat is incorporated herein by reference as if the same were set forth in their entirety herein. The Plat does include Phase 2 Property.

### ARTICLE 4 UNITS AND BOUNDARIES

#### Section 4.1 Creation of Units.

(a) Phase 1 will be, and is hereby, divided into one hundred twenty-two (122) separate Units, the Limited Common Elements, and the Common Elements and Phase 2 is divided into one hundred forty-nine (149) separate Units for a total of two hundred seventy-one (271) Units. The maximum number of Units which the Declarant reserves the right to create is two hundred seventy-one Units. Each Unit consists of a dwelling space and its appurtenant percentage of undivided Allocated Interest in the Common Elements as shown on Exhibit "B" attached to this Declaration and incorporated herein by this reference. The percentage ownership of each Unit and thus the Allocated Interest is based upon the square footage of heated floor space of the Unit divided by the heated floor space of all the Units which was determined by the licensed project architect, which



square footage may or may not be the exact square footage of the Unit. The square footage as so determined, for purposes of computing the Allocated Interests shall be final and conclusive notwithstanding the fact that any Owner may conclude that the square footage of any particular Unit is different by some measure than that so determined.

(b) Each Unit shall be conveyed as a separately designated and legally described freehold estate subject to the Act and the Project Instruments. The Units, and their locations in relationship to other Units, Common Elements, and Limited Common Elements, are depicted on the Plat. Each Unit includes that part of the structure which lies within the boundaries set forth in Section 4.2.

Section 4.2 Horizontal (Upper and Lower) Boundaries.

(a) The horizontal boundaries of each Unit shall be the planes formed by the unfinished interior surfaces of the floors and ceilings of the Unit.

(b) To the extent that any chutes, flues, fireplaces, ducts, conduits, wires, load bearing walls, load bearing columns, or any other apparatus lies partially inside of the designated boundaries of a Unit, any portions thereof serving only that Unit shall be deemed a Limited Common Element in favor of that Unit; all portions thereof serving more than one Unit shall be deemed a part of the Limited Common Elements in favor of those Units; and all portions thereof serving all Units or the Common Elements generally shall be deemed Common Elements.

(c) In interpreting any deeds and plat, the existing physical boundaries of a Unit as originally constructed or of a Unit reconstructed in substantial accordance with the original plans thereof shall be conclusively presumed to be its boundaries rather than the metes and bounds expressed in any deed or plat, regardless of settling or lateral movement of the building in which the Unit is located, and regardless of minor variance between the boundaries shown on the Plat or in a deed and those of the Unit. To the extent of any such discrepancy(ies) and variance(s), an appropriate easement shall exist to prevent involuntary removal, correction, or injunction against use and enjoyment.

Section 4.3 Vertical Boundaries. The parametrical or vertical boundaries of each Unit shall be the planes formed by the unfinished interior surfaces of the exterior walls of the Unit. Entry doors, exterior doors, and exterior glass surfaces, including, but not limited to, glass windows, glass doors, or other exterior doors serving the Unit shall be included within the boundaries of the Unit. Heating, air-conditioning systems serving a single Unit (including any part of such system located outside the boundaries of the Unit), all duct work for heating and cooling systems and appliances and plumbing fixtures within a Unit and serving only that Unit shall be part of the Unit for repair, maintenance and replacement purposes. Fireplaces in a Unit, all duct work for the fireplace and gas lines servicing the fireplace shall also be part of the Unit for repair, maintenance and replacement purposes. Exterior door frames and window frames shall be deemed a part of the Common Elements.

Section 4.4 Description of a Condominium Unit. Any instrument affecting a Condominium Unit and/or an Unattached Garage may legally describe it by the identifying number shown on

374

the Plat. This identifying number for a Condominium Unit or Unattached Garage in the Project is the number on the Plat identifying the individual space which is part of that Condominium Unit and Unattached Garage. A legal description of a Condominium Unit or an Unattached Garage in the Project may be in the following form:

Unit \_\_\_\_\_, The Casitas at Morningstar Condominiums, in accordance with and subject to the Condominium Declaration for The Casitas at Morningstar Condominiums recorded on \_\_\_\_\_, 2007, Book \_\_\_\_\_, Pages \_\_\_\_\_ through \_\_\_\_\_, in the Office of the County Clerk of Doña Ana County, New Mexico;

Any conveyance or other instrument affecting title to a Condominium Unit, an Unattached Garage or any part thereof describing the Condominium Unit or the Unattached Garage in the Project in substantially the foregoing form or otherwise effectively describing the Condominium Unit or Unattached Garage shall be deemed to include and describe the entire Condominium Unit or Unattached Garage including the appurtenant Allocated Interest and all of the rights, easements, obligations, limitations, encumbrances, covenants, conditions and restrictions benefitting or burdening the Condominium Unit or Unattached Garage under the terms of this Declaration.

Section 4.5 Duration of Condominium Ownership. The condominium ownership of the Project created under this Declaration shall continue until this Declaration is terminated or revoked as herein provided.

Section 4.6 Ownership Includes Appurtenances. The ownership of each Unit shall include, and there shall pass with each Unit as appurtenances thereto whether or not separately described in the conveyance thereof, the Allocated Interest attributable to such Unit, together with membership in the Association and an undivided interest in the funds and assets held by the Association. Every portion of a Unit and all Limited Common Elements contributing to the support of an abutting Unit shall be burdened with an easement of support for the benefit of such abutting Unit.

Section 4.7 Property Taxation. All taxes, assessments, and other charges of the State or of any governmental subdivision or of any special improvement district or of any other taxing or assessing authority shall be assessed against and collected on each Condominium Unit and each Unattached Garage separately and not on the Buildings or Project as a whole and each Condominium Unit and each Unattached Garage shall be carried on the tax books as a separate and distinct Unit. For the purposes of valuation for assessment, the valuation of the Common Elements shall be apportioned among the Condominium Units in proportion to the Allocated Interests appurtenant to and part of the Condominium Units. The Association shall deliver to the assessor of the applicable jurisdiction, a written notice as may be required by the Act or other applicable statutes, setting forth descriptions of the Condominium Units and Unattached Garages and shall furnish all necessary information with respect to such apportionment of valuation of Common Elements for assessments. The lien for taxes assessed to any Condominium Unit or Unattached Garage shall be confined to that Condominium Unit or Unattached Garage. No forfeiture or sale of any Condominium Unit and if applicable the Unattached Garage for delinquent taxes, assessments or other governmental charges shall divest or in any way affect the title to any other Condominium Unit. Unattached Garages may be taxed

separately. The provisions of this Article 4 shall also be applicable to Garage Units that are considered part of a Condominium Unit.

Section 4.8 Mechanic's Liens. No labor performed or materials furnished for use in connection with any Condominium Unit with the consent or at the request of the Owner thereof or his agent, contractor or subcontractor, shall create any right to file a statement of mechanic's lien against either the Condominium Unit of any other Owner not expressly consenting to or requesting such labor or materials or against any interest in the Common Elements, therein appurtenant to the Condominium Unit of the Owner for whom such labor shall have been performed and such materials shall have been furnished. Each Owner shall indemnify and hold harmless each of the other Owners from and against liability or loss arising from the claim of any lien against any Condominium Unit, or any part thereof, of any Owner for labor performed or for materials furnished in work on the first Owner's Condominium Unit. At the written request of any Owner the Association shall enforce such indemnity by collecting from the Owner of the Condominium Unit on which the labor was performed or materials furnished the amount necessary to discharge any such lien, including all costs incidental thereto, including attorney's fees. If not promptly paid, the Association may collect the same in the manner provided herein for collection of assessments.

## ARTICLE 5 COMMON ELEMENTS

Section 5.1 Definition of Common Elements. The Common Elements consist of all portions of the Project not located within the boundaries, or considered a part, of a Unit. Ownership of the Common Elements shall be by the Unit Owners as tenants-in-common. The Allocated Interest attributable to each Unit shall be as set forth in Exhibit "B".

Section 5.2 Alteration of Percentage; No Separation of Interest. Other than the Allocated Interest being adjusted as a result of Phase 2 which is incorporated as specified herein, the Allocated Interests may otherwise be altered only by the consent of all Owners and Mortgagees (or such lesser number of Owners and Mortgagees as may hereafter be prescribed by the Act) expressed in a duly recorded amendment to this Declaration. The Allocated Interest of each Owner is appurtenant to the Unit owned by the Owner and may not be separated from the Unit to which it appertains and such appurtenance shall be deemed to be conveyed or encumbered or to otherwise pass with the Unit whether or not expressly mentioned or described in a conveyance or other instrument describing the Unit.

Section 5.3 No Partition; Appurtenant Use of Common Elements. The Common Elements shall remain undivided, and no Owner or any other Person shall have the right to bring any action for partition or division of the whole or any part thereof except as provided in the Act. Except as provided for Limited Common Elements or as otherwise provided herein, each Owner and the Association may use the Common Elements for the purposes for which they are intended, but no use shall enter or encroach upon the lawful rights of the other Owners. Each Owner and Occupant shall have a right and easement of use and enjoyment in and to the Common Elements (including the right of access, ingress and egress to and from the Unit over those portions of the Project designated for such purpose), and such easement shall be appurtenant to and shall pass with the title to such Unit, subject

to the rights of the Unit Owners to the exclusive use of the Limited Common Elements assigned to their respective Units and to the right of the Association to control the use and enjoyment of the Common Elements as provided by the terms of this Declaration. Every portion of a Unit and all Limited Common Elements contributing to the support of an abutting Unit shall be burdened with an easement of support for the benefit of such abutting Unit.

## ARTICLE 6 LIMITED COMMON ELEMENTS

Section 6.1 Designation. The Limited Common Elements and the Unit(s) or Owner to which they are assigned, licensed, or owned by are:

(a) to the extent that a deck, piazza, patio, porch, or balcony, together with any enclosure of such elements, serving a Unit is not within the boundaries of the Unit, the deck, piazza, patio, porch, or balcony which is appurtenant to a Unit is assigned as Limited Common Element to the Unit having direct access to such deck, piazza, patio, porch, or balcony;

(b) the doorsteps or stoops leading as access to a deck, patio, porch, or balcony are assigned as Limited Common Elements to the Unit to which the deck, patio, porch, or balcony is assigned;

(c) the portion of the Common Elements on which there is located any portion of the mechanical, electrical or heating system exclusively serving a particular Unit or Units is assigned as Limited Common Element to the Unit or Units so served;

(d) any gas or electric meter which serves only one Unit is assigned as a Limited Common Element to the Unit so served; and

(e) each Unit is assigned one (1) mailbox which will be located in a mailbox area of the Project.

## ARTICLE 7 DECLARANT AND OWNER RIGHTS

Section 7.1 Right to Combine, Subdivide, and Redesignate Units/Creation of Units, Common Elements, and Limited Common Elements.

(a) Declarant Rights.

(1) Combination and Subdivision. Declarant hereby reserves the right to: (A) physically combine the total area or space of one Unit with the total area or space of one or more adjacent Units (whether adjacent horizontally or vertically); (B) physically combine a part of or combination of parts of the area or space of one or more Units with a part of or combination of parts of the area or space within one or more adjacent Units (whether adjacent horizontally or vertically); (C) physically subdivide one or more Units into two or more Units; and (D) redesignate and reallocate Limited Common Elements in connection with any combination or subdivision of any Units). Declarant shall not exercise its rights pursuant to this Section 7.1 (a)(1) unless it is the Owner of or has the consent of all Owners of the Units)

to be subdivided or combined, nor shall Declarant exercise such rights without the written consent of any First Mortgagee having an interest in said Unit or Units. Any such combination or subdivision shall result in a corresponding reallocation of the Allocated Interest for the affected Units, provided that the Allocated Interests of all other Units shall remain unchanged.

(2) Create and Convert Common Elements.

(I) Declarant reserves the right to convert any Units owned by it into Common Elements or Limited Common Elements. Declarant further reserves the right to relocate the boundaries of any or all of the Units located on the Property to the extent Declarant owns any of such Units to incorporate any portion or all of the Common Elements or Limited Common Elements located adjacent thereto as part of such Units. If Declarant so relocates the boundaries of any such Unit, it may designate, as additional Limited Common Elements appurtenant to such Unit, any walls, floors, or other structural separations that formerly constituted the Unit boundary, or any space that would be occupied by such structural separations but for the relocation of the Unit boundary. If Declarant converts any Units to Common Elements or Limited Common Elements pursuant to this Section, the Allocated Interest appurtenant to the remaining Units shall be reallocated proportionally in accordance with their respective percentages as set forth in Exhibit "B," and an appropriate amendment thereto and to the Plat shall be prepared by Declarant and recorded in the Records.

(ii) Except for the "Stairways", "Hallways", and "Lobby", Declarant further reserves the right to convert any Common Elements or Limited Common Elements into Units. If Declarant converts any Common Elements or Limited Common Elements to Units pursuant to this Section, the Allocated Interest appurtenant to all Units shall be reallocated proportionately in accordance with the formula utilized to establish the initial Allocated Interests, and an appropriate amendment to the Plat shall be prepared by Declarant and recorded in the Records. Any conversion of Common Elements and/or Limited Common Elements to Units shall require the consent of any Unit Owner and First Mortgagee whose Unit is affected.

(3) Condominium Plat Supplements and Other Procedures. If Declarant exercises Phase 2, one or more of its rights as set forth above, or any other Development Right which affects the Plat after the Plat has been recorded, it shall cause a supplemental or amended Plat or other appropriate document to be recorded in the Records reflecting the same, and shall record an amendment, if necessary, to Exhibit "B" reflecting the same. Upon any physical combining of Units, the resulting Unit shall be allocated to the Allocated Interest appurtenant to the Units so combined. Upon any such physical combining of Units to create a single Unit, the Owner of such combined Unit shall be responsible for the assessments for Common Expenses allocable to the Units so combined, as determined pursuant to Section 4.1. Declarant reserves the right to designate, as additional Limited Common Elements appurtenant to such combined Unit, any walls, floors, or other physical separations between the Units so combined, or any space which would be occupied by such physical separations but for the

combination of such Units; provided, however, that such walls, floors, or other physical separations or such space shall automatically become Common Elements if the combined Units become subject to separate ownership in the future. Upon any subdivision of anyone or more Units to create additional Units, the resulting Units shall be allocated the Allocated Interest of the Units so subdivided, which undivided interests shall be allocated between or among such Units by Declarant in accordance with the formula utilized to determine the initial Allocated Interests, and such determination shall be final and conclusive.

(4) Reservation of Rights for Sales and Models. The Declarant hereby reserves, for the benefit of Declarant, its successors and assigns, a temporary nonexclusive easement over, across, and under the Common Elements for the maintenance of sales and leasing offices, signs, and the reasonable use of the Common Elements for sales, leasing, marketing, and construction purposes, including, without limitation, access, ingress and egress across, over and under the Common Elements for the purpose of further improving the Property or the Project for purposes of marketing, leasing, and sales, so long as Declarant owns any Unit primarily for the purpose of sale or lease. The Declarant further reserves, for the benefit of Declarant, its successors and assigns as Declarant, the right to use any unsold Unit as a "model unit" for purposes of marketing, leasing, and sales, so long as Declarant owns any Unit primarily for the purpose of sale or lease.

(5) Expiration of Reserved Rights. The reserved rights of Declarant set forth in this Section 7.1(a) shall terminate upon the expiration of the Declarant Rights Period. Declarant states that: (i) its rights under this Section 7.1 (a) or under any other provision of this Declaration may be exercised with respect to the Common Elements, Limited Common Elements, or various Units at different times; (ii) no assurances are made as to the boundaries of the Units, Common Elements, or Limited Common Elements that may be subject to Declarant's rights under this Section 7.1(a), or under any other provision of this Declaration, or as to the order in which Common Elements, Limited Common Elements, or Units, if any, may be subjected to such rights; and (iii) if Declarant exercises any rights as to any Units pursuant to Section 7.1 (a) or under any other provision of this Declaration, such rights may, but need not, be exercised as to all or any other portion of the Property.

(b) Unit Owner Rights. Each Owner of a Unit shall have the right to combine two or more adjacent Units (whether adjacent horizontally or vertically), or to divide two or more Units which have previously been divided or combined, as the case may be, by Declarant in accordance with Section 7.1(a), or by an Owner in accordance with this Section 7.1(b). Except as provided in the foregoing sentence, there may be no other division or combination of Units or relocation of boundaries of adjacent Units by Owners. A proposed combination or division of Units by an Owner shall require the consent of the Association and, if during the Declarant Rights Period, by Declarant, and shall be accomplished in accordance with the procedures set forth by the Board. The exercise of the rights granted in this Section 7.1(b) shall be subject to the prior written consent of each Mortgagee having an interest in any such combined or divided Unit(s). If Units are combined, the applicable Allocated Interests appurtenant to the combined Unit shall be the sum of the previous Allocated Interests in the Units that were combined. Any previously combined Units that are later divided shall have the Allocated Interests which they had prior to the previous combination.

