

**2009-18234**

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9671 N. Horizon Vista Place  
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**SECOND AMENDED AND RESTATED DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS**

**FOR**

**THE VILLAGE**

**DO NOT REMOVE  
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**Exhibit "A"**

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## RECITALS

WHEREAS, that certain Declaration of Horizontal Property Regime Together with Covenants, Conditions and Restrictions for The Village recorded on October 19, 1999 at Fee No. 1999 22066 in the official records of Navajo County, Arizona, the Amended and Restated Condominium Declaration recorded on May 19, 2000 at Fee No. 2000 9467 in the official records of Navajo County, Arizona, and the Amendment to Amended and Restated Condominium Declaration for The Village, a Condominium recorded on December 11, 2000 at Fee No. 2000 24228 in the official records of Navajo County, Arizona (“Superseded Declarations”) govern the real property described as:

UNITS 1 through 48 of THE VILLAGE, according to the plat recorded in Book 20 of Plats at page 16 as amended by the plat recorded in Book 20 of Plats at page 23 in the official records of Navajo County, Arizona (“Property”).

WHEREAS, the Owners of at least seventy-five percent (75%) of the Units have approved, by their vote and written consent, this Second Amended and Restated Declaration for The Village as evidenced by their signatures attached hereto and incorporated by reference herein.

NOW THEREFORE, it is hereby declared that, as of October 19, 2009, the Superseded Declarations shall be of no further force or effect and the Property shall be held, conveyed, encumbered, leased, and used subject to the following covenants, conditions, uses, restrictions, limitations, obligations, easements, equitable servitudes, charges and liens, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property. This Second Amended and Restated Declaration for The Village shall run with the Property and be binding upon and inure to the benefit of all Owners and their respective heirs, executors, administrators, personal representatives, successors and assigns.

## 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 same may be amended from time to time.

**1.2 Defined Terms.** The following capitalized terms shall have the specific meanings set forth below:

(a) **“Articles”** means the Articles of Incorporation of the Association, as amended from time to time.

(b) **“Assessment”** means the Common Expenses Assessments and Special Assessments, levied and assessed against each Unit pursuant to Article 7 of this Declaration, including all attorneys’ fees, late charges, and costs incurred in collecting same.

(c) **“Assessment Lien”** means the lien granted to the Association by the Condominium Act to secure the payment of Assessments.

(d) **“Association”** means The Village Homeowners Association, an Arizona nonprofit corporation, its successors and assigns.

(e) **“Board of Directors” or “Board”** means the Board of Directors of the Association.

(f) **“Building”** means any structure containing one or more Units that have been constructed on the land included in the Property and designated as a building on the Plat.

- (g) **“Bylaws”** means the Bylaws of the Association, as amended from time to time.
- (h) **“Common Elements”** means all portions of the Condominium other than the Units.
- (i) **“Common Expenses”** means expenditures made by or financial liabilities of the Association, together with any allocations to reserves.
- (j) **“Common Expenses Assessment”** means the assessment levied against the Units pursuant to Section 7.2 of this Declaration.
- (k) **“Common Expense Liability”** means the liability for common expenses allocated to each Unit by this Declaration.
- (l) **“Condominium” or “property”** means the real property subject to this Declaration, together with all buildings and other improvements located thereon.
- (m) **“Condominium Act”** means the Arizona Condominium Act, A.R.S. §33-1201, et seq., as same may be amended from time to time.
- (n) **“Condominium Documents”** means this Declaration, the Articles, the Bylaws, and the Rules.
- (o) **“Declaration”** means this Second Amended and Restated Declaration for The Village, as same may be amended form time to time.
- (p) **“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 9.1 of this Declaration.
- (q) **“Eligible Mortgage Holder”** means a First Mortgagee who has requested notice of certain matters from the Association in accordance with Section 9.1 of this Declaration.
- (r) **“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.
- (s) **“First Mortgagee”** means the holder of any First Mortgage.
- (t) **“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, hedges, plants, trees and shrubs of every type and kind.
- (u) **“Limited Common Elements”** means a portion of the Common Elements specifically designated in this Declaration or the Plat as a Limited Common Element and allocated by this Declaration, the Plat or by operation of the Condominium Act for the exclusive use of one or more but fewer than all of the Units.
- (v) **“Member”** means any Person who is or becomes a member of the Association.
- (w) **“Person”** means a natural person, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.
- (x) **“Plat”** means, collectively, the plats for The Village recorded in Book 20 of Maps and Plats at page 16 in the official records of the Navajo County, Arizona and Book 20 of Maps and Plats at page 23 in the official records of Navajo County, Arizona.
- (y) **“Purchaser”** means any Person who by means of a voluntary transfer becomes a Unit Owner.
- (z) **“Rules”** means the rules and regulations adopted by the Association, as amended from time to time.
- (aa) **“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.
- (bb) **“Unit Owner”** means the record owner, whether one or more Persons, of beneficial or equitable title (and legal title if the same has merged with the beneficial or equitable title) to the fee simple interest of a Unit. Unit Owner shall not include Persons having an interest in a Unit merely as

