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CONDOMINIUM DECLARATION

FOR

**CABIN INNS AT MOGOLLON AIRPARK,
A CONDOMINIUM**

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**CONDOMINIUM DECLARATION FOR
CABIN INNS AT MOGOLLON AIRPARK, A CONDOMINIUM**

This Condominium Declaration for Cabin Inns at Mogollon Airpark, A Condominium is made as of August 2, 2007, by CI-Overgaard Development, LLC, an Arizona limited liability company.

**ARTICLE 1
DEFINITIONS**

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

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

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

1.2.2 "Assessments" means the Common Expense Assessments and Special Assessments levied and assessed against each Unit pursuant to Article 8 of this Declaration.

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

1.2.4 "Association" means Cabin Inns at Mogollon Airpark Owners Association, an Arizona corporation, its successors and assigns.

1.2.5 "Board of Directors" means the Board of Directors of the Association.

1.2.6 "Building" means the structures designated as buildings on the Plat.

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

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

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

1.2.10 "Common Expense Assessment" means the assessment levied against the Units pursuant to Section 8.2 of this Declaration.

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

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

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

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

1.2.15 "Declarant" means Farnsworth Development Company, an Arizona corporation, and its successors and any Person to whom it may transfer any Special Declarant Right.

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

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

- (a) Add real estate to the Condominium;
- (b) Create easements, Units, Common Elements or Limited Common Elements within the Condominium;
- (c) Subdivide Units, convert Units into Common Elements or convert Common Elements into Units;
- (d) Withdraw real estate from the Condominium;
- (e) Make the Condominium part of a larger condominium or planned community;
- (f) Amend the Declaration during the Period of Declarant Control to comply with the Condominium Act or any other applicable law or to correct any error or inconsistency in the Declaration if the amendment does not adversely affect the rights of any Share Owner;
- (g) Amend the Declaration during the Period of Declarant Control to comply with the rules or guidelines, in effect from time to time, of any governmental or quasi-governmental entity or federal corporation guaranteeing or insuring mortgage loans or governing transactions involving mortgage instruments, including, without limitation, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration or the Veterans Administration.

1.2.18 "Eligible Insurer Or Guarantor" means an insurer or governmental guarantor of a First Mortgage who has requested notice of certain matters in accordance with Section 11.1 of this Declaration.

1.2.19 "Eligible Mortgage Holder" means a First Mortgagee who has requested notice of certain matters from the Association in accordance with Section 11.1 of this Declaration.

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

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

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

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

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

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

1.3 "Resort Cabin" means a Unit designed and intended for use and occupancy pursuant to this Declaration.

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

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

1.3.3 "Plat" means the plat of Cabin Inns at Mogollon Airpark recorded in the records of Navajo County, Arizona, and all amendments, supplements and corrections thereto.

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

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

1.3.6 "Rules" means the rules and regulations adopted by the Association, as amended from time to time.

1.3.7 "Share" means the beneficial or equitable title (and legal title if the same has merged with the beneficial or equitable title) to a one tenth (1/10th) fee simple interest of a Resort Cabin.

1.3.8 "Share Owner" means the record owner, whether one or more Persons, of a Share. Share Owner shall not include Persons having an interest in a Lot merely as security for the performance of an obligation or a Lessee. Share Owner shall include a purchaser under a Recorded contract for the conveyance of real property subject to the provisions of A.R.S. § 33-741 et. seq. Share Owner shall not include a purchaser under a purchase contract and receipt, escrow instructions or similar executory contracts which are intended to control the rights and obligations of the parties to the executory contracts pending the closing of a sale or purchase transaction. In the case of Resort Cabins the one tenth (1/10th) fee simple title to which is vested in a trustee pursuant to a subdivision trust agreement or similar agreement, the beneficiary of any such trust who is entitled to possession of the trust property shall be deemed to be the Share Owner.

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

- (a) Construct Improvements provided for in this Declaration or shown on the Plat;
- (b) Exercise any Development Right;
- (c) Maintain sales offices, management offices, models, and signs advertising the Condominium;
- (d) Use easements through the Common Elements for the purpose of making Improvements within the Condominium or within the Additional Property;
- (e) Appoint or remove any officer of the Association or any member of the Board of Directors during the Period of Declarant Control.

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

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

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

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

2.2 Name of Condominium. The name of the Condominium created by this Declaration is Cabin Inns at Mogollon Airpark, A Condominium.

2.3 Name of Association. The name of the Association is Cabin Inns at Mogollon Airpark Owners Association.

2.4 Identifying Numbers of Units. The identifying numbers of the Units are 1 through 38, as shown on the Plat.

2.5 Unit Boundaries.

2.5.1 The boundaries of each Unit are as follows:

(i) The lower horizontal boundary is a horizontal plane ten feet (10') below the surface of the land extended to an intersection with the vertical boundaries.

(ii) The upper horizontal boundary is a horizontal plane forty feet (40') above the lower horizontal boundary extended to an intersection with the vertical boundaries.

(iii) The vertical boundaries are vertical planes on the boundaries of the Unit as shown on the Plat extended upward and downward to an intersection with the upper and lower horizontal boundaries.

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

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

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

2.6 Allocation of Common Element Interest and Common Expense Liabilities. The undivided interests in the Common Elements and in the Common Expenses of the Association shall

be allocated equally among the Units. Accordingly, each Unit's fraction of undivided interests in the Common Elements and in the Common Expenses of the Association shall be 1/37th. If the Condominium is expanded by the annexation of all or any part of the Additional Property pursuant to Section 2.9 of this Declaration, the undivided interest in the Common Elements and in the Common Expenses of the Association for each Unit shall be reallocated in the manner set forth in Subsection 2.9.1(d) of this Declaration.

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

2.8 Allocation of Limited Common Elements.

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

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

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

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

(d) Each Unit is allocated the patio, if any, adjoining the Unit as shown on the Plat.

2.8.2 A Limited Common Element may be reallocated by an amendment to this Declaration made in accordance with the provisions of Section 33-1218(B) of the Condominium Act.