ARTICLE 8  
ASSOCIATION MEMBERSHIP AND ALLOCATIONS

Section 8.1 Membership. All Owners, by virtue of their ownership of an interest in a Unit, excluding Persons holding such interest under a Mortgage, are members of the Association and, except as otherwise provided herein or in the Bylaws, shall be entitled to vote on all matters upon which members of the Association are entitled to vote pursuant to this Declaration and the Act and in accordance with the Bylaws, subject to the provisions of Section 8.4. Each Owner is obligated to comply with the Articles, Declaration, Bylaws, and the Rules and Regulations. Membership in the Association shall not be transferred, pledged or alienated in any way, except upon the sale of the Unit to which it is appurtenant, and then only to the purchaser of such Unit. Any attempt to make a prohibited transfer is void. If the Owner of any Unit should fail or refuse to transfer the membership registered in his name to the purchaser of his Unit the Association shall have the right to record the transfer upon its books and other records to effectuate such Membership change.

Section 8.2 Votes. Subject to the provisions of the Project Instruments, including, without limitation, Section 8.4, each Owner shall be entitled to cast one (1) weighted vote for each Unit in which such Owner holds the interest required for membership, which vote shall be appurtenant to such Unit. Each vote shall be weighted in accordance with the Allocated Interests. No votes may be split; each Owner must vote his or her entire weighted vote on each matter to be voted on by the Owners. If Owners of a Unit cannot agree on how the vote for that Unit is to be cast, that vote will not be cast or counted for any purpose other than the calculation of the total votes for the entire Project. The total votes for the entire Project shall equal two hundred seventy one (271 votes) at all times.

Section 8.3 Allocation of Liability for Common Expenses. Except as otherwise provided herein, each Unit is hereby allocated liability for Common Expenses apportioned in accordance with the Allocated Interests.

(a) Except as provided below, or elsewhere in the Act or Project Instruments, the amount of all Common Expenses shall be assessed against all the Units in accordance with the allocation of liability for Common Expenses described above.

(b) The Board of Directors shall have the power to assess specifically pursuant to this Section as in its discretion it deems appropriate. Failure of the Board of Directors to exercise its authority under this Section shall not be grounds for any action against the Association or the Board of Directors and shall not constitute a waiver of the right to exercise authority under this Section in the future with respect to any expenses, including an expense for which the Board of Directors has not previously exercised its authority under this Section.

(1) Any Common Expenses benefitting less than all of the Units or significantly disproportionately benefitting all Units may be specifically assessed equitably among all of the Units which are benefitted according to the benefit received, as determined in the sole discretion of the Board of Directors.

(2) Any Common Expenses occasioned by the conduct of less than all of those entitled to occupy all of the Units or by the Occupant(s), licensees, or invitees of any such Unit or Units may be specifically assessed against such Unit or Units. For purposes of subsection (b) of this Section, nonuser shall constitute a benefit to less than all Units or a significantly disproportionate benefit among all Units only when such nonuser results in an identifiable, calculable reduction in cost to the Association.

Section 8.4 Election of Board During Declarant Control Period. Notwithstanding any contrary provision hereof, during the Declarant Control Period, the Board shall be elected as follows:

(a) Until the date which is sixty (60) days after conveyance of eighty percent (80%) of the Units to Owners other than Declarant, all of the members of the Board shall be appointed by Declarant, in Declarant's sole discretion, and such members need not be Owners; and

(b) From and after the date which is sixty (60) days after conveyance of fifty percent (50%) of the Units to Owners other than Declarant, at least one member and not less than twenty-five percent (25%) of the members of the Board shall be appointed by the Declarant from among the Owners. No member so appointed shall be an affiliate of the Declarant if such persons are available.

Declarant may voluntarily surrender the right to appoint and remove officers and members of the Board before termination of the Declarant Control Period, but in that event Declarant may require, for the duration of the Declarant Control Period, that specified actions of the Association or Board, be approved by the Declarant before they become effective

## ARTICLE 9 ASSOCIATION RIGHTS AND RESTRICTIONS

The Association shall have all of the rights set forth in this article in addition to, and not in limitation of, all other rights it may have pursuant to the laws of the State, this Declaration, and the Project Instruments.

Section 9.1 Right of Entry. The Association shall have the right to enter into Units for maintenance, emergency, security, or safety purposes, which right may be exercised by the Board of Directors, officers, agents, employees, managers, and all police officers, fire personnel, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall be only during reasonable hours and after reasonable notice to the Owner or Occupant of the Unit.

Section 9.2 Rules and Regulations. The Association shall have the continuing right to make and to enforce reasonable rules and regulations governing the use of the Project, including the Units, Limited Common Elements, and Common Elements.

Section 9.3 Right of Enforcement. The Association shall have the right to enforce use restrictions, provisions of the Declaration and Bylaws, and rules and regulations by the imposition



of reasonable monetary fines and suspension of use and voting privileges. These powers, however, shall not be construed as limiting any other legal means of enforcing the use restrictions or rules and regulations of the Association. Any fines imposed in accordance with this Section 9.3 shall be considered an assessment against the Unit and may be collected in the manner provided for collection of other assessments.

Section 9.4 Permits, Licenses, Easements, etc. The Association shall have the right to grant permits, licenses, utility easements, and other easements over, through, and under the Common Elements without a vote of the Owners. Owners are subject to the terms of any exclusive or other arrangement entered into by the Association with regard to the grant of a permit, license, utility easement, or other easement to any third party.

Section 9.5 Right of Maintenance. The Association shall have the right to control, manage, operate, maintain, improve, and replace all portions of the Project for which the Association is assigned maintenance responsibility under this Declaration or applicable law.

Section 9.6 Property Rights. The Association shall have the right to acquire, hold, encumber, and dispose of tangible and intangible personal property and real property.

Section 9.7 Casualty Loss. The Association shall have the right to deal with any insurance carrier and/or any governmental or quasi-governmental entity, as the case may be, in the event of damage or destruction as a result of casualty loss, or threatened or actual condemnation, or exercise of rights of eminent domain, in accordance with the provisions of this Declaration and applicable law.

Section 9.8 Governmental Entities. The Association shall have the right to represent the Owners in dealing with governmental entities.

Section 9.9 Master Owners' Association. The Association shall have the exclusive right to represent the Property with respect to any matters pertaining to any master association of which the Property is a part.

Section 9.10 Common Elements. The Association shall have the right to close temporarily any portion of the Common Elements for emergency, security, or safety purposes, or for any such other reasonable purpose as determined in the sole discretion of the Board, with no prior notice of such closing to the Owners, for a period not to exceed one (1) year. Furthermore, the Association shall have the right to permanently close any portion of the Common Elements (excluding Limited Common Elements) upon thirty (30) days prior notice to all Owners. Any portion of the Common Elements which has been permanently closed may be reopened by action of the Board or by the vote of Owners holding a majority of the votes cast at a duly called special or annual meeting.

ARTICLE 10  
ASSESSMENTS

Section 10.1 Purpose of Assessment. The Association shall have the power to levy assessments as provided herein and in the Act. The assessments for Common Expenses provided for herein

shall be used for the general purposes of promoting the health, safety, welfare, common benefit, and enjoyment of the Owners and Occupants of Units in the Project as may be more specifically authorized from time-to-time by the Board of Directors.

Section 10.2 Creation of the Lien and Personal Obligation For Assessments. Each Owner of any Unit, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (i) annual assessments or charges ("Annual Assessments"); (ii) special assessments ("Special Assessments"); (iii) specific assessments ("Specific Assessments"); and (iv) an assessment upon the sale of a Unit ("Assessment Reserve Payment") all as herein provided. All such assessments, together with late charges, interest, costs, and reasonable attorney's fees actually incurred shall be a charge on the Unit and shall be a continuing lien upon the Unit against which each assessment is made. Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (b) the lien or charge of any First Mortgage made in good faith and for value (except those accruing after the First Mortgagee forecloses or takes a conveyance in lieu of foreclosure). Such lien, when delinquent, may be enforced by suit, judgment, and/or foreclosure in the same manner as Mortgages are foreclosed under the laws of the State. Such amounts shall also be the personal obligation of each Person who was the Owner of such Unit at the time when the assessment fell due and may be collected in the same manner as other debts or liens are collected under the laws of the State. Each Owner and each successor-in-title to the Unit shall be jointly and severally liable for all assessments and charges due and payable at the time of any conveyance. Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors; unless otherwise provided, the Annual Assessments shall be paid in equal monthly installments due on the first day of each calendar month. No Owner may be exempt from liability for or otherwise withholding payment of assessments for any reason whatsoever, including, but not limited to, nonuser of the Common Elements; the Association's failure to perform its obligations required or purportedly required under this Declaration or applicable law; or inconvenience, discomfort, or purported or actual consequential damages arising from the Association's performance of its duties or deficiency therein.

Section 10.3 Notice to Lien Holders. A copy of the notice of delinquency shall be mailed certified mail or registered mail, return receipt requested, to holders of recorded liens, and to persons who have recorded requests for notice with the Association. Notice shall be mailed to the name and address as appears on the request for notice and on the recorded liens.

Section 10.4 Lien/Security Interest. A lien under this Article 10 is prior to all other liens and encumbrances on the Unit except:

- (a) Liens and encumbrances recorded before the recordation of the Declaration;
- (b) Liens for real estate taxes and other governmental assessments or charges against the Unit;
- (c) Other than as provided in Section 10.4(c)(1) below, a First Mortgage on the Unit recorded before the date on which the assessment sought to be enforced became delinquent.

(1) Notwithstanding the provisions of Section 10.4(c) above, the lien of the Association shall be prior to all First Mortgage liens to the extent of six (6) months of regular Common Expense assessments.

This Section 10.4 does not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other assessments made by the Association. Recording of the Declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for assessment under this Section 10.4 is required, except that a notice of delinquent assessment must be recorded before commencement of foreclosure.

Section 10.5 Subordination of the Lien to First Mortgage. Except as provided in Section 10.4(c)(1), the lien of the assessments provided for herein shall be subordinate to the lien upon any Unit of a First Mortgage recorded prior to the date that the assessment sought to be enforced becomes delinquent. Sale or transfer of any Condominium Unit shall not affect the assessment lien. However, the sale or transfer of any Condominium Unit pursuant to judicial or nonjudicial foreclosure of a First Mortgage or any conveyance in lieu thereof shall, except pursuant to Section 10.4(c)(1), extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Condominium Unit from lien rights for any assessments thereafter becoming due. Where the holder of a recorded First Mortgage or other purchaser of a Condominium Unit obtains title to the same as a result of foreclosure or conveyance in lieu, such acquirer of title, his successors and assigns, shall not, except pursuant to Section 10.4(c)(1), be liable for Allocated Interest of the Common Expenses or assessments by the Association chargeable to such Condominium Unit which became due prior to the acquisition of title to such Condominium Unit by such acquirer. Such unpaid Allocated Interest of Common Expenses or assessments shall be deemed to be Common Expenses collectible from all of the Condominium Units including such acquirer, his successors and assigns.

Section 10.6 Delinquent Assessments. All assessments and related charges not paid on or before the due date shall be delinquent, and the Owner shall be in default.

(a) If any monthly installment of Annual Assessments or any part thereof or any other charge is not paid in full within five (5) days of when due, a late charge equal to the greater of ten dollars (\$10.00) or ten percent (10%) of the amount not paid, or such higher amounts as may be permitted or authorized by the Act, may be imposed without further notice or warning to the delinquent Owner, and interest at the highest rate as permitted by the Act or other applicable law and adopted by resolution of the Board of Directors shall accrue from the due date.

(b) If part payment of assessments and related charges is made, the amount received shall be applied in the following order, and no restrictive language on any check or draft shall be effective to change the order of application:

(1) respectively, to any unpaid late charges, interest charges, and Specific Assessments (including, but not limited to, fines) in the order of their coming due;

(2) to costs of collection, including reasonable attorney's fees actually incurred by the Association;

(3) to any unpaid installments of the Annual Assessment or Special Assessments in the order of their coming due; and

(4) any other amounts due and owing.

(c) If assessments, fines, or other charges or any part thereof due from an Owner are not paid when due, a notice of delinquency may be given to that Owner stating that if the assessment, fine, or charge remains delinquent for more than ten (10) days from the date of the notice of delinquency, the Board of Directors may accelerate and declare immediately due all of that Owner's unpaid installments of the Annual Assessment, any Special Assessments, and any Specific Assessments. If an Owner fails to pay all assessments and related charges currently due within ten (10) days of the date of the notice of delinquency, the Board of Directors may then accelerate and declare immediately due all installments of the Annual Assessment, any Special Assessments, and any Specific Assessments without any further notice being given to the delinquent Owner. Upon acceleration, that Owner shall thereby lose the privilege of paying the Annual Assessment in monthly installments for that fiscal year.

(d) If assessments and other charges or any part thereof remain unpaid more than thirty (30) days after the assessment payments first become delinquent, the Association, acting through the Board of Directors, may institute suit to collect all amounts due pursuant to the provisions of the Declaration, the Bylaws, the Act and the law of the State, and may suspend the Owner's and/or Occupant's right to vote and/or to use the Common Elements; provided, however, that the Board of Directors may not limit ingress or egress to or from the Unit or disconnect utilities or other essential services to the Unit.

Section 10.7 Computation of Operating Budget and Annual Assessment. The Board has the obligation and duty, prior to the beginning of each fiscal year, to prepare a budget covering the estimated costs of operating the Project during the coming year. The Board shall cause the budget and notice of the assessments to be levied against each Unit for the following year to be delivered to each member at least thirty (30) days prior to the end of the Association's fiscal year. The Annual Assessment for each Unit shall be equal to the amount of the budget approved by the Board multiplied by the percentage of ownership in the Common Elements owned by each Unit. The budget and the Annual Assessment shall become effective unless disapproved at a duly called and constituted meeting of the Association by a vote of at least fifty-one percent (51%) of the total eligible voting power of the Association; provided, however, if a quorum is not obtained at the such meeting, the budget shall become effective even though a vote to disapprove the budget could not be called at the meeting. During the Declarant Control Period, Declarant shall have the option, but shall not be required to, loan funds to the Association to make up any deficits in the budget and shall have the option of charging interest on all funds advanced to the Association used to fund such deficits. Notwithstanding the foregoing, in the event that the membership disapproves the proposed budget

or the Board fails for any reason so to determine the budget for the succeeding year, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the current year shall continue for the succeeding year. In such case, the Board may propose a new budget at any time during the year at a special meeting of the Association. The proposed budget and Annual Assessment shall be delivered to the members at least thirty (30) days prior to the proposed effective date thereof and at least seven (7) days prior to the special meeting. The approval procedure set forth above for budgets considered at annual meetings shall also apply to budgets considered at special meetings.

Section 10.8 Special Assessments. In addition to the Annual Assessment provided for in Section 10.2 above, the Board of Directors may, at any time, and in addition to any other rights it may have, levy a special assessment against all Owners as, in its discretion, it shall deem appropriate. Notice of any such special assessment shall be sent to all Owners prior to becoming effective. Notwithstanding the above, for so long as the Declarant owns any portion of the Project, all Special Assessments must be consented to by the Declarant prior to becoming effective.

Section 10.9 Specific Assessments. The Board shall have the power to assess specific expenses of the Association against Units (a) receiving benefits, items, or services not provided to all Units within the Project that are incurred upon request of the Owner of a Unit for specific items or services relating to the Unit or (b) that are incurred as a consequence of the conduct of less than all Owners, their licensees, invitees, or guests. The Association may also levy or specifically assess any Unit to reimburse the Association for costs incurred in bringing the Unit into compliance with the provisions of the Declaration, any applicable Supplemental Declaration, the Articles, the Bylaws, and rules and regulations, provided the Board gives prior notice to the Unit Owner and an opportunity for a hearing.

Section 10.10 Assessment Reserves. Upon each sale of a Unit, the purchaser shall deposit at closing with the Association an amount determined by the Association, which sum shall not exceed two times the amount of the monthly Common Expense assessment then allocable to such Unit. Such sum shall be non-refundable and shall be held, with or without interest, by the Association or Managing Agent in a segregated account as a reserve for working capital, and may be used for such purposes as the Association or the Board deems necessary or appropriate, except as restricted by the provisions of Section 10.12 hereof. Such payment shall not be considered an advance payment of regular assessments nor shall it relieve an Owner from making the regular monthly payment of other assessments as the same come due. For the purpose of this Section 10.10, "sale" means the conveyance of an ownership interest of more than 51 % of ownership, coupled with a present possessory interest, excluding any such transfers between and among Persons already having some ownership and possessory interest in a common Unit. Lien and collection rights relating to Assessment Reserves payments shall be the same as for other assessments.