security for the performance of an obligation, or a lessee or tenant of a Unit. Unit Owner shall include a purchaser under a contract for the conveyance of real property, a contract for deed, a contract to convey, an agreement for sale or any similar contract subject to A.R.S. §33-741, et. seq. Unit Owner shall not include contracts which are intended to control the rights and obligations of the parties to executory contracts pending the closing of a sale or purchase transaction. In the case of Units the fee simple title to which is vented in a trustee pursuant to A.R.S. §33-801, et seq., the trustor shall be deemed to be the Unit Owner. In the case of Units the fee simple title to which is vested in a trustee pursuant to a subdivision trust agreement or similar agreement, the beneficiary of any such trust who is entitled to possession of the Unit shall be deemed to be the Unit Owner.

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

**2.1 Submission of Property.** The Property, together with all improvements situated thereon and all easements, rights and appurtenances thereto, are hereby submitted to the provision of the Condominium Act.

**2.2 Name of Condominium.** The name of the Condominium is The Village.

**2.3 Name of Association.** The name of the condominium association is The Village Homeowners Association.

**2.4 Identifying Numbers of Units.** The identifying numbers of the Units are 1 through 48 inclusive.

**2.5 Unit Boundaries.**

(a) The boundaries of each Unit are the interior unfinished surfaces of the exterior perimeter walls, party walls, floor, and ceiling. All lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the finished surfaces are part of the Unit, and all other portion of the walls, floors and ceilings are part of the Common Elements. All spaces, interior partitions and other fixtures and improvements within the boundaries of a Unit are part of the Unit, and all fixtures and improvements outside the boundaries of any Unit, including, but not limited to, buildings, roofs, foundations, perimeter walls, party walls, and any common stairways, are a part of the Common Elements.

(b) The physical boundaries of a Unit shall be considered to be the property boundaries regardless of the settling, rising or lateral movement of the buildings and regardless of any variances between the boundaries shown on the Plat and the actual physical boundaries.

(c) In the event of an inconsistency or conflict between the provisions of this Section 2.5 and the Plat, this Section 2.5 shall control.

**2.6 Common Elements.** The Common Elements shall be those portions of the Condominium that are not part of the Units, including, but not limited to, all water and sewer lines and the fixtures and equipment related thereto which are located on the Property (except plumbing fixtures located within the Units), to the extent such water and sewer lines and related equipment and fixtures are not owned or maintained by a public or private utility company or an improvements, water or sewer district or a governmental instrumentality or agency.

**2.7 Limited Common Elements.** The portions of the Common Elements designated on the Plat as “limited common elements” or allocated herein for the exclusive use of one or more but fewer than all of the Units shall be considered as Limited Common Elements within the meaning of the Condominium Act and include the following:

- (a) the patio or balcony shown on the Plat as adjoining the Unit and which is designed for the exclusive use of the Unit.
- (b) one (1) covered parking space within the Common Elements, exclusive of any betterments and/or improvements placed, erected or constructed therein by the Owner, the number and location of which shall be designated for the use of each Owner by the Board of Directors.
- (c) any air-conditioning/heating equipment that serves only one Unit.
- (d) exterior doors and windows which are designed to served a single Unit.

A Limited Common Element may be reallocated by an amendment to this Declaration made in accordance with the provisions of A.R.S. §33-1218(B).

**2.8 Allocation of Common Element Interests and Common Expense Liabilities.** The undivided interests in the Common Elements and in the Common Expenses of the Association shall be allocated among the Units equally, with each unit having 1/48 interest in the Common Elements and Common Expenses. Any unbuilt Unit may be withdrawn from the Condominium buy a Declaration of Withdrawal, executed by the unbuilt Unit Owner and the President and Secretary of the Association and recorded in the official records of Navajo County, Arizona. Should one or more unbuilt Units be withdrawn from the Condominium, the fractional interest in the Common Elements and Common Expenses shall be reallocated among the remaining Units equally.

**2.9 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.

### **ARTICLE 3 EASEMENTS**

**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 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 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 created an easement for ingress and egress for pedestrian and vehicular traffic over, through and across such driveways and parking areas as from time to time may be paved and intended for such purposes. Such easements shall run in favor of and be for the benefit of the Unit Owners and occupants of the Units and their guests, tenants and invitees.

### **3.3 Unit Owners' Easements of Enjoyment.**

(a) Every Unit Owner 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:

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

(2) 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; and

(3) All rights and easements set forth in this Declaration.