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

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

ARTICLE 3
EASEMENTS AND DEVELOPMENT RIGHTS

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

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

3.3 Unit Owners' Easements of Enjoyment.

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

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

(b) The right of the Association to convey the Common Elements or subject the Common Elements to a mortgage, deed of trust, or other security interest, in the manner and subject to the limitations set forth in the Condominium Act;

(c) All rights and easements set forth in this Declaration including, but not limited to, the rights and easements granted to the Declarant by Sections 3.4, 3.5 and 3.6 of this Declaration;

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

3.3.2 Notwithstanding the provisions of Section 3.3.1 above to the contrary, if a Unit is leased or rented, the Lessee and the members of his family residing with the Lessee shall have the right to use the Common Elements during the term of the lease, and the Unit Owner shall have no right to use the Common Elements until the termination or expiration of the lease.

3.3.3 The guests and invitees of any Unit Owner, Lessee or Resident entitled to use the Common Elements pursuant to this Section 3.3 may use the Common Elements provided they are accompanied by a Member, Lessee or Resident entitled to use the Common Elements pursuant to this Section 3.3. The Board of Directors shall have the right to limit the number of guests and invitees who may use the Common Elements at any one time and may restrict the use of the Common Elements by guests and invitees to certain specified times.

3.3.4 The easement of enjoyment in and to the Common Elements shall not be conveyed, transferred, alienated or encumbered separate and apart from a Unit. Such right and easement of enjoyment in and to the Common Elements shall be deemed to be conveyed, transferred, alienated or encumbered upon the sale of any Unit, notwithstanding that the description in the instrument of conveyance, transfer, alienation or encumbrance may not refer to such right and easement.

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

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

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

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

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

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

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

3.5 Declarant's Development Rights and Easements.

3.5.1 Declarant shall have the right and an easement on and over the Common Elements to construct the Common Elements and the Units shown on the Plat and all other Improvements the Declarant may deem necessary and to use the Common Elements and any Units owned by Declarant for construction or renovation related purposes including the storage of tools, machinery, equipment, building materials, appliances, supplies and fixtures, and the performance of work in the Condominium or in any part of the Additional Property whether or not Additional Property has been subjected to this Declaration.

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

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

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

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

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

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

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

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

3.8 Easement in Favor of the Association.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 4 USE AND OCCUPANCY RESTRICTIONS

4.1 Cabin Use. All Resort Cabins shall be used, improved and devoted exclusively to the use as a commercial resort rental cabin in accordance with this Declaration and the Rules and Regulations of the Association. No other trade or business may be conducted on any Lot or in or from any Resort Cabin. The foregoing notwithstanding, Declarant or one or more of Declarant's affiliates shall have the right to use Unit 38 as a real estate sales office so long as the Association shall have the right to use a portion of Unit 38 as a lobby and check-in / check-out facility.

4.2 Nuisances; Construction Activities. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot, and no odors or loud noises shall be permitted to arise or emit therefrom, so as to render any such property or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to the occupants of such other property. No condition shall be permitted to exist or

operate upon any Lot so as to be offensive or detrimental to any other property in the vicinity thereof or to its occupants.

4.3 Diseases and Insects. No Person shall permit any thing or condition to exist upon any Lot which shall induce, breed or harbor infectious plant diseases or noxious insects.

4.4 Antennas. The installation, use or maintenance of any antenna, satellite or microwave dish or other device for transmission or reception of television or radio signals shall be constructed on any Lot only in accordance with the Design Guidelines. Except to the extent that the Federal Communications Act and the Regulations adopted pursuant to such Act (collectively, the "FCC Rules") prohibit prior approval for certain devices, no antenna, satellite or microwave dish or other device for transmission or reception of television or radio signals shall be constructed, installed, used or maintained on any Lot without the prior written approval of the Board of Directors. If any FCC Rules modify or override a portion of the Design Guidelines, the remaining Design Guidelines shall remain in full force and effect.

4.5 Mineral Exploration. No Lot shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, gas, earth or any earth substance of any kind.

4.6 Trash Containers and Collection. No garbage or trash shall be placed or kept on any Lot except in covered containers of a type, size and style which are approved by the Board of Directors. In no event shall such containers be maintained so as to be Visible From Neighboring Property except to make the same available for collection and then only for the shortest time reasonably necessary to effect such collection. All rubbish, trash, or garbage shall be removed from Lots and shall not be allowed to accumulate thereon. No outdoor incinerators shall be kept or maintained on any Lot.

4.7 Clothes Drying Facilities. No outside clotheslines or other outside facilities for drying or airing clothes shall be erected, placed or maintained on any Lot so as to be Visible From Neighboring Property.

4.8 Utility Service. No lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television, and radio signals, shall be erected, placed or maintained anywhere in or upon any Lot unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures approved by the Board of Directors. No provision of this Declaration shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of buildings or structures approved by the Board of Directors.

4.9 Overhead Encroachments. No tree, shrub, or planting of any kind on any Lot shall be allowed to overhang or otherwise to encroach upon any sidewalk, street, pedestrian way or other area from ground level to a height of eight (8) feet without the prior written approval of the Board of Directors.

4.10 Animals. No animal, bird, fowl, poultry, reptile or livestock, including dogs, cats or other household pets, may be kept on any Lot, except on Lots designated as pet friendly by the Declarant or, following the Period of Declarant control, by the Board of Directors.

4.11 Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot, except such machinery or equipment as is usual and customary in connection with the use, maintenance or construction (during the period of construction) of a building, appurtenant structures, or other Improvements or such machinery or equipment which Declarant or the Association may require for the operation and maintenance of the Project.

4.12 Signs. Except for signs constructed or erected by the Declarant for promotional and marketing purposes or by the Association, no signs whatsoever may be erected, posted or displayed on any Lot or the Common Area in a location that is Visible From Neighboring Property without the prior written approval of the Board of Directors.

4.13 Further Subdivision, Property Restrictions, Rezoning and Timeshares. No Unit shall be further subdivided or separated into smaller units by any Share Owner other than the Declarant, pursuant to Navajo County procedures. No further covenants, conditions, restrictions or easements shall be recorded by any Share Owner, Lessee, or other Person other than the Declarant against any Unit without the provisions thereof having been first approved in writing by the Board of Directors. No application for rezoning, variances or use permits pertaining to any Unit shall be filed with any governmental authority by any Person other than the Declarant unless the application has been approved by the Board of Directors and the proposed use otherwise complies with this Declaration.