Section 10.11 Capital Budget and Contribution. The Board shall annually prepare a capital budget which shall take into account the number and nature of replaceable assets, the expected life of each asset, the expected repair or replacement cost, and available reserves. The Board shall set

the required capital contribution, if any, in an amount sufficient to permit meeting the projected capital needs of the Association, as shown on the capital budget. The capital contribution required, if any, shall be fixed by the Board and included within the budget and assessment as provided in Section 10.4 of this Article. A copy of the capital budget shall be distributed to each member in the same manner as the operating budget.

Section 10.12 Date of Commencement of Assessments. The obligation to pay assessments shall commence as to a Unit on the date on which the assessment is made by the Association. The first Annual Assessment levied on each Unit shall be prorated on a per diem basis and adjusted according to the number of days and months remaining in the fiscal year at the time assessments commence on the Unit

Section 10.13 Statement of Account. Any Owner, Eligible Mortgagee, or a Person having executed a contract for the purchase of a Unit, or a lender considering a loan to be secured by a Unit, shall be entitled, upon written request, to a statement from the Association setting forth the amount of assessments due and unpaid, including any late charges, interest, fines, or other charges against a Unit. The Association shall respond in writing within ten (10) days of receipt of the request for a statement; provided, however, the Association may require the payment of a reasonable fee as a prerequisite to the issuance of such a statement. Such written statement shall be binding on the Association as to the amount of assessments due on the Unit as of the date specified therein.

Section 10.14 Surplus Funds and Common Profits. Common profits from whatever source shall be applied to the payment of Common Expenses. Any surplus funds remaining after the application of such common profits to the payment of Common Expenses shall, at the option of the Board of Directors, be distributed to the Owners, credited to the next assessment chargeable to the Owners in proportion to the liability for Common Expenses attributable to each Unit, or added to the Association's reserve account.

Section 10.15 Assessment for Unit Utilities. Each Unit Owner is responsible to timely pay the Unit Utilities of their Unit. The Association or the Declarant is not responsible for payment of Unit Utilities. Thus, Assessment will not be allocated as a Common Expense and the Unit Utilities of each particular Unit will be the sole responsibility of the each Unit Owner.

## ARTICLE 11 INSURANCE

Section 11.1 Insurance. The Association shall obtain and maintain at all times, as a Common Expense, insurance as required by law and as required herein. All such insurance coverage shall be written in the name of the Association as trustee for itself, each of the Owners, and the Mortgagees of Owners, if any. It shall be the duty of the Board of Directors at least every three (3) years to conduct an insurance review to determine if the policy in force is adequate to meet the needs of the Association. Such insurance shall run to the benefit of the Association, the respective Unit Owners, and their respective Mortgagees, as their interests may appear.

(a) The Association may elect at its sole discretion to obtain an insurance policy that covers any of the following types of property contained within a Unit, regardless of ownership:

(1) fixtures, improvements, and alterations that are part of the Buildings or structure; and

(2) appliances which become fixtures, including built-in refrigerating, ventilating, cooking, dishwashing, laundering, security, or housekeeping appliances.

(b) The Board of Directors shall utilize every reasonable effort to secure a master policy covering physical damage in an amount equal to full replacement costs of all improvements located on the Project at commercially reasonable rates that will provide the following:

(1) that the insurer waives its rights of subrogation of any claims against the Board of Directors, officers of the Association, the individual Owners, their respective household members, and their respective insurers;

(2) that the master policy on the Project cannot be canceled, invalidated, or suspended on account of the conduct of any director, officer, or employee of the Association or the managing agent without a prior demand in writing delivered to the Association and to all Mortgagees of Units to cure the defect, and the allowance of a reasonable time thereafter within which the defect may be cured;

(3) that any "no other insurance" clause contained in the master policy shall expressly exclude individual Unit Owners' policies from its operation;

(4) that until the expiration of thirty (30) days after the insurer gives notice in writing to the Mortgagee of any Unit, the Mortgagee's insurance coverage will not be affected or jeopardized by any act or conduct of the Owner of such Unit, the other Unit Owners, the Board of Directors, or any of their agents, employees, or household members, nor be canceled for nonpayment of premiums;

(5) that the master policy may not be canceled or substantially modified without at least thirty (30) days prior notice in writing to the Board of Directors and all Mortgagees of Units;

(6) a construction code endorsement;

(7) an agreed value endorsement and an inflation guard endorsement; and

(8) that the deductible amount per occurrence shall not exceed such amount as determined by the Board.

388

(c) All policies of insurance shall be written with a company authorized to do business in the State and holding a rating of B+:V or better in the Financial Category as established by AM Best Company, Inc., if available at commercially reasonable rates, or, if not available, the best rating available. The company shall provide insurance certificates to each Owner and each Mortgagee upon request.

(d) Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Association's Board of Directors; provided, however, no Mortgagee having an interest in such losses shall be prohibited from participating in the settlement negotiations, if any, related thereto.

(e) In no event shall the insurance coverage obtained and maintained by the Association hereunder be brought into contribution with insurance purchased by individual Unit Owners or their Mortgagees. Any Unit Owner who obtains an individual insurance policy which insures Common Elements or Limited Common Elements shall file a copy of such individual policy or policies with the Board of Directors within thirty (30) days after the purchase of such insurance. Such Owner shall also promptly notify, in writing, the Board of Directors in the event such policy is canceled.

(f) In addition to the insurance required herein above, the Board shall obtain as a Common Expense:

(1) worker's compensation insurance if and to the extent necessary to meet the requirements of law; and

(2) flood insurance, to the extent that it is required by law or the Board determines it to be necessary.

(3) officers' and directors' liability insurance as the Board determines to be necessary without or without a cross-liability endorsement.

(g) In addition to the required insurance, the Board may obtain such additional insurance, in such amounts and with such endorsements, as the Board determines is advisable in its sole discretion, which additional insurance shall be a Common Expense. Such additional insurance may include without limitation: fidelity bonds, covering officers, directors, employees, and other persons who handle or are responsible for handling Association funds.

(h) Insurance carried by the Association as a Common Expense shall not include part of a Unit not depicted on the Plat, nor shall the Association include public liability insurance for individual Owners for liability arising within the Unit. Nothing contained herein gives any Owner or other party a priority over the rights of First Mortgagees as to distribution of insurance proceeds.



(I) Every Unit Owner shall be obligated to obtain and maintain at all times insurance covering those portions of his or her Unit to the extent not insured by policies maintained by the Association. Each Owner shall obtain at the Owner's expense insurance coverage for the finished surfaces of perimeter and partition walls, floors, and ceilings within the Unit (i.e., paint, wallpaper, paneling, other wall covering, tile, bathroom fixtures, appliances, cabinets, carpet and any floor covering;) and any other improvements, betterments, or personal property owned by the Owner which are not Common Elements or Limited Common Elements. Upon request by the Board, the Unit Owner shall furnish a copy of such insurance policy or policies to the Association. In the event that any such Unit Owner fails to obtain insurance as required by this subsection, the Association may purchase such insurance on behalf of the Unit Owner and assess the cost thereof to the Unit Owner, to be collected in the manner provided for collection of assessments under Article 10 hereof.

(j) In the event of an insured loss, any required deductible shall be considered a maintenance expense to be paid by the Person(s) who would be responsible for such loss in the absence of insurance. If the loss affects more than one Unit or a Unit and the Common Elements, the cost of the deductible may be apportioned equitably by the Board among the parties suffering loss in proportion to each affected owner's portion of the total cost of repair. Notwithstanding this, if the insurance policy provides that the deductible will apply to each Unit separately or to each occurrence, each Unit Owner shall be responsible for paying the deductible pertaining to his or her Unit, if any. If any Owner or Owners fail to pay the deductible when required under this subsection, then the Association may pay the deductible and assess the cost to the Owner or Owners pursuant to Article 10 hereof.

Section 11.2 Owners: Policies. OWNERS ARE RESPONSIBLE FOR CARRYING, AT THEIR OWN EXPENSE, INSURANCE TO AUGMENT OR COVER LOSSES AND DAMAGES NOT COVERED BY THE BLANKET INSURANCE CARRIED BY THE ASSOCIATION. Insurance policies issued to the Association do not eliminate the need for Unit Owners to obtain insurance for their own benefit as outlined in Section 11.1(I). Individual Owners may carry such other insurance for their own benefit and at their own expense as they may deem appropriate, provided that the liability of the carriers issuing insurance obtained by the Association shall not be affected or diminished by reason of any such additional insurance carried by any Owner. Insurance coverage on improvements and fixtures installed by an Owner and on furnishings, including carpeting and other floor coverings, draperies, oven, range, refrigerator, wallpaper, disposal and other items of personal property belonging to the Owner, and public liability coverage within each Condominium Unit shall be the sole and direct responsibility of the Owner thereof, and the Board of Directors, the Association and Declarant shall have no responsibility therefor. Similarly, Owners shall be responsible for insuring any items stored in any storage area, and for insuring any automobiles, motorcycles or other vehicles, any bicycles, and any parts and contents of any of the foregoing, which are parked in any Parking Space, Attached Garage, detached garage or storage areas, and the Board of Directors, the Association or Declarant shall have no responsibility therefore.

Section 11.3 No Imperiling of Insurance. No Owner and no Owner's guests shall do anything or cause anything to be kept in or on the Project which might: (I) result in an increase in the

390

premiums of insurance obtained for the Project unless the Owner pays the full amount of such increase upon demand of the Association; or (ii) cause cancellation of such insurance.

Section 11.4 Owners' Policies. All policies of insurance shall provide that the insurance thereunder shall be invalidated or suspended only with respect to the interest of any particular Owner that is guilty of a breach of warranty, a negligent or willful act or omission, or noncompliance with any provision of such policy, including payment of the insurance premium applicable to that Owner's interest. Furthermore, if a particular Owner permits or fails to prevent the happening of any event, whether occurring before or after a loss, under which the provisions of a policy would otherwise invalidate or suspend the entire policy, the insurance under any such policy attributable to the interest of all other insured Owners, First Mortgagees and other Persons who are named insured and who are not guilty of any such act or omission, shall not be invalidated or suspended and shall remain in full force and effect.

## ARTICLE 12 REPAIR AND RECONSTRUCTION

Section 12.1 Casualty Destruction of Common Elements. If any portion of the Common Elements is damaged or destroyed by fire or other casualty, then:

(a) If the cost to repair or rebuild does not exceed the amount of available insurance proceeds, the Board shall contract to repair or rebuild the damaged portions of the Common Elements substantially in accordance with the original plans and specifications.

(b) If the cost to repair or rebuild exceeds the amount of available insurance proceeds, then the Board shall contract to repair or rebuild the damaged portions of the Common Elements substantially in accordance with the original plans and specifications therefor, unless at least eighty percent (80%) of the all of the Owners, as well as one hundred percent (100%) of the Owners of Units or assigned Limited Common Element that will not be rebuilt, elect not to repair or rebuild the Condominium Project.

(c) If the Owners elect not to the repair or rebuild the Common Elements as provided in Section 12.1(b), then each Owner (and his Mortgagee(s) as their respective interest shall then appear shall be entitled to receive that portion of the insurance proceeds equal to the proportion of the decrease in fair market value of his Condominium Unit as compared to the aggregate decrease in the fair market values of all the Condominium Units caused by such damage or destruction. For purposes hereof, fair market value shall be determined by an appraiser licensed by the State, selected by the Board and hired by and at the expense of the Association.

(d) Should a dispute arise as to the distribution of insurance proceeds as provided in Section 12.1(c), the dispute shall be decided by the American Arbitration Association pursuant to its Commercial Rules of Arbitration, with the arbitration proceedings held in the area of the Project.

(e) If a bid to repair or rebuild is accepted, the Board shall have the right to levy a special assessment against each Condominium Unit in the damaged or destroyed Building(s) in the proportion the Condominium Units are assessed for purposes of raising funds for the rebuilding or major repair of the structural Common Elements, to make up any deficiency between the total insurance proceeds and the contract price for such repair and rebuilding. Such assessment and all insurance proceeds, whether or not subject to liens of Mortgagees, shall be paid to the account of the Association to be used for such rebuilding.

Section 12.2 Taking of Common Elements. If any portion of the Common Elements is taken by condemnation, eminent domain or any proceeding in lieu thereof, and the award therefor is not allocated among the Owners and holders of Mortgages on such Owner's Unit, as their respective interests then appear, by court judgment or by agreement between the condemning authority and each of the affected Owners, then the Owners of the Common Elements, and the Mortgage as their respective interests then appear, shall be entitled to receive a distribution from the award for such taking in the same proportion as insurance proceeds will be distributed pursuant to Section 12.1(c). However, if it should be determined to repair or rebuild any portion of the Common Elements, such proceeds shall be paid to the Association for that purpose in the same manner and subject to the same terms; conditions and limitations as are set forth in Section 12.1 for the repair of damaged or destroyed portions of the Common Elements. Any decision to repair or rebuild shall be made in the same manner and subject to the same conditions and limitations as provided in Section 12.1 to determine whether or not to rebuild or repair the damage or destruction.

Section 12.3 Casualty Destruction of Condominium Unit. In the event of damage or destruction of any Condominium Unit, the Owner thereof shall reconstruct the same as soon as reasonably practicable and substantially in accord with the original plans and specifications therefor; provided, however, that any such Owner may, with the written consent of the Board, reconstruct or repair the same pursuant to new or changed plans and specifications. In the event the Board fails to approve or disapprove such changed plans and specifications within sixty (60) days of receipt thereof by the Association, they shall be deemed to have been approved.

Section 12.4 Taking of Condominium Unit. In the event of the taking of a Condominium Unit, the Owner (and his Mortgagees as their interests may appear) of the Condominium Unit shall be entitled to receive the award for such taking and after acceptance thereof, said Owner or said Owner's Mortgagee shall be divested of any further interests in the Condominium Project if such Owner shall vacate his or her Condominium Unit as the result of such taking. In such event said Owner shall grant his or her remaining Allocated Interests in the Common Elements appurtenant to the Condominium Unit so taken, if any, to the other Owners owning an Allocated Interest in the same Common Elements, such grant to be in proportion to the Allocated Interest in the Common Elements then owned by each.

Section 12.5 Mortgage Interest Approval. Any restoration or repair of the Project, after a partial condemnation or damage due to an insurable hazard, shall be performed substantially in accordance with original plans and specifications, unless other action is approved by holders of First

Mortgages Interests on Condominium Units which have at least fifty one percent (51%) of the votes of Condominium Units subject to Eligible Mortgages.

ARTICLE 13  
ARCHITECTURAL CONTROL

Section 13.1 Architectural Standards.

(a) Except for the Declarant and except as provided herein, no Owner, Occupant, or any other person may make any encroachment onto the Common Elements or Limited Common Elements, or make any exterior change, alteration, or construction (including painting and landscaping), nor erect, place or post any object, sign, antenna, playground equipment, light (except for reasonable seasonal decorative lights during the applicable seasonal period), storm door or window, artificial vegetation, exterior sculpture, fountain, flag, or thing on the exterior of the Buildings, in any windows, or make any structural changes to a Unit, or modify the plumbing, electrical or HV AC systems of a Unit, or otherwise make any changes to any Limited Common Elements, or any other Common Elements, without first obtaining the written approval of the Architectural Review Board (the "ARB").

(b) The standard for approval of such improvements shall include, but not be limited to, aesthetic consideration, materials to be used, harmony with the external design of the existing Buildings, the location in relation to surrounding structures and topography, the effect on the structural and other systems shared with other Units. Applications for approval of any such architectural modification shall be in writing and shall provide such information as the ARB may reasonably require. The ARB or its designated representative shall be the sole arbiter of such application and may withhold approval for any reason, including purely aesthetic considerations, and it shall be entitled to stop any construction which is not in conformance with approved plans. The Board of Directors or the ARB may publish written architectural standards for exterior and Common Elements alterations or additions, and any request in substantial compliance therewith shall be approved; provided, however, each such requested change shall be in harmony with the external design of the existing Buildings and Units and the location in relation to surrounding structures and topography. The ARB may allow such encroachments on the Common Elements and Limited Common Elements as it deems acceptable.

(c) In the event that the ARB fails to approve or to disapprove such application within forty-five (45) days after the application and all information as the ARB may reasonably require have been submitted, its approval will not be required and this section (a) will be deemed complied with; provided however, even if the requirements of this subsection are satisfied, nothing herein shall authorize anyone to construct or maintain any structure or improvement that is otherwise in violation of the Declaration, the Bylaws, or the rules and regulations.