(b) If a Unit is leased or rented, the lessee shall have the right to use the Common Elements during the term of the lease.

(c) 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.

(d) A Unit Owner's right and 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.

(e) 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 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, the Common Elements and the Limited 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.

**3.5 Common Elements Easement in Favor of Unit Owners.** Common Elements shall be subject to the following easements in favor of the Units benefited:

(a) 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.

(b) For the installation, repair, maintenance, use, removal or replacement of light 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.

(c) 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.

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

(e) 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.

**3.7 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:

(a) For inspection 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;

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

(c) 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.

(d) 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.

(e) 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, their guests, tenants, invitees and the other occupants of the Unit.

**3.8 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 Residential Purposes.** Units shall be used for private residential purposes by a Single Family (defined as a group of one or more persons each related to the other by blood, marriage or legal adoption, or a group of four or less persons who are not related but who maintain a common household). No business or profession of any nature shall be conducted in any Unit; provided, however, that home occupations shall be allowed if contained wholly within a Unit and if such occupations do not involve any of the following: solicitation of the general public; traffic of customers to or from any Unit; repairs, manufacturing; and/or noise, inconvenience or disturbance to other residents of the Property. The Board of Directors shall, in its sole discretion, determine whether any home occupation is in conformance with this Section 4.1.

**4.2 Antennas; Satellite Dishes.** No antenna, satellite television dish or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation (except television antennas and satellite dishes less than one meter in diameter, and any other devices covered by 47 C.F.R. § 1.4000 as same may be amended from time to time), shall be erected, used or maintained outdoors on any portion of the Common Elements (except those portions designated as Limited Common Elements) unless approved by the Board of Directors.

**4.3 Utility Service.** Except for lines, wires and devices existing on the Condominium as of the date of this Declaration and maintenance and replacement of the same, no lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, cable and radio signals, shall be erected, placed or maintained anywhere in or upon the Condominium unless they are installed and maintained underground or concealed in, under or on Buildings or other structures permitted under this Declaration, subject to the provisions of 47 C.F.R. § 1.4000 as same may be amended from time to time.

**4.4 Improvements and Alterations.** Any Unit Owner may make nonstructural additions, alterations and improvements with his Unit without the prior written approval of the Board of Directors, but such Unit Owner shall, to the extent permitted under Arizona law, be responsible for any damage to other Units and to the Common Elements which results from any such alterations, additions or improvements. No Unit Owner shall make any structural additions, alterations or improvements within a Unit, unless prior to the commencement of each addition, alteration or improvement, the Unit Owner receives the prior written approval of the Board of Directors and an architect or engineer, licensed in Arizona, certifies that such addition, alteration or improvement will not impair the structural integrity of the Building within which such addition, alteration or improvement is to be made. The Unit Owner shall, to the extent permitted by Arizona law, be responsible for any damage to other Units and to the Common Elements which results from any such additions, alterations or improvements. Notwithstanding the foregoing, no addition, alteration or improvement to a Unit or to any Limited Common Element allocated to the exclusive use of a Unit, whether structural or not, which would be visible from the exterior of the Building in which the Unit is located or from the exterior of the Limited Common Element, shall be made without the prior written approval of the Board of Directors, which approval shall only be granted if the Board of Directors affirmatively finds that the proposed addition, alteration or improvement is aesthetically pleasing and in harmony with the surrounding improvements. No Unit Owner shall make any addition, alteration or improvement to the Common Elements without the prior written approval of the Board of Directors.

**4.5 Trash Containers and Collection.** No garbage or trash shall be placed or kept on the Condominium except in covered containers of a type, size and style which are approved by the Board of Directors. The Board of Directors shall have the right to subscribe to a trash service for the use and benefit of the Association and all Unit Owners, which expense shall be a Common Expense, and to adopt and promulgate rules and regulations regarding garbage, trash, trash containers and collection. The Board of Directors shall have the right to require all Unit Owners to place trash and garbage in containers located in areas designated by the Board of Directors. No incinerators shall be kept or maintained in any Unit.

**4.6 Machinery and Equipment.** No machinery or equipment of any kind shall be placed, operated or maintained upon the Condominium except such machinery or equipment as is usual and customary in connection with the use, maintenance or construction of buildings, improvements or structures which are within the uses permitted by this Declaration, and except that which the Association may require for the construction, operation and maintenance of the Common Elements.

**4.7 Animals.** No animals, including but not limited to, livestock, poultry, or bees shall be kept or maintained in any Unit except that Owners may keep a reasonable number of dogs, cats, fish and other generally recognized household pets so long as such pets are not kept for commercial purposes, do not make objectionable noises and are not kept in such number or manner as to otherwise cause a nuisance or inconvenience to any residents and are kept in compliance with all existing applicable local ordinances. The Board of Directors shall have the right to determine that, in its sole discretion, certain

household pets, their number, or the manner in which type are kept constitute a nuisance and may require their removal from the Condominium. The Board of Directors shall have the right to adopt, amend and repeal rules and regulations governing the keeping of pets in the Condominium which may include limitations on the number and size of pets.