4.14 Vehicles and Parking.

4.14.1 As used in this Section 4.15, the term "Motor Vehicle" means a car, van, truck, recreational vehicle, motor home, motorcycle, all terrain vehicle, utility vehicle, pickup truck or other motor vehicle.

4.14.2 The Board of Directors shall have the right and power to adopt rules and regulations governing the parking of Motor Vehicles on Lots and the common Area and implementing the provisions of this Section 4.15. In the event of any conflict or inconsistency between the provisions of this Section 4.15 and the rules and regulations adopted by the Board of Directors, the provisions of this Section 4.15 shall control.

4.14.3 No Motor Vehicle shall be constructed, reconstructed or repaired on any Lot or Common Area.

4.14.4 The Board shall have the right to have any Motor Vehicle which is parked, kept, maintained, constructed, reconstructed or repaired in violation of the Association Documents towed away at the sole cost and expense of the owner of the Motor Vehicle.

4.15 Variances. The Board of Directors may grant variances from the restrictions set forth in this Article 4 if the Board of Directors determines in its discretion that (i) a restriction would create an unreasonable hardship or burden on an Share Owner, Lessee or Resident, or a change of circumstances since the recordation of this Declaration has rendered such restriction obsolete and (ii) the activity permitted under the variance will not have any substantial adverse effect on the Share Owners, Lessees and Residents of the Project, and (iii) such variance is in accordance with Navajo County procedures.

4.16 Drainage. No Resort Cabin, structure, building, landscaping, fence, wall or other Improvement shall be constructed, installed, placed or maintained in any manner that would obstruct, interfere with or change the direction or flow of water in accordance with the drainage plans for the Project, or any part thereof, or for any Unit as shown on the drainage plans on file with the county or municipality in which the Project is located.

4.17 Rooftop HVAC Equipment Prohibited. No heating, ventilating, air conditioning or evaporative cooling units or equipment related thereto may be mounted, installed or maintained on the roof of any Resort Cabin or other building.

ARTICLE 5 RESORT CABIN OPERATION

5.1 Share Owner Reservation Policy. All Resort Cabins shall be subject to the reservation policies and procedures for Share Owners as may be adopted from time to time by the Declarant and, following the Period of Declarant Control, by the Board of Directors.

5.2 Public Rental Operation; Revenues. The Association shall be responsible for the cabin commercial public rental operation, including the implementation of such reservation systems as will allow the Association to integrate the reservation and rental of Resort Cabins with the cabin reservation policies and procedures for Share Owners. Net Revenues derived from the rental of Resort Cabins for periods outside the fixed reservation periods of Share Owners shall be placed in and become part of the reserve funds of the Association. Net Revenues derived from the rental of Resort Cabins for fixed reservation periods of Share Owners which have been made available for rental by Share Owners shall be credited to the account of the respective Share Owner making the Resort Cabin available for rental.

5.3 Housekeeping; Maintenance. The Association shall be responsible for the operation of the housekeeping operations and maintenance and repair of the exterior and interior of the Resort Cabins. The costs and expenses associated with the Resort Cabin reservation systems, housekeeping operations and maintenance of the Resort Cabins shall be Common Expenses of the Association.

5.4 Management and Service Companies. The Declarant and, following the Period of Declarant Control, the Board of Directors, may hire a third party company or companies to perform any or all of the responsibilities of the Association. It is anticipated the during the Period of Declarant Control such company or companies will be affiliates of the Developer, but that the compensation paid pursuant to the agreements with such company or companies will be comparable to compensation paid to similar companies and will be terminable by the Association with not less than one year's notice following the termination of the Period of Declarant Control.

ARTICLE 6 MAINTENANCE AND REPAIR OF COMMON ELEMENTS AND UNITS

6.1 Duties of the Association. The Association shall maintain, repair and replace all Common Elements, including without limitation all drainage facilities in the Common Elements, and shall maintain, repair and replace the interior and exterior of the Units. The cost of all such maintenance, repairs and replacements shall be a Common Expense and shall be paid for by the

Association. The Board of Directors shall be the sole judge as to the appropriate maintenance, repair and replacement of the Common Elements and the Units, but all Common Elements and Units shall be maintained in good condition and repair at all times. No Owner, Lessee, Resident or other Person shall construct or install any Improvements on the Common Elements or alter, modify or remove any Common Elements without the approval of the Board of Directors. No Owner, Lessee, Resident or other Person shall obstruct or interfere with the Association in the performance of the Association's maintenance, repair and replacement of the Common Elements.

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

ARTICLE 7 THE ASSOCIATION; RIGHTS AND DUTIES, MEMBERSHIP

7.1 Rights, Powers and Duties of the Association. No later than the date on which the first Unit is conveyed to a Purchaser, the Association shall be organized as an Arizona corporation. The Association shall be the entity through which the Unit Owners shall act. The Association shall have such rights, powers and duties as are prescribed by law and as are set forth in the Condominium Documents together with such rights, powers and duties as may be reasonably necessary in order to effectuate the objectives and purposes of the Association as set forth in this Declaration and the Condominium Act. The Association shall have the right to finance capital improvements in the Condominium by encumbering future Assessments if such action is approved by the written consent or affirmative vote of Unit Owners representing more than two-thirds (2/3) of the votes in the Association. Unless the Condominium Documents or the Condominium Act specifically require a vote of the Members, the Board of Directors may act in all instances on behalf of the Association.

7.2 Directors and Officers.

7.2.1 During the Period of Declarant Control, the Declarant shall have the right to appoint and remove the members of the Board of Directors and the officers of the Association who do not have to be Unit Owners.

7.2.2 Upon the termination of the Period of Declarant Control, the Unit Owners shall elect the Board of Directors which must consist of at least three members, all of whom must be Unit Owners. The Board of Directors elected by the Unit Owners shall then elect the officers of the Association.