Section 13.2 Architectural Review Board. The ARB shall have exclusive jurisdiction over all construction on any portion of the Project. During the Declarant Control Period, the Declarant retains the right to appoint and remove all members of the ARB, who shall serve at the Declarant's discretion. The ARB shall consist of one (1) to three (3) members, with the exact number being set from time to time by and in the sole discretion of the Declarant for so long as the Declarant retains

the right to appoint and remove ARB members. There shall be no surrender of these rights prior to their expiration as provided above, except in a written instrument in recordable form executed by Declarant; provided, however, that Declarant may delegate certain authority of the ARB to the Association for such periods of time as Declarant in its sole discretion may decide. Upon expiration or permanent surrender of such rights, the Board shall set the number of members of the ARB and appoint the members of the ARB, who shall thereafter serve and may be removed in the Board's discretion.

Section 13.3 Condition of Approval; Delivery of Insurance. As a condition of approval for a requested architectural change, modification, addition, or alteration, an Owner, on behalf of such Owner and such Owner's successors-in-interest, shall assume the obligation to complete all work in accordance with applicable codes and ordinances, free of liens and encumbrances, and assume all responsibilities for maintenance, repair, replacement, and insurance of such change, modification, addition, or alteration. In the discretion of the ARB, an Owner may be required to verify such condition of approval by written instrument in recordable form acknowledged by such Owner. The ARB may also condition any approval upon the posting of a bond or other form of completion assurance. Each Owner making improvements to such Owner's Unit shall be obligated to deliver to the Association evidence that (a) such Owner maintains current general liability insurance covering the construction to be performed by Owner or its agents, with minimum limits of \$1,000,000 per occurrence/\$2,000,000 aggregate, and with insurance companies qualified under Section 11.1(c); and (b) the Association is named as an additional insured under such policy.

Section 13.4 Limitation of Liability. Review and approval of any application pursuant to this Section is made on the basis of aesthetic considerations only and the Declarant, the Board of Directors, and the ARB shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements. The Declarant, the Association, the Board of Directors, the ARB, and the members of any of the foregoing shall not be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction or modifications to any Unit.

Section 13.5 No Waiver of Future Approvals. Each Owner acknowledges that the members of the Board of Directors and the ARB will change from time-to-time and that interpretation, application, and enforcement of the architectural standards may vary accordingly. The approval of either the Board of Directors or the ARB of any proposals, plans, specifications, or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of the Board of Directors or the ARB, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans, specifications, drawings, or matters whatsoever subsequently or additionally submitted for approval or consent.

Section 13.6 Enforcement. Any construction, alteration, or other work done in violation of this Article shall be deemed to be nonconforming. Upon written request from the ARB, or from the Board of Directors if said authority has been delegated by the Declarant to the Association or Declarant's right under Section 13.2 has expired or been surrendered, Owners shall, at their own cost and expense, remove such construction, alteration, or other work and shall restore the property to substantially the same condition as existed prior to the construction, alteration, or other work. Should an Owner fail to remove and restore as required hereunder, the ARB shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as existed

prior to the construction, alteration, or other work. All costs thereof, including reasonable attorney's fees, may be assessed against the Unit and collected as an assessment pursuant to this Declaration. In addition to the foregoing, the ARB shall have the authority and standing, on behalf of the Association, to impose reasonable fines and to pursue all legal and equitable remedies available to enforce the provisions of this Section and its decisions. Any exterior change, alteration, or construction (including landscaping) upon the Common Elements made by an Owner in violation of this Declaration shall be at such Owner's sole risk and expense. The ARB may require that the Owner remove the change, alteration, or construction and restore the Common Elements to the original condition, or may require that the change, alteration, or construction remain on the Common Elements without reimbursement to the Owner for any expense incurred in making the change, alteration, or construction.

Section 13.7 Declarant Exception. The provisions of this Article shall not apply to the initial construction by Declarant of Condominium Units or other improvements to the Project by Declarant, and neither the Board nor any committee appointed by the Board shall have any authority or right to approve or disapprove the initial construction, upgrades or renovations by Declarant of Condominium Units or other improvements to the Project by Declarant.

#### ARTICLE 14 USE RESTRICTIONS

Each Owner of a Unit shall be responsible for ensuring that the Owner's family, invitees, guests, tenants, employees and Occupants comply with all provisions of the Project Instruments. Furthermore, each Owner and Occupant shall always endeavor to observe and promote the cooperative purposes for which the Association was established. In addition to any rights that the Association may have against the Owner's family, invitees, guests, tenants, employees or Occupants, as a result of such Person's violation of the Project Instruments, the Association may take action under this Declaration against the Owner as if the Owner committed the violation in conjunction with the Owner's family, invitees, guests, tenants, employees or Occupants. Whether the same is documented elsewhere or not, under any such circumstances above described, the affected Owner shall have and enjoy a right over for indemnification and/or contribution from and against the offending party. This right over shall not be deemed to diminish the liability of the Owner to the Association, and the Association shall also have all remedies available at law or in equity against the offending party jointly and severally with the Owner. Use restrictions regarding the use of Units and the Common Elements are as follows and also as may be adopted by the Board of Directors in accordance with the terms hereof and as specified in the Bylaws. In addition, the Units are subject to any and all use restrictions currently contained in the Records.

Section 14.1 Units. All Units shall be used for residential purposes and for ancillary home office uses, except as provided in Article 20 with respect to Declarant. A home office use shall be considered ancillary so long as: (a) the existence or operation of the activity is not apparent or detectable by sight, sound, or smell from outside the Unit; (b) the activity conforms to all zoning requirements for the Project; (c) the activity does not involve regular or unreasonable visitation to the Unit by clients, customers, suppliers, or other invitees, or door-to-door solicitation of residents of the Project; (d) the activity does not increase traffic or include frequent deliveries within the Project other than deliveries by couriers, express mail carriers, parcel delivery services, and other such delivery services; (e) the activity is consistent with the primarily residential character of the

Project and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Project, as may be determined in the sole discretion of the Board; and (f) the activity does not result in a materially greater use of Common Element facilities or Association services or increase the premiums for any insurance maintained by the Association.

Section 14.2 No Business or Trade. No other business, trade, or similar activity shall be conducted upon a Unit without the prior written consent of the Board. The terms "business" and "trade," as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (a) such activity is engaged in full or part-time; (b) such activity is intended to or does generate a profit; or (c) a license is required. The leasing of a Unit shall not be considered a business or trade within the meaning of this Section. This Section shall not apply to any activity conducted by the Declarant or an agent of the Declarant, or a contractor or subcontractor approved by the Declarant, with respect to its development and sale of the Project or its use of any Units which it owns within the Project.

Section 14.3 Alteration of Units. Subject to the prior approval of the ARB and compliance with the other provisions of this Declaration, Unit Owners may make alterations to the interiors of their Units, relocate the boundaries between adjoining Units, and subdivide their Units as follows:

(a) Alterations of the Interiors of the Units. If any Owner acquires an adjoining Unit, such Owner may (subject to the prior written approval of the Mortgagees of the Units involved, the prior written approval of the Board, and, for so long as the Declarant owns a Unit, the prior written approval of the Declarant) remove all or any part of any intervening partition or to create doorways or other apertures therein, notwithstanding the fact that such partition may, in whole or part, be part of the Common Elements, so long as no portion of any load bearing wall or column is materially weakened or removed and no portion of any Common Elements is damaged, destroyed, or endangered, other than that partition and any chutes, flues, conduits, wires or other apparatus contained therein which shall be relocated by such Owner if such facilities serve any other part of the Project. The alterations permitted by this subsection shall not be deemed an alteration or relocation of boundaries between adjoining Units.

(b) Relocation of Boundaries. For so long as Declarant owns one or more Units, boundaries between adjoining Units may be relocated only with the prior written consent of the Declarant. The Declarant shall have the right to relocate boundaries between Units owned by the Declarant or its affiliates without the approval of the Association, and the Declarant, without the need for further Owner approval, may execute any required amendment to the Declaration on the Association's behalf pertaining thereto.

(c) Subdivision of Units. An Owner may subdivide his or her Unit only with the prior written consent of the Association acting through the Board and, for so long as the Declarant owns a Unit, without the prior written consent of the Declarant. Notwithstanding the above, the Declarant shall have the right to subdivide Units owned by the Declarant or its affiliates without the approval of the Association, and the Declarant, without the need for further Owner approval, may execute any required amendment to the Declaration on the Association's behalf pertaining thereto.

Notwithstanding anything in this Declaration to the contrary, any Amendment required to provide for subdivision of Units shall set forth the restated Allocated Interests attributable to each Unit created by the subdivision, the total of which must equal the Allocated Interest attributable to the Unit that existed before subdivision. The Owners hereby delegate authorization to the Board of Directors or, the Declarant, for so long as the Declarant owns a Unit, without a membership vote, to restate the Allocated Interests for purposes of this subsection, in its sole discretion. Notwithstanding anything herein to the contrary, the Board of Directors is not authorized to restate the Allocated Interests of a subdivided Unit without the consent of the Declarant, for so long as the Declarant owns any portion of the Project.

Section 14.4 Use of Common Elements. There shall be no obstruction of the Common Elements, nor shall anything be kept on, parked on, stored on, or removed from any part of the Common Elements without the prior written consent of the Board, except as specifically provided herein. This prohibition shall not apply to the Declarant. With the prior written approval of the Board, and subject to any restrictions imposed by the Board, an Owner or Owners may reserve portions of the Common Elements for use for a period of time as set by the Board. Any such Owner or Owners who reserve a portion of the Common Elements as provided herein shall assume, on behalf of himself/herself/themselves and his/her/their guests, Occupants and family, all risks associated with the use of the Common Elements and all liability for any damage or injury to any person or thing as a result of such use. The Association shall not be liable for any damage or injury resulting from such use unless such damage or injury is caused solely by the willful acts or gross negligence of the Association, its agents, or employees.

Section 14.5 Use of Limited Common Elements. Use of the Limited Common elements is restricted exclusively to the Owners of the Unit(s) to which such Limited Common Elements are assigned, and said Owner's family members, guests, invitees, and Occupants. The Limited Common Elements are reserved for exclusive use, but are and remain a part of the Common Elements, and the restrictions applicable to the Common Elements shall also apply to the Limited Common Elements.

Section 14.6 Prohibition of Damage, Nuisance and Noise.

(a) Without the prior written consent of the Board, nothing shall be done or kept on the Project, or any part thereof, which would increase the rate of insurance on the Project or any Unit or part thereof, which would be in violation of any statute, rule, ordinance, regulation, permit, or other validly imposed requirements of any governmental body, or which would increase the Common Expenses.

(b) Noxious, destructive, or offensive activity shall not be carried on upon the Project. No Owner or Occupant of a Unit may use or allow the use of the Unit or any portion of the Project at any time, in any way or for any purpose which may endanger the health or unreasonably annoy or disturb or cause embarrassment, discomfort, or nuisance to other Owners or Occupants, or in such a way as to constitute, in the sole opinion of the Board of Directors, a nuisance. Nothing herein, however, shall be construed to affect the rights of an aggrieved Owner to proceed individually for relief from interference with his or her property or personal rights. Notwithstanding anything to the contrary herein, no Owner or Occupant of a Unit may use or allow the use of the Unit, the Common Elements or the Limited Common Elements in any manner which creates noises between



the hours of 11:00 p.m. and 7:30 a.m. which can be heard by persons in another Unit that will, in the sole discretion of the Board, interfere with the rights, comfort, or convenience of the other Owner(s) or Occupant(s).

(c) No Owner shall do any work which, in the reasonable opinion of the Board or its designee, would jeopardize the soundness or safety of the Project or any structure created thereon, would reduce the value thereof, or would impair any easement or other interest in real property thereto, without in every such case the unanimous, prior written consent of all members of the Association and their Mortgagees. No damage to or waste of the Common Elements, or any part thereof, or of the exterior of any Building shall be permitted by any Owner or member of his or her family or any invitee or guest of any Owner. Each Owner shall indemnify and hold the Association and the other Owners harmless against all loss to the Association and other Owners resulting from any such damage or waste caused by such Owner, members of his or her family, guests, invitees, or Occupants of his or her Unit.

Section 14.7 Firearms and Fireworks. The display or discharge of firearms or fireworks on the Common Elements is prohibited; provided, however, that the display of lawful firearms on the Common Elements is permitted for the limited purpose of transporting the firearms across the Common Elements to or from the Owner's Unit. The term "firearms" includes "B-B" guns, pellet guns, paintball guns of any type and other firearms of all types, regardless of size.

Section 14.8 Pets. No Owner or Occupant of a Unit may keep more than a reasonable number of pets, as determined by the Association's rules and regulations and the City of Las Cruces ordinances. In the event of conflict, the most restrictive regulations shall apply. No Owner or Occupant may keep, breed, or maintain any pet for any commercial purpose. Pets may not be left unattended outdoors or kept unattended outdoors, including on any terrace or balcony areas. Dogs, cats and other pets must be kept on a leash and be under the physical control of a responsible person at all times while outside the Owner's Unit and anywhere on or about the Common Elements. The owner of the pet or the person responsible for the pet must promptly remove any feces left upon the Common Elements or Limited Common Elements by pets. The Owner or Occupant shall be responsible for pet noise control at all times so as to maintain peace and quiet for all Owners or Occupants and so as not to constitute a nuisance.

Section 14.9 Parking.

(a) Subject to the provisions of Sections 9.2 and 14.5, the Board of Directors may promulgate rules and regulations restricting parking on and about the Property, including restricting the number of vehicles which any Owner or Occupant may bring onto the Property and designating, assigning, or licensing parking spaces to Owners. This Section 14.9 shall not prohibit an Owner or Occupant from having service vehicles park temporarily on the Property if otherwise in compliance with this Section 14.9 and the rules and regulations adopted by the Board.

(b) If any vehicle is parked on any portion of the Property in violation of this Section 14.9, or in violation of the Association's rules and regulations, the Board may place a notice on the vehicle specifying the nature of the violation and stating that after twenty-four (24) hours the vehicle may be towed. The notice shall include the name and telephone number of the person or entity which will do the towing and the name and telephone number of a person to contact regarding

the alleged violation. If, twenty-four (24) hours after such notice is placed on the vehicle, the violation continues or thereafter occurs again within six (6) months of such notice, the vehicle may be towed in accordance with the notice, without further notice to the Owner or user of the vehicle.

(c) If a vehicle is parked in a fire lane, is blocking another vehicle or access to another Owner's or Occupant's Unit, is obstructing the flow of traffic, is parked other than in a parking space, or otherwise creates a hazardous condition, no notice shall be required and the vehicle may be towed immediately. If a vehicle is towed in accordance with this subsection, neither the Association nor any officer or agent of the Association shall be liable to any person for any claim of damage as a result of the towing activity. Notwithstanding anything to the contrary herein, the Board may elect to impose fines or use other available sanctions, rather than exercise its authority to tow, or in addition to the exercise of such authority.

#### Section 14.10 Abandoned Personal Property.

(a) Abandoned or discarded personal property is prohibited from being stored, kept, or allowed to remain for a period of more than twenty-four (24) hours upon any portion of the Common Elements or Limited Common Elements without the prior written permission of the Board. If the Board or its designee, in its sole discretion, determines that property is being kept, stored, or allowed to remain on the Common Elements or Limited Common Elements in violation of this section, then the Board may remove and either discard or store the personal property in a location which the Board may determine.

(b) Prior to taking any such action, the Board shall place a notice on the personal property and/or on the front door of the Unit of the owner of such property, if known, specifying the nature of the violation and stating that after two (2) days the property may be removed and either discarded or stored. The notice shall include the name and telephone number of the Person or entity which will remove the property, and the name and telephone number of a Person to contact regarding the alleged violation.

(c) If two (2) days after such notice is placed on the personal property and/or the front door of the Unit, the violation continues or thereafter occurs again within six (6) months of such notice, the personal property may be removed in accordance with the original notice, without further notice to the owner or user of the personal property.

(d) Notwithstanding anything to the contrary, the Board, in its discretion, may determine that an emergency situation exists, and the personal property abandoned or stored in violation of this subsection may, without prior notice to the owner or user of the personal property, be removed and either discarded or stored by the Board in a location which the Board may determine; provided, however, the Board shall give to the owner, if known, notice of the removal of the property and the location of the personal property within three (3) days after the personal property is removed.

(e) If personal property is removed in accordance with this subsection, neither the Association nor any officer or agent of the Association shall be liable to any Person for any claim of damage resulting from the removal activity or subsequent disposition thereof. Notwithstanding anything to the contrary herein, the Board may elect to impose fines or use other available sanctions,

rather than exercise its authority to remove abandoned or improperly stored personal property, as set forth herein, or in addition to the exercise of such authority.