**4.8 Clothes Drying Facilities.** Outside clotheslines or other outside facilities for drying or airing clothes shall not be placed or maintained on the Condominium.

**4.9 Diseases and Insects.** No unit Owner shall permit anything or condition to exist upon the Condominium which could induce, breed, or harbor infectious diseases or noxious insects.

**4.10 Leasing of Units.** All leases shall be in writing and shall provide that the terms of the lease shall be subject in all respects to the provisions of the Condominium Documents, and any failure by the lessee to comply with the terms of the Condominium Documents shall be a default under the lease. Upon leasing his Unit, a Unit Owner shall promptly notify the Association of the commencement date and termination date of the lease and the names of each lessee or other person who will be occupying the Unit during the term of the lease. Any Unit that is leased for a term of more than six (6) consecutive months must have an approved storage shed. The Board of Directors may promulgate additional rules and regulations, consistent with this Declaration, governing the leasing of Units.

**4.11 Mineral Exploration.** No portion of the Condominium shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth, or any earth substance of any kind.

**4.12 Trucks, Trailers, Campers and Boats.** Recreational vehicles, commercial vehicles (except such vehicles that re parked temporarily for the purpose of performing services to a particular Unit or the Common Elements), boats, campers, trailers, trucks (greater than one-ton capacity), and similar equipment and vehicles shall not be parked or stored on any portion of the Condominium except temporarily (less than forty-eight {48} hours) for the purpose of loading and unloading.

**4.13 Motor Vehicles.** Except for emergency repairs, no automobile, motorcycle, motorbike or other motor vehicle shall be constructed, reconstructed, serviced or repaired on any portion of the Condominium (with the exception of exterior vehicle washing), and no inoperable or unregistered vehicle may be stored or parked on any portion of the Condominium. No automobile, motorcycle, motorbike or other motor vehicle shall be parked upon any part of the Condominium except in carports or in such designated parking spaces as may exist from time to time on the Common Elements. The Board of Directors may adopt additional parking rules and regulations as it deems necessary or advisable, including, but not limited to, a limitation on the number of vehicles a Unit Owner parks on the Property at any one time and restrictions on guest parking.

**4.14 Towing of Vehicles.** The Board of Directors shall have the right to have any truck, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, recreational vehicle, boat, boat trailer or similar equipment or vehicle or any automobile, motorcycle, motorbike, or other motor vehicle parked, kept, maintained, constructed, reconstructed or repaired in violation of the Condominium Documents towed away at the sole cost and expense of the owner of the vehicle or equipment. Any expense incurred by the Association in connection with the towing of any vehicle or equipment shall be paid to the Association upon demand by the owner of the vehicle or equipment.

**4.15 Window Coverings.** No reflective materials, including, but without limitation, aluminum foil, reflective screens or glass, mirrors or similar items, shall be installed or placed upon the outside or inside of any windows of a Unit without the prior written approval of the Board of Directors. No enclosures, drapes, blinds, shades, screens or other items affecting the exterior appearance of a Unit or any Limited Common Elements allocated to the Unit shall be constructed or installed without the prior written consent of the Board of Directors.

**4.16 Signs.** No signs shall be permitted on any Unit or Building or any other portion of the Condominium without the prior written approval of the Board of Directors except for the following:

- (a) One indoor or outdoor “for sale” sign (not exceeding 18” x 24”) and rider (not exceeding 6” x 24”);
- (b) Signs pertaining to Association maintenance, management or safety; and
- (c) Such signs as are required by legal proceedings.

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

**4.18 Nuisances and Offensive Activity.** No nuisance shall be permitted to exist or operate within the Condominium, and no activity shall be conducted within the Condominium which is offensive or detrimental to any portion of the Condominium or any Unit Owner or other occupant of the Condominium or is an annoyance to any Unit Owner or other occupant. No exterior speakers, horns, whistles, bells, or other sound devices, except security or other emergency devices used exclusively for security or emergency purposes, shall be located, used or placed on the Condominium. A determination by the Board of Directors that a Unit is in violation of this provision shall be conclusive.

**4.19 Storage.** Balconies and patios shall be kept in a neat and clean condition and no rugs, garments or other materials may be hung on or from such areas. No items may be placed in any Building walkway, and no storage of any kind shall be permitted on a balcony or patio except with respect to items that are customarily associated with such areas (patio furniture, barbeques, planters, and similar items). Personal, household and recreational items (including, but not limited to bicycles, ATV’s and equipment) that cannot be stored within a Unit shall be stored in a storage shed, approved by the Association, and placed within the Unit Owner’s carport. A Unit Owner shall be responsible for the maintenance of his/her storage shed except to the extent that the Association shall be exclusively responsible for staining the exterior portions of the shed.