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

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

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

ARTICLE 8 ASSESSMENTS

8.1 Preparation of Budget.

8.1.1 At least thirty (30) days before the beginning of each fiscal year of the Association commencing with the fiscal year in which the first Unit is conveyed to a Purchaser, the Board of Directors shall adopt a budget for the Association containing an estimate of the total amount of funds which the Board of Directors believes will be required during the ensuing fiscal year to pay all Common Expenses including, but not limited, to: (i) the amount required to pay the cost of maintenance, management, operation, repair and replacement of the Common Elements and those parts of the Units, if any, which the Association has the responsibility of maintaining, repairing and replacing; (ii) the cost of wages, materials, insurance premiums, services, supplies and other expenses required for the administration, operation, maintenance and repair of the Condominium; (iii) the amount required to render to the Unit Owners all services required to be rendered by the Association under the Condominium Documents; and (iv) such amounts as may be necessary to provide general operating reserves and reserves for contingencies and replacements. The budget shall separately reflect any Common Expenses to be assessed against less than all of the Units pursuant to Subsection 8.2.4 or 8.2.5 of this Declaration.

8.1.2 At least ten (10) days before the beginning of each fiscal year of the Association (except for the first fiscal year), the Board of Directors shall send to each Share Owner a summary of the budget and a statement of the amount of the Common Expense Assessment assessed against the Share of the Share Owner in accordance with Section 8.2 of this Declaration. The failure or delay of the Board of Directors to prepare or adopt a budget for any fiscal year shall not constitute a waiver or release in any manner of a Share Owner's obligation to pay his allocable share of the Common Expenses as provided in Section 8.2 of this Declaration, and each Share Owner shall continue to pay the Common Expense Assessment against his Unit as established for the previous fiscal year until notice of the Common Expense Assessment for the new fiscal year has been given to the Share Owners by the Board of Directors.

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

8.2 Common Expense Assessment.

8.2.1 For each fiscal year of the Association commencing with the fiscal year in which the first Unit is conveyed to a Purchaser, the total amount of the estimated Common Expenses set forth in the budget adopted by the Board of Directors (except for the Common Expenses which are to be assessed against less than all of the Units pursuant to Subsections 8.2.4 and 8.2.5 of this Declaration) shall be assessed against each Unit in proportion to the Unit's Common Expense Liability as set forth in Section 2.2 of this Declaration. The amount of the Common Expense Assessment assessed pursuant to this Subsection 8.2.1 shall be in the sole discretion of the Board of Directors. If the Board of Directors determines during any fiscal year that its funds budgeted or available for that fiscal year are, or will, become inadequate to meet all Common Expenses for any reason, including, without limitation, nonpayment of Assessments by Members, the Board of Directors may increase the Common Expense Assessment for that fiscal year and the revised Common Expense Assessment shall commence on the date designated by the Board of Directors.

8.2.2 The Common Expense Assessments shall commence as to all Units on the first day of the month following the conveyance of the first Unit to a Purchaser. The first Common Expense Assessment shall be adjusted according to the number of months remaining in the fiscal year of the Association. The Board of Directors may require that the Common Expense Assessments or Special Assessments be paid in installments.

8.2.3 Except as otherwise expressly provided for in this Declaration, all Common Expenses including, but not limited to, Common Expenses associated with the maintenance, repair and replacement of a Limited Common Element, shall be assessed against all of the Units in accordance with Subsection 8.2.1 of this Declaration.

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

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

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

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

8.4 Effect of Nonpayment of Assessments; Remedies of the Association.

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

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

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

8.5 Subordination of Assessment Lien to Mortgages. The Assessment Lien shall be subordinate to the lien of any First Mortgage. Any First Mortgagee or any other Person acquiring title or coming into possession of a Share through foreclosure of a First Mortgage, purchase at a foreclosure sale or trustee sale, or through any equivalent proceedings, such as, but not limited to, the taking of a deed in lieu of foreclosure, shall acquire title free and clear of any claims for unpaid Assessments, monetary penalties and other fees and charges against the Unit which became payable prior to such sale or transfer. Any delinquent Assessments, monetary penalties and other fees and charges which are extinguished pursuant to this Section may be reallocated and assessed to all Units as at Common Expense. Any Assessments, monetary penalties and other fees and charges against the Share which accrue prior to such sale or transfer shall remain the obligation of the defaulting Share Owner.

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

8.7 Certificate of Payment. The Association on written request shall furnish to a lienholder, Share Owner or person designated by a Share Owner a recordable statement setting forth the amount of unpaid Assessments against his Unit. The statement shall be furnished within fifteen

(15) days after receipt of the request and is binding on the Association, the Board of Directors, and every Share Owner. The Association may charge a reasonable fee in an amount established by the Board of Directors for each such statement.

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

8.9 Working Capital Fund. To insure that the Association shall have adequate funds to pay all Common Expenses, each Purchaser of a Unit from the Declarant shall pay to the Association, immediately upon becoming the Share Owner of the Unit, a sum equal to two monthly installments of the Common Expense Assessment for the Unit. Such amount shall be non-refundable and shall not be considered as an advance payment of any Assessments levied by the Association pursuant to this Declaration.

8.10 Surplus Funds. The Association shall not be obligated to spend in any year all the Assessments and other sums received by it in such year, and may carry forward as surplus any balances remaining. The Association shall not be obligated to reduce the amount of the Common Expense Assessment in the succeeding year if a surplus exists from a prior year, and the Association may carry forward from year to year such surplus as the Board in its discretion may determine to be desirable for the greater financial security of the Association and the accomplishment of its purposes.

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

8.12 Reserve Contribution.

8.12.1 Except as provided in Subsection 8.12(2), each Person who purchases or otherwise purchases or otherwise becomes the Owner of a Lot shall pay to the Association, immediately upon becoming the Owner of the Lot, a contribution to the reserves to be established pursuant to Section 8.13 (a "Reserve Contribution"). The Reserve Contribution initially shall be an amount equal to two monthly installments of the Regular Assessment for the Lot. The amount of the Reserve Contribution may be increased or decreased by the Board of Directors from time to time, but the amount of the Reserve Contribution may not be increased by the Board of Directors by more than twenty percent (20%) during any twelve month period without the approval of Members holding more than fifty percent (50%) of the votes in the Association.