Section 14.11 Heating of Units in Colder Months. In order to prevent breakage of water pipes during colder months of the year that might result in damage to any portion of the Project, increased Common Expenses, increased insurance premiums, or cancellation of insurance policies due to numerous damage claims, the thermostats within the Units shall be maintained with the heat in an "on" or "automatic" position and at a minimum temperature setting of fifty-five degrees (55°) Fahrenheit (except during power failures or periods when heating equipment is broken) whenever the temperature is forecasted to or does reach thirty-two degrees (32°) Fahrenheit or below. Owners and Occupants of Units shall take all steps reasonably necessary on a timely basis to keep heating equipment, including, but not limited to, the thermostat, in good working order and repair. At any time during the months specified above when the heating equipment is not working properly, the Unit Owner or Occupant shall immediately inform the Association of this failure of the equipment and of the time needed to repair the equipment. The Board of Directors may fine any Owner or Occupant and/or may cause the water service to the violator's Unit to be discontinued for violation of this subsection, in addition to any other remedies of the Association. Any fine imposed pursuant to this subsection shall be deemed an assessment against the Unit and may be collected in the same manner as provided herein for collection of assessments.

Section 14.12 Signs. Except as may be required by legal proceedings, no signs, advertising posters, billboards, canopy or awnings, or any variation of the foregoing of any kind shall be erected, placed, or permitted to remain on the Property without the prior written consent of the Board or its designee. The Board shall have the right to erect reasonable and appropriate signs on behalf of the Association and to enact reasonable rules and regulations governing the general placement of signs on or about the Property. Notwithstanding the restrictions contained in this section, the Declarant may approve and erect signs for the purpose of carrying on business related to the development, improvement, and sale of Units in the Project, and such signs shall not be subject to approval or regulation by the Association or by the Board.

Section 14.13 Rubbish, Trash, and Garbage. All rubbish, trash, and garbage shall be regularly removed from the Unit and shall not be allowed to accumulate therein. No garbage or trash shall be placed on the Common Elements or Limited Common Elements outside the Unit, temporarily or otherwise, except as provided herein. Rubbish, trash, and garbage shall be disposed of in closed plastic bags and placed in proper receptacles designated by the Board for collection or shall be removed from the Property. Garbage to be recycled shall be disposed of as instructed by the Association.

Section 14.14 Impairment of Units and Easements. An Owner shall not directly or indirectly engage in any activities or work that will impair the structural soundness or integrity of another Unit, Limited Common Element, or Common Element or impair any easement or other interest in real property, nor shall an Owner engage in any activities or allow any condition to exist which will adversely affect any other Unit, Limited Common Element, or Common Element or their Owners, Occupants, or licensees.

Section 14.15 Unsanitary or Unkempt Conditions. The pursuit of hobbies or other activities, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or

undertaken on any part of the Property. Clothing, bedding, rugs, mops, appliances, indoor furniture, and other household items shall not be placed or stored outside the Unit.

Section 14.16 Garage Sales. Garage sales, yard sales, flea markets, or similar activities are prohibited unless and to the extent conducted under the auspices of the Association.

Section 14.17 Window Treatments. Unless otherwise approved in writing by the Board, all windows which are part of a Unit shall have window treatments and any portion thereof visible from outside the Unit shall be white or off-white in color.

Section 14.18 Antennas and Satellite Equipment. Unless otherwise approved in writing by the Board, and subject to any relevant federal, state or local law, no Owner, Occupant, or any other Person shall place, remove or maintain any type of exterior television or radio antenna, or satellite equipment on the Property without first having specific approval from the Association. This provision shall not, however, prohibit the Association from constructing or maintaining a central antenna or communications system on the Property for the benefit of its members. Notwithstanding the foregoing, the Association shall regulate antennas, satellite dishes, or any other apparatus for the transmission or reception of television, radio, satellite, or other signals of any kind as the Association shall determine and only in strict compliance with all federal laws and regulations.

Section 14.19 Time Sharing. Notwithstanding anything herein to the contrary, no Unit shall be used for or subject to any type of time sharing plan.

Section 14.20 Hardwood or Tile Floors on Upper Floors. In order to minimize sound transmission between Units, the Owners of Units that are not located on the first floor shall not install any hard surface floor materials including, without limitation, tile, marble, or wood floor material, in a Unit without the prior written consent of the Association. Without limiting the Association's discretion in considering any request, the Association may condition its approval of any such installation upon any or all of the following: (a) a limitation on the area where hard surface floor covering materials may be installed, (b) a requirement that the Owner provide the Association specifications regarding the floor covering materials, or (c) a requirement that the Owner install such sound dampening material underneath the floor material as the Association deems necessary. Specifically excluded from this rule, however, are (A) floor coverings for interior areas that are located over the same Unit (e.g., in Units containing more than one floor); (B) floor coverings for the balconies and an interior area (not to exceed four feet by four feet in dimension) adjacent to and aligned with the main entry-exit door of the Unit; (C) floor coverings for the kitchen not to exceed 30 square feet; (D) floor coverings for bathrooms not to exceed 30 square feet; and (E) floor coverings for closets not to exceed 30 square feet.

## ARTICLE 15 LEASING

The Board shall have the power to make and enforce reasonable rules and regulations and to fine, in accordance with the Declaration and Bylaws, in order to enforce the provisions of this Article.

Section 15.1 Definition. "Leasing," for purposes of this Declaration, is defined as regular, exclusive occupancy of a Unit by any person or persons other than the Owner for which the Owner

receives any consideration or benefit, including, but not limited to, a fee, service, gratuity, or emolument.

Section 15.2 Leasing Provisions. Leasing of Units shall be governed by the following provisions:

(a) General. Units may be leased only in their entirety; no fraction or portion may be leased without prior written approval of the Board. All leases shall be in writing and in a form approved by the Board prior to the effective date of the lease. The Board may maintain and, upon request, provide a form which is deemed acceptable. There shall be no subleasing of Units or assignment of leases unless prior written approval is obtained from the Board of Directors. Within seven (7) days after executing a lease agreement for the lease of a Unit, the Unit Owner shall provide the Board of Directors with a copy of the lease and the name of the lessee and all other people occupying the Unit. The Unit Owner must make available to the lessee copies of the Declaration, Bylaws, and the rules and regulations. The Board may require that no adult Person will be allowed to occupy any Unit subject to a lease unless they are signatory to and obligated by the lease.

(b) Compliance With Declaration, Bylaws, and Rules and Regulations. Use of Common Elements, and Liability for Assessments. Any lease of a Unit shall be deemed to contain the following provisions, whether or not expressly therein stated, and each Owner and each lessee, by occupancy of a Unit, covenants and agrees that any lease of a Unit shall contain the following language and agrees that if such language is not expressly contained therein, then such language shall be incorporated into the lease by existence of this covenant on the Unit:

(1) Compliance With Declaration, Bylaws, and Rules and Regulations. The lessee shall comply with all provisions of the Declaration, Bylaws, and rules and regulations adopted pursuant thereto and shall control the conduct of all other Occupants and guests of the leased Unit in order to ensure compliance with the foregoing. The Owner shall cause all Occupants of his or her Unit to comply with the Declaration, Bylaws, and the rules and regulations adopted pursuant thereto, and shall be responsible for all violations by such Occupants, notwithstanding the fact that such Occupants of the Unit are fully liable and may be sanctioned for any violation of the Declaration, Bylaws, and rules and regulations adopted pursuant thereto. In the event that the lessee, or a person living with or visiting the lessee, violates the Declaration, Bylaws, or a rule or regulation for which a fine is imposed, notice of the violation shall be given to the Owner and the lessee, and such fine shall be assessed against the lessee in accordance with the Bylaws. If the fine is not paid by the lessee within the time period set by the Board, the Board may assess the fine against the Owner and the Owner shall pay the fine upon notice from the Association of the lessee's failure to pay the fine. Unpaid fines shall constitute a lien against the Unit. Any violation of the Declaration, Bylaws, or rules and regulations adopted pursuant thereto by the lessee, any Occupant, or any Person living with the lessee, is deemed to be a default under the terms of the lease and authorizes the Owner to terminate the lease without liability and to evict the lessee in accordance with State law. The Owner hereby delegates and assigns to the Association, acting through the Board, the power and authority of enforcement against the lessee for breaches resulting from the violation of the Declaration, Bylaws, and the rules and regulations adopted pursuant thereto, including the power and authority to evict the lessee as attorney-in-fact on behalf, and for the benefit, of the Owner, in accordance with the terms hereof. In the

event the Association proceeds to evict the lessee, any costs, including attorney's fees and court costs, associated with the eviction shall be an assessment and lien against the Unit.

(2) Use of Common Elements. Except where the Owner also occupies the Unit, the Owner transfers and assigns to the lessee, for the term of the lease, any and all rights and privileges that the Owner has to use the Common Elements of the Project, including, but not limited to, the use of any and all recreational facilities.

(3) Liability for Assessments. When a Unit Owner who is leasing his or her Unit fails to pay any Annual, Special, or Specific Assessment or any other charge for a period of more than thirty (30) days after it is due and payable, then the delinquent Owner hereby consents to the assignment of any rent received from the lessee during the period of delinquency, and, upon request by the Board, lessee shall pay to the Association all unpaid Annual, Special, and Specific Assessments and other charges payable during and prior to the term of the lease and any other period of occupancy by lessee. However, lessee need not make such payments to the Association in excess of, or prior to the due dates for, monthly rental payments unpaid at the time of the Board's request. All such payments made by lessee shall reduce, by the same amount, lessee's obligation to make monthly rental payments to lessor. If lessee fails to comply with the Board's request to pay assessments or other charges, lessee shall pay to the Association all amounts authorized under this Declaration as if lessee were an Owner. The above provision shall not be construed to release the Owner from any obligation, including the obligation for assessments, for which he or she would otherwise be responsible.

## ARTICLE 16 TERMINATION OF CONDOMINIUM

Section 16.1 Approval of Termination. Except in the case of a taking of all the Units by eminent domain, the condominium ownership of the Project may be terminated only by agreement of Owners of Units to which at least eighty percent (80%) of the votes in the Association are allocated.

Section 16.2 Termination Agreement. An agreement to terminate shall be evidenced by the execution of a termination agreement, or ratifications thereof, in the same manner as a deed, by the requisite number of Owners, as set forth in Section 16.1. The termination agreement must specify a date after which the agreement will be void unless it is recorded before that date. A termination agreement and all ratifications thereof shall be recorded in the Records and is effective only upon recordation. The termination agreement shall provide that all the Common Elements and Units shall be sold following termination, and the termination agreement shall set forth the minimum terms of the sale.

Section 16.3 Sale of Condominium. Upon termination, the Association, on behalf of the Owners, may contract for the sale of real estate in the Project, but the contract is not binding on the Owners until approved pursuant to Section 16.1. Title to the real estate in the Project, upon termination, vests in the Association as trustee for the holders of all interests in the Units. Thereafter, the Association has all powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds thereof distributed, the Association continues in existence with all

powers it had before termination. Proceeds of the sale shall be distributed to owners and Mortgagees as their interests may appear, in proportion to the respective interests of Owners as provided in Section 16.5. Unless otherwise specified in the termination agreement, as long as the Association holds title to the real estate, each Owner and his successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted their Unit. During the period of that occupancy, each Owner and his successors in interest remain liable for all assessments and other obligations imposed on Owners by the Act or this Declaration.

Section 16.4 Proceeds of Sale. Following termination of the condominium, the proceeds of any sale of real estate, together with the assets of the Association, are held by the Association as trustee for Owners and Mortgagees as their interests may appear. Following termination, creditors of the Association holding liens on the Units, which were recorded before termination, may enforce those liens in the same manner as any lien holder.

Section 16.5 Interest in Proceeds. The respective interests of Owners referred to in Sections 16.3 and 16.4 are as follows:

(a) Except as provided in Section 16.5(b), the respective interests of Owners are the fair market values of their Units, Limited Common Elements and Allocated Interests immediately before the termination, as determined by one or more independent appraisers selected by the Association. The decision of the independent appraisers shall be distributed to the Owners and becomes final unless disapproved within thirty (30) days after distribution by Owners of Units to which twenty-five percent (25%) of the votes in the Association are allocated. The proportion of any Owner's interest to that of all Owners is determined by dividing the fair market value of that Owner's Unit and Allocated Interest by the total fair market values of all the Units and common elements; and

(b) If any Unit or any Limited Common Element is destroyed to the extent that an appraisal of the fair market value thereof before destruction cannot be made, the interests of all Owners are their respective Allocated Interests immediately before the termination.

Section 16.6 Foreclosure of Entire Condominium. Except as provided in Section 16.7, foreclosure or enforcement of a lien or encumbrance against the entire Project does not of itself terminate the condominium, and foreclosure or enforcement of a lien or encumbrance against a portion of the Project does not withdraw that portion from the condominium.

Section 16.7 Foreclosure of Prior Lien. If a lien or encumbrance against a portion of the real estate comprising the Project has priority over this Declaration, and the lien or encumbrance has not been partially released, the parties foreclosing the lien or encumbrance may upon foreclosure record an instrument excluding the real estate subject to that lien or encumbrance from the condominium.

## ARTICLE 17 MAINTENANCE RESPONSIBILITY

Section 17.1 By the Owner. Each Owner shall have the obligation to maintain and keep in good repair all portions of his or her Unit and all improvements made to the Limited Common Elements assigned to the Unit. This maintenance responsibility shall include, but not be limited to

the following: window locks, all doors, doorways, door frames, and hardware that are part of the Unit (except for periodic painting or staining of the exterior surface of exterior doors and entry doors and door frames facing out of the Unit of the Project); all portions of the heating and cooling system(s) of a Unit including fireplaces in a Unit; and all pipes, lines, ducts, conduits, or other apparatus which serve only the Unit, whether located within or without a Unit's boundaries (including all gas, electricity, water, and sewer pipes, lines, ducts, conduits, or other apparatus serving only the Unit). Notwithstanding anything herein to the contrary, this maintenance responsibility excludes windows, window frames, and casings.

(a) Some Units contain interior support beams which are load bearing beams. No Owner or Occupant shall do any act which jeopardizes or impairs the integrity of such beams.

(b) In addition, each Unit Owner shall have the responsibility:

(1) to keep in a neat, clean, and sanitary condition any Limited Common Elements serving his or her Unit including, without limitation, terraces and balconies;

(2) to perform his or her responsibility in such manner so as not to unreasonably disturb other persons in other Units or otherwise lawfully on or about the Property;

(3) to report promptly to the Association or its agent any defect or need for repairs for which the Association is responsible; and

(4) to pay for the cost of repairing, replacing, or cleaning up any item which is the responsibility of the Unit Owner but which responsibility such Owner fails or refuses to discharge (which the Association shall have the right, but not the obligation, to do), or to pay for the cost of repairing, replacing, or cleaning up any item which, although the responsibility of the Association, is necessitated by reason of the willful or negligent act of the Unit Owner, his or her family, invitees, tenants, or guests, with the cost thereof to be added to and become part of the Unit Owner's next chargeable assessment.

Section 17.2 By the Association.

(a) The Association shall maintain and keep in good repair as a Common Expense the "Area of Common Responsibility," which includes the following:

(1) all Common Elements, including any Limited Common Elements (but excluding the maintenance of any Limited Common Elements required to be accomplished by an Owner pursuant to Section 17.1); and provided, however, the cost of maintenance and repair of Limited Common Elements may be assessed against the Unit Owner to whom the Limited Common Element is assigned under Section 8.3 of this Declaration. Notwithstanding anything contained herein to the contrary, the Area of Common Responsibility shall include the paving, curbing, and striping of any parking spaces within the Project.



(2) periodic cleaning and/or painting and/or staining of exterior surfaces of the Building and of exterior doors and door frames and entry doors and door frames facing the hallway(s) of the Project, as determined to be appropriate by the Board; and

(3) all windows, window frames, and casings (except window locks), even though they are part of the Unit, the cost of which may be assessed against the Unit in which the item is located, pursuant to Section 8.3 of this Declaration.

(b) Subject to the maintenance responsibilities herein provided, the maintenance or repair performed on or to the Common Elements by an Owner or Occupants which are the responsibility of the Association hereunder (including, but not limited to landscaping of Common Elements) shall be performed at the sole expense of such Owner or Occupant, and the Owner or Occupant shall not be entitled to reimbursement from the Association even if the Association accepts the maintenance or repair.

(c) The Association shall not be liable for injury or damage to person or property caused by the elements or by the Owner of any Unit, or any other person, or resulting from any utility, rain, snow or ice which may leak or flow from any portion of the Common Elements or from any pipe, drain, conduit, appliance, or equipment which the Association is responsible to maintain hereunder. The Association shall not be liable to the Owner of any Unit or such Owner's Occupant, guest, invitee, or family, for loss or damage, by theft or otherwise, of any property which may be stored in or upon any of the Common Elements. The Association shall not be liable to any Owner, or any Owner's Occupant, guest, invitee, or family for any damage or injury caused in whole or in part by the Association's failure to discharge its responsibilities under this Article where such damage or injury is not a foreseeable, natural result of the Association's failure to discharge its responsibilities. No diminution or abatement of assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under this Declaration, or for inconvenience, discomfort, or consequential damages arising from the action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, or the failure or alleged failure to act.