**4.20 Notification Upon Sale.** Upon sale of his/her Unit, an Owner shall notify the Association, in writing, within five (5) days after close of escrows, of the name and address of the buyer(s) and the date of the transfer.

## **ARTICLE 5**

### **MAINTENANCE AND REPAIR OF COMMON ELEMENTS AND UNITS**

**5.1 Duties of the Association.** The Association shall maintain, repair and replace all Common Elements and the portion of the Limited Common Elements designated as parking spaces. The cost of all such maintenance, repairs, and replacements shall be a Common Expense and shall be paid for by the Association.

## **5.2 Duties of Unit Owners.**

(a) Each Unit Owner shall maintain, repair and replace, at his own expense, all portions of his Unit, including, but no limited to, interior plumbing fixtures.

(b) Each Unit owner shall be responsible for the maintenance and repaid of the Limited Common Elements associated with his/her Unit except for the covered parking spaces and patios/balconies which the Association shall maintain.

(c) Unit Owners shall not, without the prior written consent of the Board of Directors, make any alterations in the Common Elements or remove any improvements or fixtures therefrom.

**5.3 Repair or Restoration Necessitated By Owner.** Each Unit Owner shall be liable to the Association, to the extent permitted by Arizona law, for any damage to the Common Elements or the improvements thereon caused by the action or inaction of the Unit Owner or any of his licensees, invitees, employees, agents, contractors or tenants. The cost to the Association of any such repair, maintenance or replacement 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.

**5.4 Unit Owner's Failure to Maintain.** If a Unit Owner fails to maintain in good condition and repair his Unit or any Limited Common Element which he is obligated to maintain under this Declaration and the required maintenance, repair or replacement is not performed with fifteen (15) days after written notice has been given to the Unit Owner by the Association, the Association shall have the right, but not the obligation, to enter the Unit and perform the required maintenance, repair or replacement. 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 6**

### **THE ASSOCIATION; POWERS AND DUTIES; MEMBERSHIP**

**6.1 Rights, Powers and Duties of the Association.** 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, and with the written consent or affirmative vote of Unit Owners representing more than fifty percent (50%) of the votes in the Association, encumber future Assessments. Unless the Condominium Documents or the Condominium Act specifically requires a vote of the Members, approvals or actions to be given or taken by the Association shall be valid if given or taken by the Board.

**6.2 Powers and Authority of the Board.** The Board shall have the power to do any and all lawful things which may be authorized, required or permitted to be done by the Association under and by virtues of its Articles, Bylaws, this Declaration, and Arizona law, and to do and perform any and all acts which may be necessary or proper for or incidental to the exercise of any of the express powers of the Association. Without in any way limited the generality of any of the foregoing provisions, the Board shall have the power and authority at any time to do the following:

(a) Care, upkeep, repair and supervision of the Common Elements.

(b) Care, upkeep, and repair of the portion of the Limited Common Elements designated as parking spaces and balconies/patios.

(c) Collection of Assessments from Unit Owners.

(d) Designation and dismissal of personnel necessary for the maintenance and operation of the Common Elements.

(e) To maintain insurance coverage as provided for in Article 8 of the Declaration.

(f) To grant and convey to any person easements, rights-of-way, parcels or strips of land in, on, over or under any portion of the Common Elements for the purpose of constructing, erecting, operating or maintaining thereon, therein and thereunder (i) roads, streets, walks, pathways and driveways; (ii) temporary overhead or permanent underground lines, cables, wires, conduits, or other devices for the transmission or electricity for lighting, heating, power, telephone, cable television, and other purposes; (iii) sewers, storm drains and pipes, drainage easements, water systems, water, heating and gas lines or pipes; and (iv) any similar or quasi public improvement or facilities.

(g) To retain and pay for legal and account services necessary or proper in the operation of the Common Elements, enforcement of the Condominium Documents, or in any of the other duties or rights of the Association.

(h) To obtain or pay for, as the case may be, any other property, or services, which the Board deems necessary including security services from the Common Elements.

(i) To select and employ a trust company, bank, or property management company to collect and disburse funds of the Association.

(j) To adopt, repeal and amend Association Rules governing the use of the Common Elements.

(k) To impose reasonable monetary penalties against a Unit Owner for violations of the Condominium Documents after providing such Owner with notice of the violations and an opportunity to be heard.