8.12.2 No Reserve Contribution shall be payable with respect to: (a) the transfer or conveyance of a Lot by devise or intestate succession; (b) a transfer or conveyance of a Lot to a family trust, family limited partnership or other Person for bona fide estate planning purposes; (c) a transfer or conveyance of a Lot to a corporation, partnership or other entity in which the grantor

owns a majority interest unless the Board determines, in its sole discretion, that a material purpose of the transfer or conveyance was to avoid payment of the Reserve Contribution in which event a Reserve Contribution shall be payable with respect to such transfer or conveyance; (d) the conveyance of a Lot by a trustee's deed following a trustee's sale under a deed of trust; or (e) a conveyance of a Lot as a result of the foreclosure of a realty mortgage or the forfeiture or foreclosure of a purchaser's interest under a Recorded contract for the conveyance of real property subject to A.R.S. § 33-741, et seq.

8.12.3 All Reserve Contributions shall be deposited in the Reserve Account established pursuant to Section 8.13. Reserve Contributions shall be non-refundable and shall not be considered as an advance payment of Assessments.

8.13 Reserves.

8.13.1 The Board of Directors shall establish reserves for the future periodic maintenance, repair or replacement of the major components of the Common Elements which the Association is obligated to maintain, repair and replace. The reserves may be funded from Regular Assessments, the Reserve Contributions paid pursuant to Section 8.12 or any other revenue of the Association. All amounts designated as reserves shall be deposited by the Board of Directors in a separate bank account (the "Reserve Account") to be held for the purposes for which they are collected and are to be segregated from and not commingled with any other funds of the Association.

8.13.2 Unless the Association is exempt from Federal or State taxes, all reserves shall be accounted for as contributions to the capital of the Association and as trust funds segregated from the regular income of the Association or in any other manner authorized by law or regulation of the Internal Revenue Service that will prevent such funds from being taxed as income of the Association.

ARTICLE 9 INSURANCE

9.1 Scope of Coverage.

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

(a) A blanket causes of loss - special form policy of property insurance, sprinkler leakage (if applicable), debris removal and water damage endorsements insuring the entire Condominium (including, without limitation, all the Resort Cabins and floor coverings, built-ins, cabinets and fixtures initially installed therein by the Declarant, and the replacements thereof, together with all air conditioning and heating equipment and other service machinery contained therein and covering the interests of the Association, the Board of Directors and all Unit Owners and their mortgagees, as their interests may appear (subject, however, to the loss payment adjustment provisions in favor of the insurance trustee), in an amount equal to one hundred percent (100%) of the then current replacement cost of the Condominium (exclusive of the land, excavations, foundations and other items normally excluded from such coverage), without deduction for depreciation (such amount to be redetermined annually by the Board of Directors with the assistance of the insurance company

affording such coverage). The Board of Directors shall also obtain and maintain such coverage on all personal property owned by the Association.

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

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

(d) Directors' and officers' liability insurance in an amount not less than \$1,000,000 covering all the directors and officers of the Association in such limits as the Board of Directors may determine from time to time.

(e) Such other insurance as the Association shall determine from time to time to be appropriate to protect the Association, the members of the Board of Directors, the members of any committee or the Board of Directors or the Unit Owners.

(f) The insurance policies purchased by the Association shall, to the extent reasonably available, contain the following provisions:

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

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

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

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

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

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

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

(8) Any Insurance Trust Agreement will be recognized by the insurer.

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

(h) If required by any governmental or quasi-governmental agency (including, without limitation, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation) flood insurance in accordance with the applicable regulations of such agency.

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

9.1.3 The deductible, if any, on any insurance policy obtained by the Association shall be a Common Expense, but the Association may assess any deductible amount necessitated by the negligence, misuse or neglect for which a Share Owner is responsible to such Share Owner.

9.1.4 Each Unit Owner shall be responsible for obtaining insurance for his or her own benefit and at his or her own expense covering his Unit, his or her personal property and providing personal liability coverage.

9.2 Fidelity Bonds.

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

(a) The fidelity bonds shall name the Association as an obligee;

(b) The bonds shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expressions;

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

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

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

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

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

9.6 Annual Insurance Review. After the termination of the Period of Declarant Control, the Board of Directors shall determine annually whether the amounts and types of insurance it has obtained provide adequate coverage in light of increased construction costs, inflation, practice in the area in which the Condominium is located, or any other factor which tends to indicate that either additional insurance policies or increased coverage under existing policies are necessary or desirable to protect the interests of the Owners and of the Association.

ARTICLE 10 DESTRUCTION OF IMPROVEMENTS

10.1 Automatic Reconstruction. Any portion of the Condominium for which insurance is maintained by the Association which is damaged or destroyed shall be repaired or replaced promptly by the Association unless (i) the Condominium is terminated, (ii) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (iii) eighty percent (80%) of the Share Owners, including every Owner of a Unit or allocated Limited Common Element

which will not be rebuilt, vote not to rebuild. The cost of repair or replacement of the damaged or destroyed portion of the Condominium in excess of insurance proceeds and reserves shall be a Common Expense and shall be assessed to the Members as a Special Assessment pursuant to Section 8.3 of this Declaration.

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

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

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

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

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

ARTICLE 11

EMINENT DOMAIN

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

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

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

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

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

ARTICLE 12 RIGHTS OF FIRST MORTGAGEES

12.1 Notification to First Mortgagees. Upon receipt by the Association of a written request from a First Mortgagee or insurer or governmental guarantor of a First Mortgage informing the Association of its correct name and mailing address and number or address of the Unit to which the

request relates, the Association shall provide such Eligible Mortgage Holder or Eligible Insurer Or Guarantor with timely written notice of the following:

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

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

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

12.1.4 Any proposed action which requires the consent of a specified percentage of Eligible Mortgage Holders as set forth in Section 11.2 of this Declaration.