(d) The Association shall repair incidental damage to any Unit resulting from performance of work which is the responsibility of the Association. As finished levels can have varying degrees, such repairs will be complete only to the extent of being "paint-ready." Components that may require repair or replacement, such as tile and trim, will be reinstated only to the extent that matching or similar materials are readily available at reasonable costs, as determined in the sole discretion of the Board. Accessibility around personal belongings for workers to perform such repairs is the responsibility of the Unit Owner or Occupant. Removal, storage, or other protective measures of personal items are also the responsibility of the Unit Owner or Occupant. If the removal, storage, or other protective measures are not taken by the Unit Owner or Occupant and damage occurs due to the repair process, neither the Association nor the Board will be liable for such damage. Upon completion of such repairs the Association will perform cursory cleaning, but shall not be responsible for a detailed cleaning. The Board has sole discretion of defining what is reasonable for the level, quality, and extent of the repair and subsequent cleaning. In performing its responsibilities hereunder, the Association shall have the authority to delegate to such Persons of its choice, such duties as are approved by the Board of Directors.

Section 17.3 Failure to Maintain. If the Board of Directors determines that any Owner has failed or refused to discharge properly such Owner's obligation with regard to the maintenance, repair, or replacement of items for which such Owner is responsible hereunder, then the Association shall give the Owner written notice of the Owner's failure or refusal and of the Association's right to provide necessary maintenance, repair, or replacement at the Owner's cost and expense. The notice shall set forth with reasonable particularity the maintenance, repair, or replacement deemed necessary by the Board of Directors. Unless the Board of Directors determines that an emergency exists, the Owner shall have ten (10) days within which to complete maintenance or repair, or if the maintenance or repair is not capable of completion within such time period, to commence replacement or repair within ten (10) days and prosecute the completion thereof with all deliberate speed. If the Board of Directors determines that: (I) an emergency exists, or (ii) that an Owner has not complied with the demand given by the Association as herein provided, the Association may provide any such maintenance, repair, or replacement at the Owner's sole cost and expense, and such costs, including reasonable attorney fees, shall be an assessment and a lien against the Unit.

Section 17.4 Maintenance Standards and Interpretation. The maintenance standards and the enforcement thereof and the interpretation of maintenance obligations under this Declaration may vary from one term of the Board of Directors to another. These variances shall not constitute a waiver by the Board of Directors of the right to adopt and enforce maintenance standards under this Article. No decision or interpretation by the Board of Directors shall constitute a binding precedent with respect to subsequent decisions or interpretations of the Board of Directors. All maintenance of a Unit shall be in conformance with reasonable standards of the Association from time-to-time established. No Owner shall perform any maintenance which may result in a change or alteration to the exterior of the Unit without the prior written approval of the Board of Directors as provided in Article 13 hereof.

Section 17.5 Measures Related to Insurance Coverage. The Board, upon resolution, shall have the authority to require all or any Unit Owner(s) to do any act or perform any work involving portions of the Project which are the maintenance responsibility of the Unit Owner, which will, in the Board's sole discretion, decrease the possibility of fire or other damage in the Project, reduce the insurance premium paid by the Association for any insurance coverage, or otherwise assist the Board in procuring or maintaining such insurance coverage(s). This authority shall include, but need not be limited to, requiring all Owners to turn off cut-off valves, which may now or hereafter be installed, during winter months for outside water spigots; requiring Owners to insulate pipes sufficiently or take other preventive measures to prevent freezing of water pipes; requiring Owners to install and maintain smoke detectors; requiring Owners to make improvements to the Owner's Unit; and such other measures as the Board may reasonably require so long as the cost of such work does not exceed Five Hundred and No/100 Dollars (\$500.00) per Unit in any twelve (12) month period.

Section 17.6 Performance of Work by Association. In addition to, and not in limitation of, any other rights the Association may have, if any Unit Owner does not comply with any reasonable requirement made by the Board pursuant to Section 17.5 above, the Association, upon fifteen (15) days' written notice (during which period the Unit Owner may perform the required act or work without further liability), may perform such required act or work at the Unit Owner's sole cost. Such cost shall be an assessment and a lien against the Unit as provided herein. The Association shall have all rights necessary to implement the requirements mandated by the Board pursuant to Section 17.5, including, but not limited to, a right of entry during reasonable hours and after reasonable notice to

407

the Owner or Occupant of the Unit, except that access may be had at any time without notice in an emergency situation.

Section 17.7 Association Right of Entry. For the purpose of performing the maintenance of the Common Elements or for any other purpose reasonably related to the performance by the Board of its responsibilities under this Declaration, the Association agents or employees shall have the right to enter any Condominium Unit or upon any portion of the Common Elements to effect emergency repairs. For other than emergency repairs, the Association's agents or employees shall have the right to enter any Condominium Unit or any portion of the Common Elements to effect repairs, Improvements, replacements or maintenance which the Association deems necessary, after approval by two-thirds ( $\frac{2}{3}$ ) vote of the Board. Such entry shall be made with as little inconvenience to the Owner as possible. Any damage caused thereby shall be repaired by the Association. Such entry for other than emergency repairs shall be made only upon reasonable notice to the Owner.

## ARTICLE 18 PARTY WALLS

Section 18.1 General Rules of Law to Apply. Each wall built as a part of the original construction of the Units which shall serve and separate any two (2) adjoining Units shall constitute a party wall and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligent or willful acts or omissions shall apply thereto.

Section 18.2 Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in equal proportions.

Section 18.3 Damage and Destruction. If a party wall is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner or Owners who have benefitted by the wall may restore it, and the Association shall reimburse said Owner(s) for the cost incurred, without prejudice, however, to the Association's right to seek reimbursement from or withhold payment to the Owners or others under any rule of law or provision in this Declaration regarding liability for negligent or willful acts or omissions.

Section 18.4 Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

## ARTICLE 19 MORTGAGEE RIGHTS

Section 19.1 Liability of First Mortgagees. Where a First Mortgagee of record or other purchaser of a Unit obtains title pursuant to judicial or nonjudicial foreclosure of the Mortgage, it shall not be liable for the share of the Common Expenses or assessments by the Association chargeable to such Unit which became due prior to such acquisition of title. Such unpaid share of Common Expenses or assessments shall be deemed to be Common Expenses collectible from Owners

of all the Units, including such acquirer, its successors, and assigns. Additionally, such acquirer shall be responsible for all charges accruing subsequent to the passage of title, including, but not limited to, all charges for the month in which title is passes.

Section 19.2 Mortgagee Notice. Upon written request to the Association, identifying the name and address of the holder and the Unit number or address, any Eligible Mortgagee will be entitled to timely written notice of:

(a) any condemnation loss or any casualty loss which affects a material portion of the Project or any Unit on which there is a First Mortgage held by such Eligible Mortgagee;

(b) any delinquency in the payment of assessments or charges owed by an Owner of a Unit subject to a First Mortgage held by such Eligible Mortgagee which remains unsatisfied for a period of sixty (60) days, and any default in the performance by an individual Unit Owner of any other obligation under the Project Instruments which is not cured within sixty (60) days;

(c) any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; or

(d) any proposed action which would require the consent of a specified percentage of Eligible Mortgagees, as specified herein.

Section 19.3 Financial Statements. Any First Mortgagee shall be entitled, upon written request, to receive within a reasonable time after request, a copy of the financial statement of the Association for the immediately preceding fiscal year, free of charge to the Mortgagee so requesting.

Section 19.4 Additional Mortgagee Rights. Notwithstanding anything to the contrary herein contained, the provisions of Articles 15 and 16 governing sales and leases shall not apply to impair the right of any first Mortgagee to:

(a) foreclose or take title to a Unit pursuant to remedies contained in its Mortgage;

or

(b) take a deed or assignment in lieu of foreclosure; or

(c) sell, lease, or otherwise dispose of a Unit acquired by the Mortgagee.

Section 19.5 Mortgagee's Consent. Provided that the holder of the First Mortgage informs the Association in writing of its appropriate address and requests in writing to be notified, neither the Association nor any Owner shall do any of the following, unless at least sixty-seven (67%) percent of the Eligible Mortgages which encumbers Units (based upon one (1) vote for each Unit encumbered by such Mortgage) have given their prior written approval:

(a) seek, by act or omission, to abandon the Project or to terminate the Plat or this Declaration, or change, waive or abandon any scheme or regulation or enforcement thereof, pertaining to the architectural design or the exterior appearance or maintenance of Condominium Units or the Common Elements;

(b) terminate the legal status of the Project after substantial destruction or condemnation, if the same occurs;

(c) change the Allocated Interest or obligations of any Condominium Unit for purposes of levying assessments or allocating distributions of hazard insurance proceeds or condemnation awards or for determining the Allocated Interest of the Common Elements appurtenant to each Condominium Unit;

(d) partition or subdivide any Condominium Unit (applicable only to the affected Mortgage);

(e) seek, by act or omission, to abandon, partition, subdivide, encumber, sell or transfer the Common Elements; however, the granting of public utility easements or other public purposes which is consistent with the normal or traditional uses in the geographical area in which the Project is located shall not be deemed a transfer within the meaning of this provision;

(f) apply hazard insurance proceeds for losses to any portion of the Project for other than the repair, replacement or reconstruction of the Project, except as may be provided by statute upon substantial loss to the Condominium Units or Common Elements;

(g) fail to maintain fire and extended coverage insurance on the Project and all Common Elements on a current replacement cost basis in an amount less than one hundred percent (100%) of the insurable value, based on current replacement cost.

Section 19.6 Notice to Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Unit.

Section 19.7 Failure of Mortgagee to Respond. Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

Section 19.8 Construction of Article. Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, Bylaws, or State law for any of the acts set out in this Article.

## ARTICLE 20 ADDITIONAL DECLARANT RIGHTS

Section 20.1 Sale and Leasing of Units. Notwithstanding anything to the contrary contained herein, Declarant shall have the right to sell or lease Units and to erect and maintain signs to facilitate such sales or leases as it, in its sole discretion, deems appropriate and shall not be required to comply with the provisions of this Declaration regarding signs and sales or signs and leases.

Section 20.2 Construction and Sale Period. Notwithstanding any provisions in this Declaration, the Bylaws, Articles of Incorporation, use restrictions, rules and regulations, design guidelines, any amendments thereto, and related documents, for so long as Declarant owns any portion of the Project, it shall be expressly permissible for Declarant and any builder, contractor, subcontractor, or developer approved by Declarant to maintain and carry on, upon such portion of the Project as Declarant may deem necessary, such facilities and activities as in the sole opinion of Declarant may be required, convenient, or incidental to Declarant's and such third party's development, construction, and sales activities related to the Property, including, but without limitation, the right of access, ingress or egress for vehicular and pedestrian traffic over, under, on, or in the Project; the right to tie into any portion of the Project with streets, driveways, parking areas, and walkways; the right to tie into and/or otherwise connect and use (without a tap-on or any other fee for so doing), install, lay, replace, relocate, maintain, and repair any device which provides utility or similar services including, without limitation, electrical, telephone, natural gas, water, sewer and drainage lines and facilities constructed or installed in, on, under, and/or over the Project; the right to carry on sales and promotional activities within and about the Project; and the right to construct and operate business offices, signs, construction trailers, model Units, and sales offices. Declarant and any such third party, as designated by Declarant, may use Units or offices owned or leased by Declarant or such third-party as model Units and sales offices. Rights exercised pursuant to such reserved easement(s) shall be exercised with a minimum of interference with the quiet enjoyment of affected property and Owners; reasonable steps shall be taken to protect such property and Owners; and damage shall be repaired by the Person causing the damage at its sole expense.

Section 20.3 Further Declarant's Rights.

(a) Certain specific rights are reserved by this Declaration to the Declarant. These Declarant Rights are to facilitate the work of conversion of Condominium Units, Common Elements, Limited Common Elements and improvements upon the Project. The completion of the work, sale, rental or other disposition of said Condominium Units is essential to the establishment of the Project as a residential community. So that this work can be completed and the Project established as a fully occupied residential community as rapidly as possible, nothing in this Declaration shall be understood to:

(1) Prevent Declarant or its contractors or subcontractors from doing things on the Project or in any Condominium Unit, Limited Common Element, Common Elements, which are reasonably necessary or advisable in connection with the completion of said work, including, without limitation, alterations, structural or otherwise, to any portion of the Project; or

(2) Prevent Declarant or its representatives from constructing and maintaining on any part or parts of the Project, such structures as may be reasonable and necessary for the conduct of its business of completing said work and establishing said Project as a residential community and disposing of the same by sale, lease or otherwise; or

(3) Prevent Declarant from conducting on any part of the Project its business of completing its work, and of establishing a plan of Condominium Unit ownership and of disposing of the Project in the form of Condominium Units by sale, lease or otherwise;

(4) Prevent Declarant from maintaining such sign or signs on any portion of the Project as may be necessary for the sale, lease or disposition thereof; provided, however, that the maintenance of any such sign shall, during the sales period, not unreasonably interfere with the use by any Owner of his Condominium Unit, or Limited Common Elements; or

(5) Require Declarant to obtain the consent or approval of any Owner or holder of a First Mortgage to exercise any of the foregoing rights.

(b) No trailer, model home, or construction, sales or leasing office located on a Condominium Unit owned by Declarant shall constitute a Common Element, or otherwise be owned by the Association or any Owner of any Condominium Unit (other than Declarant). Nothing contained in this Declaration shall limit the right of Declarant or to require Declarant to obtain approvals (a) to excavate, cut, fill or grade any property owned by Declarant or to construct, alter, demolish or replace any improvements on any property owned by Declarant or (b) to use any structure on any property owned by Declarant as a construction, model home or real estate sales or leasing office in connection with the sale of any property within the boundaries of the Project, or (c) to require Declarant to seek or obtain the approval of the Association or other Owners for any such activity or Improvements to Property by Declarant on any Property owned by Declarant. Nothing in this Declaration shall limit or impair the reserved rights of Declarant as elsewhere provided in this Declaration.

(c) Declarant hereby specifically reserves the right (during the Declarant Rights Period) to: (I) create Condominium Units or Common Elements; (ii) subdivide or combine Condominium Units or convert Condominium Units (or portions thereof) to Common Elements; (iii) convert Common Elements (or portions thereof) to Condominium Units or Limited Common Elements; (iv) complete improvements indicated on the Plat; (v) exercise any development right stated in this Declaration; (vi) use easements through the Common Elements for the purpose of making improvements within the Condominium Project or within the property that may be added to the Project; (vii) maintain sales and management offices, model Units, and advertising signs within the Project; (viii) use the Common Elements to make improvements to the Common Elements or Condominium Units; (ix) amend the Plat in order to conform such Plat to the actual location of any improvement, or to establish and designate the location in which Declarant is exercising its rights reserved herein; or (x) appoint or remove any officer of the Association or any member of the Board of Directors.

Section 20.4 Expiration of Reserved Rights. The reserved rights of Declarant set forth in this Article 20 shall terminate upon the expiration of the Declarant Rights Period.

## ARTICLE 21 EASEMENTS

Section 21.1 Use and Enjoyment. Each Unit Owner and Occupant shall have a right and easement of use and enjoyment in and to the Common Elements (including the right of access, ingress and egress to and from his or her Unit over those portions of the Project designated for such purposes), and such easement shall be appurtenant to and shall pass with the title to each Unit, subject, however, (I) to the rights of the Unit Owners to the exclusive use of the Limited Common

Elements assigned to their respective Units; (ii) to the right of the Association to control the use and enjoyment of the Common Elements as provided by the terms of this Declaration, including, but not limited to, the right of the Association to suspend voting and use privileges as provided herein; and (iii) to the general terms and conditions of this Declaration. Every portion of a Unit and all Limited Common Elements contributing to the support of an abutting Unit shall be burdened with an easement of support for the benefit of such abutting Unit.

Section 21.2 Utilities. To the extent that any utility line, pipe, wire, or conduit serving any Unit, Units, or the Common Elements shall lie wholly or partially within the boundaries of another Unit or the Common Elements, such other Unit, Units, or the Common Elements shall be burdened with an easement for the use, maintenance, repair and replacement of such utility line, pipe, wire or conduit, such easement to be in favor of the Unit, Units, or Common Elements served by the same and the Association. It shall be the obligation of the benefitted Owner to maintain, replace, and repair any pipe, line, conduit, duct, or wire owned by such Owner, even if such pipe, line, conduit, duct or wire is located in the Unit of another Owner. In such circumstance, the benefitted Owner shall repair all incidental damage to any Unit or the Common Elements resulting from performance of any such work. All Unit Owners hereby covenant and agree that as finished levels can have varying degrees, such repairs will be complete only to the extent of being "paint-ready." Components that may require repair or replacement, such as tile or trim, will be reinstated only to the extent that matching or similar materials are readily available at reasonable costs, as determined in the sole discretion of the Board.