**6.3 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 Unit Owners.

**6.4 Transfer of Membership.** Membership in the Association shall not be transferred, encumbered, hypothecated or alienated in any manner, except in connection with the sale or transfer of a Unit. Any purported transfer of a membership in violation of the foregoing shall be void. In the event an Owner shall sell or otherwise transfer a Unit, the transferee of such Unit shall become a member of the Association in the place and stead of the transferor.

## **ARTICLE 7 ASSESSMENTS**

### **7.1 Preparation of Budget.**

(a) Within thirty (30) days of the beginning of each fiscal year, 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 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 7.2(d) or 7.2(e) of this Declaration.

(b) The Board of Directors is expressly authorized to adopt and amend budgets for the Association, and no ratification of any budget by the Unit Owners shall be required. The failure or delay

of the Board of Directors to prepare or adopt a budget for any fiscal year shall not constitute a waiver or release in any manner of a Unit Owner's obligation to pay his allocable share of the Common Expenses as provided in Section 7.2 of this Declaration, and each Unit Owner shall continue to pay the Common Expense Assessment against his Unit as established for the previous fiscal year until notice of the Common Expense Assessment for the new fiscal year has been established by the Board of Directors.

(c) Within thirty (30) days after the adoption of budget, the Board of Directors shall send to each Owner a statement of the amount of the Common Expense assessed against his/her Unit in accordance with Section 7.2

## **7.2 Common Expense Assessment.**

(a) For each fiscal year, the total amount of the estimated Common Expenses set forth in the budget adopted by the Board of Directors (except for the Common Expenses which are to be assessed against less than all of the Units pursuant to Subsections 7.2(d) and 7.2 (e) of this Declaration) shall be assessed against each Unit equally. The amount of the Common Expense Assessment assessed pursuant to this Section 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 Owners, it may increase the Common Expenses Assessment for that fiscal year and the revised Common Expense Assessment shall commence on the date designated by the Board of Directors.

(b) The Common Expense Assessments shall be levied on a fiscal year basis, although the Board may provide that such annual assessment is payable in equal monthly or quarterly installments.

(c) Except as otherwise expressly provided for in this Declaration, all Common Expenses shall be assessed against all of the Units in accordance with Subsection 7.2(a) of this Declaration.

(d) If any Common Expense is caused by actions or inaction of any Unit Owner or any of his licensees, invitees, employees, agents, contractors or tenants, the Association shall assess that Common Expense exclusively against his Unit.

(e) 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.

(f) All Assessments, monetary penalties and other fees and charges levied against a Unit, including attorney's fees and costs incurred in collecting such amounts, shall be the personal obligation of the Unit Owner of the Unit at the time the Assessments, monetary penalties or other fees and charges became due. The personal obligation of a Unit Owner for Assessments, monetary penalties and other fees and charges levied against his Unit shall not pass to the Unit Owner's successors in title unless expressly assumed by them.

**7.3 Special Assessments.** In addition to Common Expense Assessments, the Association may levy, in any fiscal year of the Association, a special assessment applicable to that fiscal year only 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 shall have first been approved by the affirmative vote of Owners representing a majority of votes in the Association at a meeting duly called for such purpose. Unless otherwise specified by the Board of Directors, Special Assessments shall be due thirty (30) days after they are levied by the Association and notice of the Special Assessment is given to the Unit Owners.

**7.4 Effect of Nonpayment of Assessments; Remedies of the Association.**

(a) Payment of all Assessments (or any installment of an Assessment) shall be made within thirty (30) days of the date notice thereof is mailed to an Owner. 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 incur a late fee equal to the greater of \$15.00 or ten percent (10%) of the amount owned.

(b) All Assessments and any other charges levied by the Association against a Unit or Unit Owner pursuant to this Declaration, including attorney's fees and costs incurred in the collection of such amounts, shall be secured by the Assessment Lien as provide for in A.R.S. §33-1256. 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 of lien setting forth the amount of any delinquent Assessments or other charges levied against a Unit or the Unit Owner which are secured by the Assessment Lien.

(c) The Association shall have the right, at its option, to enforce collection of any delinquent Assessments, and all other 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 its 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.

**7.5 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 party acquiring title or coming into possession of a Unit 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 added 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 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 Unit which accrue prior to such sale or transfer shall remain the personal obligation of the defaulting Unit Owner.

**7.6 No Waiver or Offset.** No Unit Owner may exempt himself from liability for payment of Assessments, monetary penalties and other fees and charges levied pursuant to the Condominium Documents for any reason, including, but not limited to his/her non-use of any of the Common Elements and facilities, abandonment of his Unit, or a claim that the Association is not properly exercising its duties and powers as provided in the Condominium Documents or the Condominium Act.

**7.7 Certificate of Payment.** The Association on written request shall furnish to a lienholder, Unit Owner or person designated by a Unit Owner a recordable statement setting forth the amount of unpaid Assessments against his Unit. The statement shall be furnished within twenty (20) business days after receipt of the request and is binding on the Association, the Board of Directors, and every Unit Owner. The Association may charge a reasonable fee in an amount established by the Board of Directors for each such statement.