12.2 Approval Required for Amendment to Declaration, Articles or Bylaws.

12.2.1 The approval of Eligible Mortgage Holders holding First Mortgages on Units the Share Owners of which have at least fifty-one percent (51%) of the votes in the Association allocated to Share Owners of all Units subject to First Mortgages held by Eligible Mortgage Holders shall be required to add or amend any material provisions of the Declaration, Articles or Bylaws which establish, provide for, govern or regulate any of the following:

- (a) Voting rights;
- (b) Assessments, assessment liens or subordination of assessment liens;
- (c) Reserves for maintenance, repair and replacement of Common Elements;
- (d) Insurance or fidelity funds;
- (e) Responsibility for maintenance and repairs;
- (f) Expansion or contraction of the Condominium, or the addition or annexation of property to the Condominium;
- (g) Boundaries of any Unit;
- (h) Reallocation of interests in the Common Elements or Limited Common Elements or rights to their use;
- (i) Convertibility of Units into Common Elements or of Common Elements into Units;
- (j) Leasing of Units;

- (k) Imposition of any restrictions on a Share Owner's right to sell or transfer his Unit;
- (l) A decision by the Association to establish self management when professional management had been required previously by an Eligible Mortgage Holder;
- (m) Restoration or repair of the Condominium (after a hazard damage or partial condemnation) in a manner other than that specified in the Condominium Documents;
- (n) Any action to terminate the legal status of the Condominium after substantial destruction or condemnation occurs;
- (o) Any provisions which expressly benefit First Mortgagees, Eligible Mortgage Holders or Eligible Insurers Or Guarantors.

12.2.2 Any action to terminate the legal status of the Condominium for reasons other than substantial destruction or condemnation of the Condominium must be approved by Eligible Mortgage Holders holding mortgages on Units the Share Owners of which have at least sixty-seven percent (67%) of the votes in the Association allocated to Share Owners of all Units subject to First Mortgages held by Eligible Mortgage Holders.

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

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

12.3 Prohibition Against Right of First Refusal. The right of a Share Owner to sell, transfer or otherwise convey his Unit shall not be subject to any right of first refusal or similar restriction.

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

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

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

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

12.5.3 Partition or subdivide any Unit;

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

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

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

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

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

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

12.9 Conflicting Provisions. In the event of any conflict or inconsistency between the provisions of this Article and any other provision of the Condominium Documents, the provisions of this Article shall prevail; provided, however, that in the event of any conflict or inconsistency between the different Sections of this Article or between the provisions of this Article and any other provision of the Condominium Documents with respect to the number or percentage of Share Owners, First Mortgagees, Eligible Mortgage Holders or Eligible Insurers Or Guarantors that must consent to (i) an amendment of the Declaration, Articles or Bylaws, (ii) a termination of the Condominium, or (iii) certain actions of the Association as specified in Section 11.1 and 11.5 of this Declaration, the provision requiring the consent of the greatest number or percentage of Share Owners, First Mortgagees, Eligible Mortgage Holders or Eligible Insurers Or Guarantors shall prevail; provided, however, that the Declarant, without the consent of any Share Owner being required, shall have the right to amend this Declaration, the Articles or the Bylaws during the Period

of Declarant Control in order to (i) comply with the Condominium Act or any other applicable law if the amendment does not adversely affect the rights of any Share Owner, (ii) correct any error or inconsistency in the Declaration, the Articles or the Bylaws if the amendment does not adversely affect the rights of any Share Owner, or (iii) comply with the requirements or guidelines in effect from time to time of any governmental or quasi-governmental entity or federal corporation guaranteeing or insuring mortgage loans or governing transactions involving mortgage instruments including, without limitation, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Veterans Administration.

ARTICLE 13 GENERAL PROVISIONS

13.1 Enforcement. The Association or any Share Owner shall have the right to enforce the Condominium Documents in any manner provided for in the Condominium Documents or by law or in equity, including, but not limited to, an action to obtain an injunction to compel removal of any Improvements constructed in violation of this Declaration or to otherwise compel compliance with the Condominium Documents. The failure of the Association or an Owner to take enforcement action with respect to a violation of the Condominium Documents shall not constitute or be deemed a waiver of the right of the Association or any Owner to enforce the Condominium Documents in the future. If any lawsuit is filed by the Association or any Owner to enforce the provisions of the Condominium Documents or in any other manner arising out of the Condominium Documents or the operations of the Association, the prevailing party in such action shall be entitled to recover from the other party all attorney fees incurred by the prevailing party in the action. In addition to any other rights or remedies available to the Association pursuant to the Condominium Documents or at law or in equity, the Board of Directors shall have the power to levy reasonable monetary penalties against a Share Owner for a violation of the Condominium Documents by the Share Owner, a Lessee of the Share Owner or a Resident of the Owner's Unit provided the Share Owner is given notice and an opportunity to be heard. All rights, options and remedies of Declarant, the Association, the Share Owners or First Mortgagees under this Declaration are cumulative, and not one of them shall be exclusive of any other, and Declarant, the Association, the Share Owners and the First Mortgagees shall have the right to pursue any one or all of such rights, options and remedies or any other remedy or relief which may be provided by law, whether or not stated in this Declaration.

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

13.3 Duration. The covenants and restrictions of this Declaration, as amended from time to time, shall run with and bind the Condominium in perpetuity unless the Condominium is terminated as provided in Section 12.4 of this Declaration.

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

13.5 Amendment.

13.5.1 Except in cases of amendments that may be executed by a Declarant in the exercise of its Development Rights or under Section 33-1220 of the Condominium Act, by the Association under Section 33-1206 or 33-1216(D) of the Condominium Act, or by certain Share Owners under

Section 33-1218(B), Section 33-1222, Section 33-1223 or Section 33-1228(B) of the Condominium Act, the Declaration, including the Plat, may be amended only by a vote of the Share Owners to which at least sixty-seven percent (67%) of the votes in the Association are allocated.

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

13.5.3 An amendment to the Declaration shall not terminate or decrease any unexpired Development Right, Special Declarant Right or Period of Declarant Control unless the Declarant approves the amendment in writing.