Section 21.3 Pest Control. The Association may, but shall not be obligated to, dispense chemicals for the extermination of insects and pests within the Units and Common Elements. In the event the Association chooses to provide such pest control, the Association and its duly authorized contractors, representatives, and agents shall have an easement to enter Units for the purpose of dispensing chemicals for the extermination of insects and pests within the Units and Common Elements. Each Unit Owner shall either provide a key to the Unit for purpose of such entry or have someone available at such times as are designated by the Board of Directors to allow entry into the Unit for this purpose. The Association shall not be liable for any illness, damage, or injury caused by the dispensing of these chemicals for this purpose.

Section 21.4 Declarant Easements. For so long as Declarant owns any Unit primarily for the purpose of sale, Declarant and its duly authorized contractors, representatives, agents, and employees shall have: (a) an easement for the maintenance of signs, a sales office, a business office, promotional facilities and model Units on the Project, together with such other facilities as in the opinion of Declarant may be reasonably required, convenient, or incidental to the completion, renovation, improvement, development, or sale of the Unit; (b) a transferable easement on, over, through, under, and across the Common Elements and Limited Common Elements for the purpose of making improvements on the Project or any portion thereof, for the purpose of installing, replacing, repairing, and maintaining all utilities serving the Project, and for the purpose of doing all things reasonably necessary and proper in connection therewith; and (c) a transferable easement four (4) feet from the ceiling of a Project Unit down into such Project Unit for the purpose of making improvements to and installing all utility lines, pipes, wires, conduits and ducts serving the Project Unit above such Unit and for the purpose of doing all things reasonably necessary and proper in connection therewith.



ARTICLE 22  
GENERAL PROVISIONS

Section 22.1 Security. The Association may, but shall not be required to, from time-to-time, provide measures or take actions which directly or indirectly improve safety on the Project; however, each Owner, on behalf of such Owner and the Occupants, guests, licensees, and invitees of the Unit acknowledges and agrees that the Association is not a provider of security and shall have no duty to provide security in and to the Project. It shall be the responsibility of each Owner to protect such Owner's person and property and all responsibility to provide security shall lie solely with each of the respective Unit Owners. The Association shall not be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of safety measures undertaken. Neither the Association nor the Declarant shall in any way be considered insurers or guarantors of security within the Project, nor shall any of them be held liable for any loss or damage by reason of failure or alleged failure to provide adequate security or ineffectiveness of security measures undertaken. No representation or warranty is made that any security system or measures cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands, and covenants to inform its tenants and all Occupants of its Unit that the Association, its Board of Directors and committees, and Declarant are not insurers, and that each Person using the Project assumes all risks of personal injury and loss or damage to property, including Units and the contents of Units, resulting from acts of third parties.

Section 22.2 Implied Rights. The Association may exercise any right or privilege given to it expressly by this Declaration, the Bylaws, the Articles of Incorporation, any use restriction or rule, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it therein or reasonably necessary to effectuate any such right or privilege.

Section 22.3 Amendment.

(a) By Declarant. The Declarant may unilaterally amend this Declaration at any time and from time-to-time if such amendment is necessary to: (i) bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (ii) enable any reputable title insurance company to issue title insurance coverage on the Units; (iii) enable any Agencies to make, purchase, insure or guarantee Mortgage loans on or title to the Units or any of them; or (iv) satisfy the requirements of any local, state, or federal governmental agency. However, any such amendment shall not adversely affect the title to any Unit unless the Owner shall consent in writing.

(b) By Members. Except where a higher vote is required for action under any other provisions of this Declaration or by the Act, in which case such higher vote shall be necessary to amend such provision, this Declaration may be amended by the written consent of the Members of the Association holding sixty-seven percent (67%) of the total vote thereof. Notice of any meeting at which a proposed amendment will be considered shall state that fact and the subject matter of the proposed amendment. No amendment shall be effective until certified by an officer of the Association and recorded in the Records. Any action to challenge the validity of an amendment adopted under this Section must be brought within one (1) year of the effective date of such amendment. No action to challenge such amendment may be brought after such time. No

amendment to this Declaration which would limit, prohibit or eliminate the exercise of any Declarant Rights shall be effective, during the Declarant Rights Period, without the consent of the Declarant.

Section 22.4 Compliance. Every Owner and Occupant of any Unit shall comply with this Declaration, the Bylaws, and the rules and regulations of the Association. Failure to comply shall be grounds for an action by the Association or, in a proper case, by any aggrieved Unit Owner(s) to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, in addition to those enforcement powers granted to the Association in Article 9 hereof.

Section 22.5 Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any Person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application and, to this end, the provisions of this Declaration are declared to be severable.

Section 22.6 Captions. The captions of each Article and Section hereof, as to the contents of each Article and Section, are inserted only for convenience and are in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer.

Section 22.7 Notices. Notices provided for in this Declaration or the Articles or Bylaws shall be in writing, and shall be addressed to any Owner at the address of the Unit and to the Declarant or the Association at the address of their respective registered agents in the State. Any Owner may designate a different address for notices to such Owner by giving written notice to the Association. Notices addressed as above shall be deemed delivered three (3) business days after mailing by United States Registered or Certified Mail, postpaid, or upon delivery when delivered in person, including delivery by Federal Express or other reputable courier service.

Section 22.8 Perpetuities. If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then only such provisions shall be void.

Section 22.9 Indemnification.

(a) To the fullest extent allowed by the laws of the State, and in accordance therewith, the Association shall indemnify every current and former officer, director, and committee member against any and all expenses, including, but not limited to, attorney's fees, imposed upon or reasonably incurred by any officer, director, or committee member in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which such officer, director, or committee member may be a party by reason of being or having been an officer, director, or committee member. The officers, directors, and committee members shall not be liable for any mistake of judgment; negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith.

(b) The officers, directors, and committee members shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the

Association, and the Association shall indemnify and forever hold each such officer, director, and committee member free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer, director, or committee member, or former officer, director, or committee member, may be entitled. The Association shall maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such coverage is reasonably available in the opinion of the Board.

(c) To the extent permitted by law, each Owner shall release, and hold harmless each current and former officer, director, committee member and employee from all claims, causes of actions, liability and damages arising by reason of such person's actions or inactions relating to the Association and the Project, unless such person's conduct constitutes gross negligence or intentional misconduct. In the event that an Owner institutes litigation against the Association or any current or former officer, director, committee member or employee of the Association, such Owner shall reimburse and indemnify the Association and such other designated persons for all costs and expenses incurred as a result of the Owner's litigation, including reasonable attorneys fees unless there is a final court order that rules the Owner is the prevailing party in such litigation.

Section 22.10 Storage Spaces. Neither the Declarant nor the Association shall be held liable for loss or damage to any property placed or kept in a storage space or garage in the Project. Each Owner or Occupant with use of a storage space or garage who places or keeps property in such space does so at his or her own risk.

Section 22.11 Supplemental to Law. The provisions of this Declaration shall be in addition and supplemental to the Act and to all other provisions of law.

Section 22.12 Numbers and Genders. Whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders.

Section 22.13 Successors and Assigns. This Declaration shall be binding upon and shall inure to the benefit of Declarant, the Association, and each Owner, and the heirs, personal representatives, successors, and assigns of each of them, except as otherwise expressly provided herein.

Section 22.14 No Waiver. Failure to enforce any provision of this Declaration shall not operate as a waiver of any such provision or of any other provision(s) of this Declaration no matter how many violations or breaches occur.

Section 22.15 Conflict. In the event of a conflict between the provisions of the Declaration and the Bylaws, the Declaration shall prevail except to the extent the Declaration is inconsistent with the Act. In the event of a conflict between provisions relating to the exercise of Declarant's Rights and provisions relating to Owners, including specifically restrictions on rights of Owners, provisions relating to the exercise of Declarant's Rights shall prevail notwithstanding that Declarant is also an Owner of one or more Units.

Section 22.16 Assignment of Declarant Rights. Declarant shall have the unrestricted right to assign from time-to-time anyone or more of the Declarant's Rights; provided that any such assignment must be accompanied by a written assumption by the assignee.

Section 22.17 Adaptability of Units for the Handicapped. Units can be made handicapped accessible in accordance with the state and city building codes. Any modification(s) for handicapped accessibility or adaptability must be approved in advance by the Association and shall be completed at the expense of the Unit Owner whose Unit is modified, free of liens and encumbrances and in conformity with all applicable codes and ordinances.

Section 22.18 Disclaimer of Warranties. EACH OWNER, BY ITS ACCEPTANCE OF A DEED FOR ITS UNIT, ACKNOWLEDGES THAT, OTHER THAN ANY WARRANTIES WHICH SUCH OWNER MAY HAVE OBTAINED PURSUANT TO ITS PURCHASE CONTRACT, TO THE MAXIMUM EXTENT LAWFUL DECLARANT HEREBY DISCLAIMS ANY AND ALL AND EACH AND EVERY EXPRESS OR IMPLIED WARRANTIES, WHETHER ESTABLISHED BY STATUTORY, COMMON, CASE LAW OR OTHERWISE, AS TO THE DESIGN, CONSTRUCTION, SOUND AND/OR ODOR TRANSMISSION, EXISTENCE AND/OR DEVELOPMENT OF MOLDS, MILDEW, TOXINS OR FUNGI, FURNISHING AND EQUIPPING OF THE PROPERTY, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF HABITABILITY, FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY, COMPLIANCE WITH PLANS, ALL WARRANTIES IMPOSED BY STATUTE AND ALL OTHER EXPRESS AND IMPLIED WARRANTIES OF ANY KIND OR CHARACTER. DECLARANT HAS NOT GIVEN AND THE OWNER HAS NOT RELIED ON OR BARGAINED FOR ANY SUCH WARRANTIES. EACH OWNER RECOGNIZES AND AGREES THAT THE UNITS WERE NOT CONSTRUCTED BY DECLARANT. EACH OWNER, BY ACCEPTING A DEED TO A UNIT, OR OTHER CONVEYANCE THEREOF, SHALL BE DEEMED TO REPRESENT AND WARRANT TO DECLARANT THAT IN DECIDING TO ACQUIRE THE UNIT, THE OWNER RELIED SOLELY ON SUCH OWNER'S INDEPENDENT INSPECTION OF THE UNIT AND THE PROJECT. THE OWNER HAS NOT RECEIVED NOR RELIED ON ANY WARRANTIES AND/OR REPRESENTATIONS FROM DECLARANT OF ANY KIND, OTHER THAN AS EXPRESSLY PROVIDED HEREIN.

Section 22.19 Liability. Notwithstanding anything contained herein or in the other Condominium Documents, the Association, except to the extent specifically provided to the contrary herein, shall not be liable or responsible for, or in any manner be a guarantor or insurer of, the health, safety or welfare of any Owner, occupant or user of any portion of the Project, including, without limitation, Owners and their guests, invitees, agents, servants, contractors or subcontractors or for any property of any such persons. Without limiting the generality of the foregoing:

(a) it is the express intent of the Condominium Documents that the various provisions thereof which are enforceable by the Association and which govern or regulate the uses of the properties have been written, and are to be interpreted and enforced, for the sole purpose of enhancing and maintaining the enjoyment of the properties and the value thereof;

(b) the Association is not empowered, and has not been created, to act as an entity which enforces or ensures the compliance with the laws of the United States, the State or any other jurisdiction or the prevention of tortuous activities; and

(c) the provisions of the Condominium Documents setting forth the uses of assessments which relate to health, safety and/or welfare shall be interpreted and applied only as limitations on the uses of assessment funds and not as creating a duty of the Association to protect or further the health, safety or welfare of any person(s), even if assessment funds are chosen to be used for any such reason.

(d) Each Owner (by virtue of his acceptance of title to his Unit) and each other person having an interest in or lien upon, or making use of, any portion of the properties (by virtue of accepting such interest or lien or making such use) shall be bound by this provision and shall be deemed to have automatically waived any and all rights, claims, demands and causes of action against the Association arising from or connected with any matter for which the liability of the Association has been disclaimed hereby. As used herein, "Association" shall include within its meaning all of Association's directors, officers, committee and board members, employees, agents, contractors (including management companies), subcontractors, successors nominees and assigns. The provisions of this Section shall also inure to the benefit of Declarant, which shall be fully protected hereby.

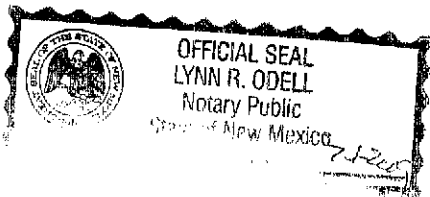
27 IN WITNESS WHEREOF, the Declarant has executed this Declaration under seal, this day of March, 2007.

MORNINGSTAR LIVING, INC., a New Mexico Corporation

By: [Signature]  
Name: Randy McMillan, President

STATE OF NEW MEXICO )  
COUNTY OF DOÑA ANA )

This instrument was acknowledged before me on the 27 day of March, 2007 by Randy McMillan, as the President of Morningstar Living, Inc., a New Mexico corporation.



[Signature]  
Notary Public in and for the State of NM  
My commission expires: 7-1-2009

MORNINGSTAR II, INC., a New Mexico Corporation

By: [Signature]  
Name: Randy McMillan, President

STATE OF NEW MEXICO )  
 )  
COUNTY OF DOÑA ANA )

This instrument was acknowledged before me on the 27 day of March, 2007  
by Randy McMillan, as the President of Morningstar II, Inc., a New Mexico corporation.

[Signature]  
Notary Public in and for the State of NM  
My commission expires: 7-1-2009

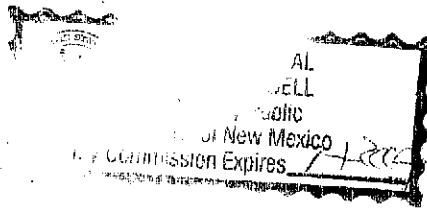


EXHIBIT "A"  
LEGAL DESCRIPTIONS

Phase 1:

Parcel 11, Alameda Preserve, in the City of Las Cruces, Doña Ana County, New Mexico, as shown and designated on the Plat thereof, filed in the Office of the County Clerk of said County on December 10, 2001, in Book 19, Pages 783-788 of the Plat Records.

Phase 2:

**(Note Phase 2 has been implemented and this Condominium Declaration does apply to the following real property at this time.)**

Parcel-13, Alameda Preserve, in the City of Las Cruces, Doña Ana County, New Mexico, as shown and designated on the Plat thereof, filed in the Office of the County Clerk of said County on December 10, 2001, in Book 19, Pages 783-788 of the Plat Records.