**7.8 Surplus Funds.** Surplus funds of the Association remaining after payment of Common Expenses and any prepayment of reserves may, in the discretion of the Board of Directors, be credited on a pro rata basis to the Unit Owners to reduce each Unit Owner's future Common Expense Assessments or deposited to the Association's reserve funds.

**7.9 Reserve Fund.** The Association shall maintain a reserve account with the funds therein being used for the periodic maintenance, repair and replacement of the Common Elements as required hereunder. The Board is responsible for providing for such reserves as the Board, in good faith, deems reasonable, and no member of the Board shall be liable to any owner or to the Association if the amount in the reserve account proves to be inadequate.

## **ARTICLE 8 INSURANCE**

### **8.1 Scope of Coverage.**

(a) The Association shall maintain, to the extent reasonably available, the following insurance coverage:

(1) Property insurance against loss or damage by fire and lightning, and such other hazards as are customarily covered in condominium projects in Navajo County, Arizona, exclusive of improvements and betterments installed in Units by Unit Owners, issued under a standard form "All Risk of Direct Physical Loss Form" in an amount equal to the maximum insurable replacement value of the Common Elements and Units, as determined by the Board of Directors; provided, however that the total amount of insurance after application of any deductibles shall not be less than one-hundred percent (100%) of the current replacement cost of the insured property, exclusive of land, excavations, foundations and other items normally excluded from a property insurance policy.

(2) Broad Form Comprehensive 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 non-owned automobiles, and (iii) coverage for any legal liability that results from lawsuits related to employment contracts in which the Association is a party.

(3) Workmen's compensation insurance to the extent necessary to meet the requirement of the laws of Arizona.

(4) Directors' and officers' liability insurance covering all the directors and officers of the Association in such limits as the Board of Directors may determine from time to time.

(5) Fidelity coverage against dishonest acts on the part of Directors, officers, managers, trustees, employees, or volunteers responsible for handling funds belong to or administered by the Association. Such fidelity bonds or insurance shall name the Association as the named insured and shall be written in an amount sufficient to provide protection, which is, in no event, less than 1 ½ times the insured's estimated annual operating expenses and reserves, and provide for at least ten (10) days notice to the Association and First Mortgagees servicing FNMA owned mortgages before cancellation or substantial modification of the bond. In connection with such coverage, an appropriate endorsement of the policy to cover any persons who serve without compensation shall be added, if the policy would not otherwise cover volunteers.

(6) 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.

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

(i) 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.

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

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

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

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

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

(vii) For policies of hazard 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.

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

(8) If the Condominium is located in an area identified by the Secretary of Housing & Urban Development as an area having special flood hazards, a "blanket policy" of flood insurance on the Condominium in the lesser of one hundred percent (100%) of the current replacement cost of the buildings and any other property covered on the required form of policy or the maximum limit coverage available under the National Insurance Act of 1363, as amended.

(9) "Agreed Amount" and "Inflation Guard" endorsements.

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

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

**8.3 Insurance Obtained by Unit Owners.** The issuance of insurance policies to the Association pursuant to this Article shall not prevent a Unit owner from obtaining insurance for his own benefit and at his own expense covering his Unit, any improvements to his Unit, his personal property, and providing personal liability coverage.

**8.4 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 Unit Owners and lienholders as their interests may appear, and the proceeds shall be disbursed and applied as provided for in A.R.S. Section 33-1253.

**8.5 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 Unit Owner, mortgagee, or beneficiary under a 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 non-renewal has been mailed to the Association, each Unit Owner, and each mortgagee or beneficiary under a deed of trust to whom a certificate or memorandum of insurance has been issued at their respective last known addresses.

## **ARTICLE 9 RIGHTS OF FIRST MORTGAGEES**

**9.1 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 of 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:

(a) Loss or any casualty loss which affects a material portion of the Condominium or any Unit on which there is a First Mortgage held, insured or guaranteed by such Eligible Mortgage Holder or Eligible insurer or Guarantor;

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

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

**9.2 Right of Inspection of Records.** Any 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, a current 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.

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

**9.4 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.

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

**9.6 Limitation on Partition and Subdivision.** No Unit shall be partitioned or subdivided without the prior written approval of the First Mortgagee on such Unit.

**9.7 Conflicting Provision.** 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.

## **ARTICLE 10 GENERAL PROVISIONS**

**10.1 Enforcement.** The Association, or any Unit Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of the Condominium Documents. Failure by the Association or by any Unit Owner to enforce any covenant or restriction contained in the Condominium Documents shall in no event be deemed a waiver of the right to do so thereafter. Each remedy provided herein is cumulative and not exclusive.