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

13.5.5 Any amendment adopted by the Share Owners pursuant to Subsection 12.5.1 of this Declaration shall be signed by the President or Vice President of the Association and shall be Recorded. Any such amendment shall certify that the amendment has been approved as required by this Section. Any amendment made by the Declarant pursuant to Subsection 12.5.4 of this Declaration or the Condominium Act shall be executed by the Declarant and shall be Recorded.

13.6 Right to Cure Alleged Defects. It is Declarant's intent that the Common Elements, each Unit and all Improvements constructed on the Condominium be built in compliance with all applicable building codes and ordinances and that they be of a quality that is consistent with good construction and development practices for production housing of this type. Nevertheless, due to the complex nature of construction and the subjectivity involved in evaluating such quality, disputes may arise as to whether a defect exists and Declarant's responsibility therefor. It is Declarant's intent to resolve all disputes and claims regarding "Alleged Defects" (as defined below") amicably, and without the necessity of time-consuming and costly litigation. Accordingly, the Association, Board of Directors and all Share Owners shall be bound by the following claim resolution procedure:

13.6.1 Right to Cure. In the event that the Association, the Board of Directors, or any Share Owner or Share Owners (collectively, "Claimant") claim, contend or allege that any portion of the Common Elements, any Unit, and/or any Improvements constructed on the Condominium are defective, or that Declarant, its agents, consultants, contractors or subcontractors (collectively, "Agents") were negligent in the planning, design, engineering, grading, construction or other development thereof (collectively, an "Alleged Defect"), Declarant hereby reserves the right for itself to inspect, repair and/or replace such Alleged Defect as set forth herein.

13.6.2 Notice. In the event that a Claimant discovers any Alleged Defect, Claimant shall notify Declarant, in writing, within fifteen (15) days of discovery of the Alleged Defect, of the specific nature of such Alleged Defect ("Notice of Alleged Defect").

13.6.3 Right to Enter, Inspect, Repair and/or Replace. Within a reasonable time after the receipt by Declarant of a Notice of Alleged Defect, or the independent discovery of any Alleged Defect by Declarant, as part of Declarant's reservation or right, Declarant shall have the right, upon reasonable notice to Claimant and during normal business hours, to enter onto or into, as applicable, the Common Elements, any Unit, and/or any Improvements for the purposes of inspecting and/or conducting testing and, if deemed necessary by Declarant, repairing and/or replacing such Alleged Defect. In conducting such inspection, testing, repairs and/or replacement, Declarant shall be entitled to take any actions as it shall deem reasonable and necessary under the circumstances.

13.6.4 No Additional Obligations; Irrevocability and Waiver of Right. Nothing set forth in this Section shall be construed to impose any obligation on Declarant to inspect, test, repair, or replace any item or Alleged Defect for which Declarant is not otherwise obligated under applicable law or any limited warranty provided by Declarant in connection with the sale of the Units. The right of Declarant to enter, inspect, test, repair and/or replace reserved hereby shall be irrevocable and may not be waived or otherwise terminated except by a writing, in recordable form, executed and Recorded by Declarant.

13.6.5 Tolling of Statute of Limitations. In no event shall any statutes of limitations be tolled during the period in which Declarant conducts any inspection or testing of any Alleged Defects.

13.7 Legal Actions. All legal actions initiated by the Association, the Board of Directors, or any Share Owner or Share Owners (collectively, "Claimant"), shall be brought in accordance with and subject to Sections 10.7 (Binding Arbitration), and 10.8 (Approval of Litigation) of this Declaration. In the event a Claimant initiates any legal action, cause of action, proceeding, reference or arbitration against Declarant alleging damages (i) for the costs of repairing or the replacement of any defective portion of the Common Elements, any Unit, and/or Improvements constructed on the Condominium, or from the negligence in the planning, design, engineering, grading, construction, or other development thereof by Declarant, its agents, consultants, contractors or subcontractors (collectively, an "Alleged Defect"), (ii) for the diminution in value of any real or personal property resulting from such Alleged Defect, or (iii) for any consequential damages resulting from such Alleged Defect, any judgment or award in connection therewith shall first be used to correct and or repair such Alleged Defect or to reimburse the Claimant for any costs actually incurred by such Claimant in correcting and/or repairing the Alleged Defect. In the event the Claimant is the Association, the Association must provide written notice to all Members prior to initiation of any legal action, cause of action, proceeding, reference or arbitration against Declarant which notice shall (at a minimum) include (i) a description of the Alleged Defect, (ii) a description of the attempts of Declarant to correct such Alleged Defect and the opportunities provided to Declarant to correct such Alleged Defect, (iii) a certification from an engineer licensed in the State of Arizona that such Alleged Defect exists along with a description of the scope of work necessary to cure such Alleged Defect and a resume of such engineer, (iv) the estimated cost to repair such Alleged Defect, (v) the name and professional background of the attorney retained by the Association to pursue the claim against Declarant and a description of the relationship between such attorney and member(s) of the Board (if any), (vi) a description of the fee arrangement between such attorney and the Association,

(vii) the estimated attorneys' fees and expert fees and costs necessary to pursue the claim against Declarant and the source of the funds which will be used to pay such fees and expenses, (viii) the estimated time necessary to conclude the action against Declarant, and (ix) an affirmative statement from the Board that the action is in the best interests of the Association and its Members. In the event the Association recovers any funds from Declarant (or any other Person) to repair an Alleged Defect, any excess funds remaining after repair of such Alleged Defect shall be paid into the Association's reserve fund.

13.8 Approval of Litigation. The Association shall not incur legal expenses, including without limitation, attorneys' fees, where the Association initiates legal proceedings or is joined as a plaintiff in legal proceedings without the written approval of Owners entitled to cast more than fifty percent (50%) of the total votes in the Association, excluding the voting power of any Unit Owner who would be a defendant in such proceedings. The Association must finance any legal proceeding with monies that are specifically collected for same and may not borrow money or use reserve funds or other monies collected for specific Association obligations other than legal fees. In the event that the Association commences any legal proceedings, all Share Owners must notify prospective purchasers of such legal proceedings and must provide such prospective purchasers with a copy of the notice received from the Association in accordance with Section 12.7 of this Declaration. This Section shall not apply to legal proceedings initiated to enforce the use restrictions contained in Article 4 hereof, or collect any unpaid Assessments or other sums levied pursuant to this Declaration.