**Exhibit "B"**

**THE CASITAS AT MORNINGSTAR HOMEOWNER'S ASSOCIATION**

**SCHEDULE OF PERCENT OF OWNERSHIP**

**Morningstar Condominiums (Phase 1&2 Combined)**

	<b>Phase No.</b>	<b>Unit #</b>	<b>Garage</b>	<b>Square Footage Variable*</b>	<b>Percentage Ownership**</b>
1	1	101		1,220	0.432822%
2	1	102		1,220	0.432822%
3	1	103		1,220	0.432822%
4	1	104		1,220	0.432822%
5	1	105		1,220	0.432822%
6	1	106		1,220	0.432822%
7	1	107		1,220	0.432822%
8	1	108		1,220	0.432822%
9	1	201	(attached garage)	1,225	0.434596%
10	1	202	(attached garage)	1,225	0.434596%
11	1	203	(attached garage)	1,338	0.474685%
12	1	204	(attached garage)	1,424	0.505196%
13	1	205	(attached garage)	1,338	0.474685%
14	1	206	(attached garage)	1,424	0.505196%
15	1	301		1,090	0.386702%
16	1	302		1,090	0.386702%
17	1	303		1,090	0.386702%
18	1	304		1,090	0.386702%
19	1	305		1,090	0.386702%
20	1	306		1,090	0.386702%
21	1	307		1,090	0.386702%
22	1	308		1,090	0.386702%
23	1	401		1,090	0.386702%
24	1	402		1,090	0.386702%
25	1	403		1,090	0.386702%
26	1	404		1,090	0.386702%
27	1	405		1,090	0.386702%
28	1	406		1,090	0.386702%
29	1	407		1,090	0.386702%
30	1	408		1,090	0.386702%
31	1	501		760	0.269627%
32	1	502		760	0.269627%
33	1	503		760	0.269627%
34	1	504		760	0.269627%
35	1	505		760	0.269627%
36	1	506		760	0.269627%
37	1	507		760	0.269627%
38	1	508		760	0.269627%
39	1	601		1,050	0.372511%
40	1	602		1,050	0.372511%
41	1	603		1,050	0.372511%
42	1	604		1,050	0.372511%
43	1	605		1,050	0.372511%
44	1	606		1,050	0.372511%

421



	<u>Phase No.</u>	<u>Unit #</u>	<u>Garage</u>	<u>Square Footage Variable*</u>	<u>Percentage Ownership**</u>
45	1	607		1,050	0.372511%
46	1	608		1,050	0.372511%
47	1	701		1,050	0.372511%
48	1	702		1,050	0.372511%
49	1	703		1,050	0.372511%
50	1	704		1,050	0.372511%
51	1	705		1,050	0.372511%
52	1	706		1,050	0.372511%
53	1	707		1,050	0.372511%
54	1	708		1,050	0.372511%
55	1	801		760	0.269627%
56	1	802		760	0.269627%
57	1	803		760	0.269627%
58	1	804		760	0.269627%
59	1	805		760	0.269627%
60	1	806		760	0.269627%
61	1	807		760	0.269627%
62	1	808		760	0.269627%
63	1	901		760	0.269627%
64	1	902		760	0.269627%
65	1	903		760	0.269627%
66	1	904		760	0.269627%
67	1	905		760	0.269627%
68	1	906		760	0.269627%
69	1	907		760	0.269627%
70	1	908		760	0.269627%
71	1	1001		1,090	0.386702%
72	1	1002		1,090	0.386702%
73	1	1003		1,090	0.386702%
74	1	1004		1,090	0.386702%
75	1	1005		1,090	0.386702%
76	1	1006		1,090	0.386702%
77	1	1007		1,090	0.386702%
78	1	1008		1,090	0.386702%
79	1	1101		760	0.269627%
80	1	1102		760	0.269627%
81	1	1103		760	0.269627%
82	1	1104		760	0.269627%
83	1	1105		760	0.269627%
84	1	1106		760	0.269627%
85	1	1107		760	0.269627%
86	1	1108		760	0.269627%
87	1	1201		1,090	0.386702%
88	1	1202		1,090	0.386702%
89	1	1203		1,090	0.386702%
90	1	1204		1,090	0.386702%
91	1	1205		1,090	0.386702%
92	1	1206		1,090	0.386702%
93	1	1207		1,090	0.386702%
94	1	1208		1,090	0.386702%

*422*

	<b>Phase No.</b>	<b>Unit #</b>	<b>Garage</b>	<b>Square Footage Variable*</b>	<b>Percentage Ownership**</b>
95	1	1301	(attached garage)	1,225	0.434596%
96	1	1302	(attached garage)	1,225	0.434596%
97	1	1303	(attached garage)	1,156	0.410117%
98	1	1304	(attached garage)	1,247	0.442401%
99	1	1305	(attached garage)	1,156	0.410117%
100	1	1306	(attached garage)	1,247	0.442401%
101	1	1401		1,090	0.386702%
102	1	1402		1,090	0.386702%
103	1	1403		1,090	0.386702%
104	1	1404		1,090	0.386702%
105	1	1405		1,090	0.386702%
106	1	1406		1,090	0.386702%
107	1	1407		1,090	0.386702%
108	1	1408		1,090	0.386702%
109	1	1501	(attached garage)	1,225	0.434596%
110	1	1502	(attached garage)	1,225	0.434596%
111	1	1503	(attached garage)	1,338	0.474685%
112	1	1504	(attached garage)	1,424	0.505196%
113	1	1505	(attached garage)	1,338	0.474685%
114	1	1506	(attached garage)	1,424	0.505196%
115	1	1601		1,050	0.372511%
116	1	1602		1,050	0.372511%
117	1	1603		1,050	0.372511%
118	1	1604		1,050	0.372511%
119	1	1605		1,050	0.372511%
120	1	1606		1,050	0.372511%
121	1	1607		1,050	0.372511%
122	1	1608		1,050	0.372511%
Phase 1 Total:				126,084	
<b>Phase 2</b>					
123	2	1701	Attached/Single	1,253	0.444530%
124	2	1702	Attached/Double	1,587	0.563024%
125	2	1703	Attached Double	1,587	0.563024%
126	2	1801	Attached/Single	906	0.321424%
127	2	1802	Attached/Single	906	0.321424%
128	2	1803	Attached/Single	800	0.283818%
129	2	1804	Attached/Single	906	0.321424%
130	2	1805	Attached/Single	800	0.283818%
131	2	1806	Attached/Single	906	0.321424%
132	2	1901	Attached/Double	1,225	0.434596%
133	2	1902	Attached/Double	1,225	0.434596%
134	2	1903	Attached/Double	1,157	0.410471%
135	2	1904	Attached/Single	1,246	0.442046%
136	2	1905	Attached/Double	1,157	0.410471%
137	2	1906	Attached/Single	1,246	0.442046%
138	2	2001		1,086	0.385283%
139	2	2002		1,086	0.385283%
140	2	2003		1,086	0.385283%
141	2	2004		1,086	0.385283%
142	2	2005		1,086	0.385283%

	Phase No.	Unit #	Garage	Square Footage Variable*	Percentage Ownership**
143	2	2006		1,086	0.385283%
144	2	2007		1,086	0.385283%
145	2	2008		1,086	0.385283%
146	2	2101		1,086	0.385283%
147	2	2102		1,086	0.385283%
148	2	2103		1,086	0.385283%
149	2	2104		1,086	0.385283%
150	2	2105		1,086	0.385283%
151	2	2106		1,086	0.385283%
152	2	2107		1,086	0.385283%
153	2	2108		1,086	0.385283%
154	2	2201		790	0.280270%
155	2	2202		790	0.280270%
156	2	2203		790	0.280270%
157	2	2204		790	0.280270%
158	2	2205		790	0.280270%
159	2	2206		790	0.280270%
160	2	2207		790	0.280270%
161	2	2208		790	0.280270%
162	2	2301		1,086	0.385283%
163	2	2302		1,086	0.385283%
164	2	2303		1,086	0.385283%
165	2	2304		1,086	0.385283%
166	2	2305		1,086	0.385283%
167	2	2306		1,086	0.385283%
168	2	2307		1,086	0.385283%
169	2	2308		1,086	0.385283%
170	2	2401		790	0.280270%
171	2	2402		790	0.280270%
172	2	2403		790	0.280270%
173	2	2404		790	0.280270%
174	2	2405		790	0.280270%
175	2	2406		790	0.280270%
176	2	2407		790	0.280270%
177	2	2408		790	0.280270%
178	2	2501	Attached/Single	1,225	0.434596%
179	2	2502	Attached/Single	1,225	0.434596%
180	2	2503	Attached/Double	1,157	0.410471%
181	2	2504	Attached/Single	1,246	0.442046%
182	2	2505	Attached/Double	1,157	0.410471%
183	2	2506	Attached/Single	1,246	0.442046%
184	2	2601	Attached/Single	1,225	0.434596%
185	2	2602	Attached/Single	1,225	0.434596%
186	2	2603	Attached/Double	1,338	0.474685%
187	2	2604	Attached/Single	1,424	0.505196%
188	2	2605	Attached/Double	1,338	0.474685%
189	2	2606	Attached/Single	1,424	0.505196%
190	2	2701		1,086	0.385283%
191	2	2702		1,086	0.385283%
192	2	2703		1,086	0.385283%

424

	<b>Phase No.</b>	<b>Unit #</b>	<b>Garage</b>	<b>Square Footage Variable*</b>	<b>Percentage Ownership**</b>
193	2	2704		1,086	0.385283%
194	2	2705		1,086	0.385283%
195	2	2706		1,086	0.385283%
196	2	2707		1,086	0.385283%
197	2	2708		1,086	0.385283%
198	2	2801	Attached/Single	1,253	0.444530%
199	2	2802	Attached/Double	1,587	0.563024%
200	2	2803	Attached/Double	1,587	0.563024%
201	2	2901	Attached/Single	1,253	0.444530%
202	2	2902	Attached/Double	1,587	0.563024%
203	2	2903	Attached/Double	1,587	0.563024%
204	2	3001	Attached/Single	906	0.321424%
205	2	3002	Attached/Single	906	0.321424%
206	2	3003	Attached/Single	800	0.283818%
207	2	3004	Attached/Single	906	0.321424%
208	2	3005	Attached/Single	800	0.283818%
209	2	3006	Attached/Single	906	0.321424%
210	2	3101		790	0.280270%
211	2	3102		790	0.280270%
212	2	3103		790	0.280270%
213	2	3104		790	0.280270%
214	2	3105		790	0.280270%
215	2	3106		790	0.280270%
216	2	3107		790	0.280270%
217	2	3108		790	0.280270%
218	2	3201	Attached/Single	1,225	0.434596%
219	2	3202	Attached/Single	1,225	0.434596%
220	2	3203	Attached/Double	1,338	0.474685%
221	2	3204	Attached/Single	1,424	0.505196%
222	2	3205	Attached/Double	1,338	0.474685%
223	2	3206	Attached/Single	1,424	0.505196%
224	2	3301		790	0.280270%
225	2	3302		790	0.280270%
226	2	3303		790	0.280270%
227	2	3304		790	0.280270%
228	2	3305		790	0.280270%
229	2	3306		790	0.280270%
230	2	3307		790	0.280270%
231	2	3308		790	0.280270%
232	2	3401	Attached/Single	1,253	0.444530%
233	2	3402	Attached/Double	1,587	0.563024%
234	2	3403	Attached/Double	1,587	0.563024%
235	2	3501	Attached/Single	1,253	0.444530%
236	2	3502	Attached/Double	1,587	0.563024%
237	2	3503	Attached/Double	1,587	0.563024%
238	2	3601	Attached/Single	906	0.321424%
239	2	3602	Attached/Single	906	0.321424%
240	2	3603	Attached/Single	800	0.283818%
241	2	3604	Attached/Single	906	0.321424%
242	2	3605	Attached/Single	800	0.283818%

	Phase No.	Unit #	Garage	Square Footage Variable*	Percentage Ownership**
243	2	3606	Attached/Single	906	0.321424%
244	2	3701		1,086	0.385283%
245	2	3702		1,086	0.385283%
246	2	3703		1,086	0.385283%
247	2	3704		1,086	0.385283%
248	2	3705		1,086	0.385283%
249	2	3706		1,086	0.385283%
250	2	3707		1,086	0.385283%
251	2	3708		1,086	0.385283%
252	2	3801	Attached/Single	906	0.321424%
253	2	3802	Attached/Single	906	0.321424%
254	2	3803	Attached/Single	800	0.283818%
255	2	3804	Attached/Single	906	0.321424%
256	2	3805	Attached/Single	800	0.283818%
257	2	3806	Attached/Single	906	0.321424%
258	2	3901		790	0.280270%
259	2	3902		790	0.280270%
260	2	3903		790	0.280270%
261	2	3904		790	0.280270%
262	2	3905		790	0.280270%
263	2	3906		790	0.280270%
264	2	3907		790	0.280270%
265	2	3908		790	0.280270%
266	2	4001	Attached/Single	1,225	0.434596%
267	2	4002	Attached/Single	1,225	0.434596%
268	2	4003	Attached/Double	1,157	0.410471%
269	2	4004	Attached/Single	1,246	0.442046%
270	2	4005	Attached/Double	1,157	0.410471%
271	2	4006	Attached/Single	1,246	0.442046%
			Phase 2 Total:	155,787	100.000000%

**Total Square Footage of Phase 1 & 2: 281,871**

\* For purposes of calculating the Square Footage Variable the square footage of heated floor space of each Unit was determined by the licensed project architect, which square footage may or may not be the exact square footage of the Unit.

\*\* Percentage Ownership is calculated by taking the Square Footage Variable of each respective Unit as a percent of the total Square Footage Variable of all units combined. For example, for unit number 608, the Square Footage Variable is 1,050 square feet divided by the total Square Footage of 281,871 square feet which equals a percentage ownership of 0.372511%.

SONOMA RANCH BLVD

SONOMA RANCH BLVD

MORNING STAR DRIVE

MORNING STAR DRIVE

HOLDING  
POND



NORTH

**EXHIBIT "C"**

PHASE 1

CASITAS AT MORNINGSTAR COND MINIUMS - FIRST FLOOR SITE PLAN

EXHIBIT "C"

127



SONOMA RANCH BLVD.

SONOMA RANCH BLVD.

MORNING STAR DRIVE

MORNING STAR DRIVE

HOLDING POND

5 GARAGES

COMMON

SPA

POOL

CABANA

MAIL BOXES

NORTH



# EXHIBIT "D"

PHASE 1

CASITAS AT MORNINGSTAR CONDOMINIUMS - SECOND FLOOR SITE PLAN

EXHIBIT "D"

6/28

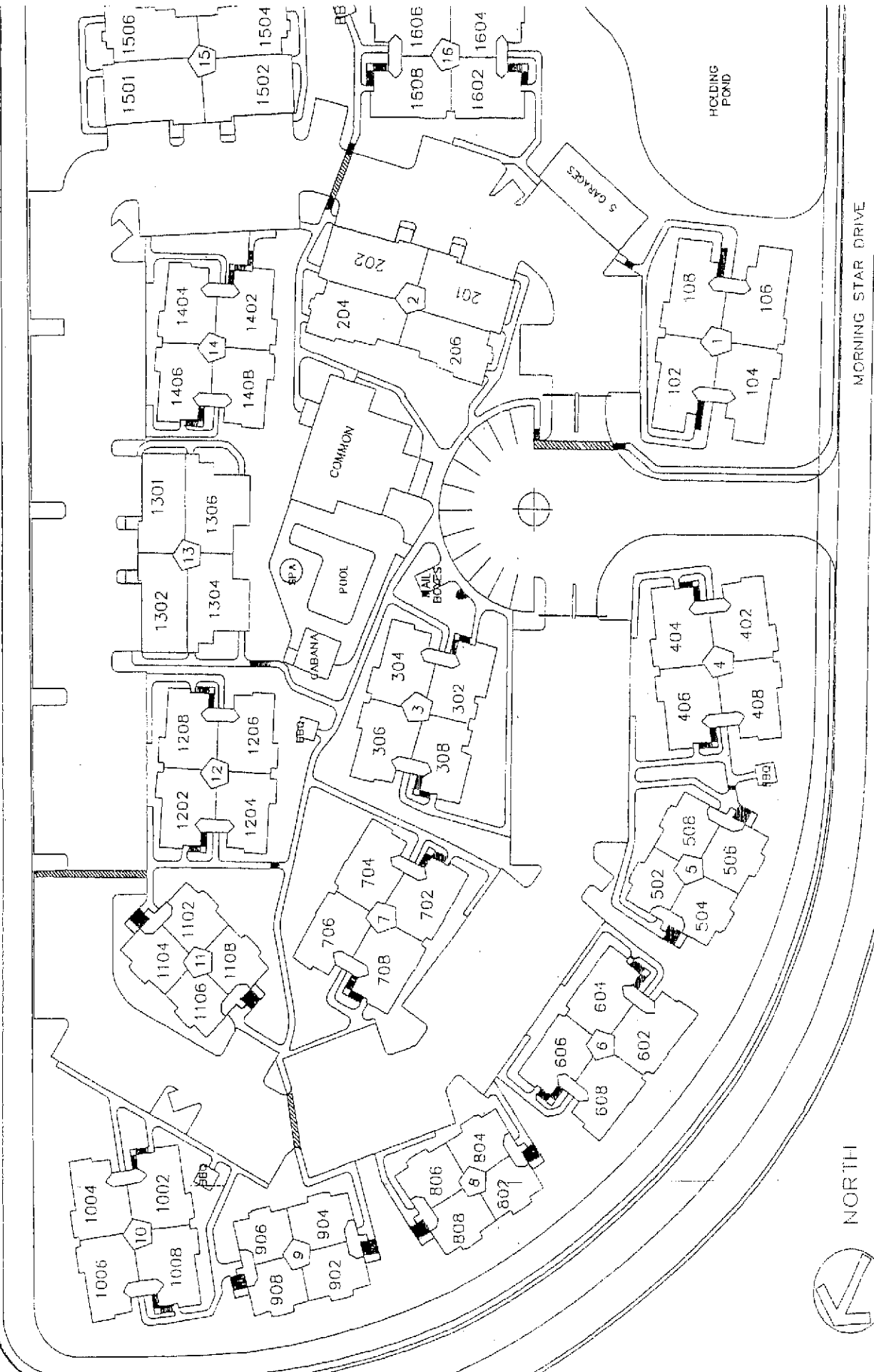




EXHIBIT "E"  
 PHASE 2  
 FIRST FLOOR SITE PLAN  
 CASITAS AT MORNINGSTAR TAO - ADDRESSES

1129