**10.2 Attorney's Fees.** In the event the Association employs an attorney for collection of any Assessment, whether by suit or otherwise, or to enforce compliance with or specific performance of the terms and conditions of this Declaration or the Association Rules, or for any other purpose in connection with the breach of this Declaration or the Association Rules, each Owner agrees to pay all attorney's fees and costs thereby incurred by the Association in addition to any other amounts due or any other relief or remedy obtained against said Owner. Such attorneys' fees and costs shall be the personal obligation of the defaulting Owner and shall be added to and become part of the Assessment lien to which such Owner's Lot is subject collectible in the manner provided in Article 7 hereof.

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

**10.4 Duration.** The covenants and restrictions of this Declaration, and any amendments thereto, shall run with and bind the Condominium until such time that the Condominium is terminated pursuant to Section 10.5

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

**10.6 Amendment.**

(a) Except in cases of amendments that may be executed by the Association under Section 33-1206 or 33-1216(D) of the Condominium Act, or by certain Unit Owners under Section 33-121(B), Section 33-1222, Section 33-1223 or Section 33-1228(B) of the Condominium Act, the provisions of this Declaration may be amended at any time by the affirmative vote or written consent of Unit Owners to which at least sixty-seven percent (67%) of the votes in the Association are allocated.

(b) Except to the extent expressly permitted or required by the Condominium Act or an order of a court of competent jurisdiction, an amendment to the Declaration shall not increase the number of Units or change the boundaries of any Unit, the allocated interest of a Unit, or the use as to which any Unit is restricted, in the absence of unanimous consent of the Unit Owners.

(c) Any amendment adopted by the Unit Owners pursuant to Subsection 10.5(a) of this Declaration shall be signed by the President or Vice President of the Association and shall be recorded with the Office of the Recorder for Navajo County, Arizona. Any such amendment shall certify that the amendment has been approved as required by this Section.

**10.7 Notices.** All notices, demands, statements or other communications required to be given to or served on a Unit Owner under this Declaration shall be in writing and shall be deemed to have been duly

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

**10.8 Binding Effect.** By acceptance of a deed or by acquiring any ownership interest in any portion of the Condominium, each Owner, for himself, his heirs, personal representatives, successors, transferees and assigns, bind 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 real property covered thereby and hereby evidences his/her 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 various subsequent and future Unit Owners. Each Unit Owner, his/her heirs, successors and assigns, covenants and agrees that the Units and the membership in the Association and the other rights created by the Condominium Documents 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.

**10.9 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.

**10.10 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

**10.11 Survival of Liability.** The termination of membership in the Association shall not relieve or release any such former Unit 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 Unit Owner or Member arising out of, or in any way connected with, such ownership or membership and the covenants and obligations incident thereto.

**10.12 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.

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

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

**10.15 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.

**10.16 Notice of Violation.** The Association shall have the right but not the obligation to record a written notice of a violation by any Unit Owner of any restriction or provision of the Condominium Documents. The notice shall be executed and acknowledged by an officer of the Association and shall contain substantially the following information: (i) the name of the Unit 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 Unit Owner to cure the violation. Recordation of a Notice of Violation shall serve as a notice to the Unit Owner and to any subsequent purchaser of the Unit that there is a violation of the provisions of the Condominium Documents. If, after the recordation of such notice, it is determined by the Association that the violation referred to in the notice does not exist or that the actual violation referred to in the notice has been cured, the Association shall record a notice of compliance which shall state the legal description of the Unit against which the Notice of Violation was recorded, the recording data of the Notice of Violation, and shall state that the violation referred to in the notice of violation has been cured, or if such be the case, that it did not exist.

**10.17 Effective Date; Effect of Prior Declarations.** This Second Amended and Restated Declaration for The Village shall become effective on October 19, 2009, and upon such date, all covenants, conditions and restrictions recorded prior thereto shall be terminated and of no further force or effect; provided, however, that nothing in this Declaration shall be deemed to invalidate any action taken prior to that time pursuant to the Superseded Declarations.

IN WITNESS WHEREOF, the undersigned certifies that at least seventy-five percent (75%) of the Owners affirmatively voted to approve this Second Amended and Restated Declaration of Covenants, Conditions and Restrictions for The Village.

THE VILLAGE HOMEOWNERS ASSOCIATION,  
An Arizona nonprofit corporation  
By: Allan C. Johnson  
It: President, Village HOA

STATE OF ARIZONA )  
 ) ss.  
COUNTY OF PIMA )

This instrument was acknowledged before me this 15<sup>th</sup> day of September, 2009, by Allan C. Johnson for the purposes stated herein.

Taydee Lozoya, Notary Public – Arizona, Pima County (Commission Expires January 17, 2012)