13.9 Binding Arbitration. In the event of a dispute between or among Declarant, its builders, contractors or brokers, or their agents or employees, on the one hand, and any Share Owner(s) or the Association, on the other hand, regarding any controversy or claim between the parties, including any claim based on contract, tort, or statute, arising out of or relating to the rights or duties of the parties under this Declaration, the design or construction of the Condominium, or an Alleged Defect, the matter will be resolved by binding arbitration which shall be conducted in accordance with the following rules:

13.9.1 Initiation of Arbitration. The arbitration shall be initiated by either party delivering to the other a Notice of Intention to Arbitrate as provided for in the American Arbitration Association ("AAA") Commercial Arbitration Rules, as amended from time to time (the "AAA Rules").

13.9.2 Governing Procedures. The arbitration shall be conducted in accordance with the AAA Rules and A.R.S. § 12-1501, et seq. In the event of a conflict between the AAA Rules and this Section 10.8, the provisions of this Section 10.8 shall govern.

13.9.3 Appointment of Arbitrator. The parties shall appoint a single Arbitrator by mutual agreement. If the parties have not agreed within ten (10) days of the date of the Notice of Intention to Arbitrate on the selection of an arbitrator willing to serve, the AAA shall appoint a qualified Arbitrator to serve. Any arbitrator chosen in accordance with this Subsection (iii) is referred to in this Section 10.8 as the "Arbitrator".

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

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

13.9.6 Compensation. The Arbitrator shall be fully compensated for all time spent in connection with the arbitration proceedings in accordance with the Arbitrator's hourly rate not to exceed Three Hundred Dollars (\$300.00) per hour, unless otherwise agreed to by the parties, for all time spent by the Arbitrator in connection with the arbitration proceeding. Pending the final award, the Arbitrator's compensation and expenses shall be advanced equally by the parties.

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

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

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

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

13.9.11 Final Award. The Arbitrator shall promptly (within sixty (60) days of the conclusion of the proceedings or such longer period as the parties mutually agree) determine the claims of the parties and render a final award in writing. The Arbitrator may award the prevailing party in the proceeding all or a part of such party's reasonable attorneys' fees and expert witness fees, taking into account the final result of arbitration, the conduct of the parties and their counsel in the course of the arbitration, and other relevant factors. The Arbitrator shall not award any punitive damages. The Arbitrator shall not award indirect, consequential or special damages regardless of whether the possibility of such damage or loss was disclosed to, or reasonably foreseen by the party against whom the claim is made; provided, however, that such damages may be deemed by the Arbitrator

to be direct damages in an award reimbursing payments made by a party therefor to a third party. The Arbitrator shall assess the costs of the proceedings (including, without limitation, the fees of the Arbitrator) against the non-prevailing party.

13.9.12 Statute of Limitations. All statutes of limitation applicable to claims which are subject to binding arbitration pursuant to this Section 12.9 shall apply to the commencement of arbitration proceedings under this Section 12.9. If arbitration proceedings are not initiated within the applicable period, the claim shall forever be barred.

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

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

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

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

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

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

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

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

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

13.19 Notice of Violation. The Association shall have the right to record a written notice of a violation by any Share Owner of any restriction or provision of the Condominium Documents. The notice shall be executed and acknowledged by an officer of the Association and shall contain substantially the following information: (i) the name of the Share Owner; (ii) the legal description of the Unit against which the notice is being recorded; (iii) a brief description of the nature of the violation; (iv) a statement that the notice is being recorded by the Association pursuant to this Declaration; and (v) a statement of the specific steps which must be taken by the Share Owner to cure the violation. Recordation of a Notice of Violation shall serve as a notice to the Share Owner and to any subsequent purchaser of the Unit that there is a violation of the provisions of the Condominium Documents.

CI-OVERGAARD DEVELOPMENT, LLC,
an Arizona limited liability company

By: Cabin Inns of America, Inc., an Arizona
corporation, its Manager

By: _____
Dan G. Curtis, its Vice President

State of Arizona)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____, 2008, by Dan G. Curtis, Vice President of Cabin Inns of America, Inc., an Arizona corporation, the Manager of CI-Overgaard Development, LLC , an Arizona limited liability company, on behalf of the limited liability company.

Notary Public

Notary Stamp

EXHIBIT A

LEGAL DESCRIPTION OF
PROPERTY SUBMITTED TO CONDOMINIUM

Parcel # 206-01-033

A PORTION OF SECTION 34, TOWNSHIP 12 NORTH, RANGE 17 EAST,
BEGINNING AT THE WEST QUARTER CORNER;
THENCE S 0 DG 0' 25" WEST 322.96 FEET **TO THE TRUE POINT OF BEGINNING;**

THENCE N 73 DG 53' 25" EAST 238.47 FEET;
THENCE S 16 DG 6' 35" EAST 385.72 FEET TO NORTH R/W HIGHWAY 260;
THENCE S 73 DG 53' 23" WEST ALONG R/W 349.93 FEET;
THENCE N 0 DG 0' 25" EAST ALONG WEST SECTION LINE 401.51 FEET
TO POINT OF BEGINNING

Parcel # 206-01-034

A PORTION OF SECTION 34, TOWNSHIP 12 NORTH, RANGE 17 EAST,
BEGINNING AT THE WEST QUARTER CORNER;
THENCE S 0 DG 0' 25" WEST 724.47' TO NORTH R/W HIGHWAY 260;
THENCE N 73 DG 53' 23" EAST ALONG SAID R/W 349.93 FEET **TO THE TRUE POINT OF
BEGINNING;**

THENCE N 16 DG 6' 35" WEST 385.72 FEET;
THENCE N 73 DG 53' 25" EAST 903.45 FEET;
THENCE S 16 DG 6' 35" EAST 385.72 FEET TO NORTH R/W HIGHWAY 260;
THENCE S 73 DG 53' 23" WEST 903.45 FEET TO THE POINT OF BEGINNING