

WHEN RECORDED, RETURN TO:

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**DECLARATION OF CONDOMINIUM AND EASEMENTS
FOR
HABITAT AT TIMBER SKY CONDOMINIUM**

(a “Leasehold condominium” per A.R.S. § 33-1216)

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**DECLARATION OF CONDOMINIUM AND EASEMENTS
FOR
HABITAT AT TIMBER SKY CONDOMINIUM**

This Declaration of Condominium and Easements for Habitat at Timber Sky Condominium (this “**Declaration**”) is made as of this ___ day of December, 2025 by Habitat for Humanity of Northern Arizona, Inc., an Arizona nonprofit corporation (“**Declarant**” or “**Habitat**”) as lessee of the Land pursuant to the Ground Lease, with the consent and approval of VP 66 & WOODY MOUNTAIN, LLC, an Arizona limited liability company (“**Master Declarant**”), in its capacity as the “Declarant” under the Timber Sky Declaration, and with the consent and approval of the City of Flagstaff, an Arizona municipal corporation (“**City**”), in its capacity as the owner of fee title to the Land.

RECITALS

A. City is the owner of fee title to certain 3.3 acres of real property situated in the Coconino County, Arizona, and legally described on **Exhibit A** attached hereto (“**Land**”).

B. City, as lessor, and Declarant, as lessee, have entered into that certain Ground Lease for Habitat at Timber Sky Condominium to be Recorded on December __, 2025 in the County Recorder’s Office, Coconino County, Arizona (“**Coconino County Recorder**”) at Instrument No. _____ (as amended, supplemented or otherwise modified from time to time, “**Ground Lease**”).

C. City is a third-party beneficiary of a Special Warranty Deed with Restrictive Covenant, Recorded on December 16, 2022, in the Coconino County Recorder at Instrument No. 3965924 (with a corrected legal description recorded on January 18, 2023 in Instrument No. 39667399) which requires development of the Land for affordable housing and an Affordability Plan, among other things, as amended by a Restrictive Covenant Agreement to be recorded concurrently herewith in the Coconino County Recorder (the “**Affordable Housing Restriction**”)

D. Declarant desires to submit the Land to a leasehold condominium form of ownership in accordance with the Condominium Act, this Declaration, and the Affordable Housing Restriction.

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

F. The Land has or will be annexed into a master planned community known as “Timber Sky” pursuant to a Declaration of Annexation and Supplemental Declaration to Declaration of Covenants, Conditions, Restrictions and Easements for Timber Sky to be recorded concurrently herewith in the Coconino County Recorder.

G. Upon such annexation, the Land will be subject to that certain Declaration of Covenants, Conditions and Restrictions for Timber Sky, Recorded on November 27, 2019, in the Coconino County Recorder at Instrument No. 3859262 (as amended, supplemented or otherwise modified from time to time, “**Timber Sky Declaration**”). Pursuant to **Section 2.6** of the Timber Sky Declaration, the Master Declarant must provide its written consent to the Recording of this Declaration, and Master Declarant desires to provide its consent.

H. City has or will enter into a Driveway Maintenance Agreement with Habitat for certain maintenance of portions of the Condominium, to be recorded concurrently herewith in the Coconino County Recorder (the “**Driveway Maintenance Agreement**”).

ARTICLE 1
DEFINITIONS

As used in this Declaration, the following defined terms shall apply. Capitalized terms used in this Declaration but 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.

“**Affiliate of Declarant**” means any Person who controls, is controlled by or is under common control with a Declarant.

“**Allocated Interest**” means an equal undivided interest in the Common Elements, the Common Expenses Liability and the votes in the Association allocated to each Unit by this Declaration.

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

“**Assessments**” means (i) the various charges levied and assessed for the payment of Common Expenses pursuant to **Article 7**, including, Regular Assessments, Special Assessments, Reserve Contributions, initial working capital funds, transfer fees, (ii) any other charge in the nature of an assessment or that is designated as an “Assessment” against each Unit under the Condominium Documents, (iii) charges for late payment of Assessments, and (iv) reasonable collection of fees and costs incurred or applied by the Association and reasonable attorney fees and costs that are incurred by the Association, with respect to those Assessments.

“**Assessment Lien**” means the lien granted to the Association by the Condominium Act to secure the payment of Assessments, monetary penalties and other fees and charges owed to the Association.

“**Association**” means Habitat at Timber Sky Condominium Association, an Arizona nonprofit corporation, its successors and assigns.

“**Board of Directors**” means the Board of Directors of the Association.

“**Bylaws**” means the Bylaws of the Association, as amended from time to time.

“**City**” means the City of Flagstaff, Arizona.

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

“**Common Elements**” means all portions of the Condominium other than the Units, including but not limited to the driveway, Parking Spaces, and Tract A of the Plat. Any Patios, spaces, interior partitions and other fixtures or improvements which may be constructed in the future and are located within the boundaries of a Unit but which serve more than one Unit are part of the Common Elements.

“**Common Expenses**” means the actual or estimated costs or expenses incurred or to be incurred by the Association or financial liabilities of the Association including, but not limited to, the following:

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

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

(c) the cost of any utilities, trash pickup and disposal, landscaping, basic cable television and other services benefiting the Unit Owners and their Units to the extent such services are paid for by the Association;

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

(e) reasonable reserves as deemed appropriate by the Board or required by the Condominium Documents;

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

(g) all real property taxes or assessments levied against the Condominium as a whole or separately against the Common Elements (but not any such taxes or assessments levied against the Units);

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

(i) any cost incurred by the Association in exercising any powers or rights of the Association or fulfilling any obligations of the Association, under the Condominium Documents or the Condominium Act.

(j) Any fees or expenses incurred by the Association to the Timber Sky Community Association under or pursuant to the Timber Sky Declaration

“Common Expense Liability” means the percentage of undivided interests in the Common Expenses allocated to each Unit by **Section 2.6**.

“Common Expense Lien” means the lien for Assessments as provided in this Declaration.

“Condominium” means the leasehold condominium created by the Recording of the Plat and this Declaration.

“Condominium Act” means the Arizona Condominium Act, A.R.S. §33-1201, et seq., as amended from time to time, or any successor statute which governs the creation and management of condominiums.

“Condominium Documents” means this Declaration (which includes the Plat), and the Articles, Bylaws, and Rules.

“Condominium Property” means the Land, together with the Units and all other Improvements located thereon.

“County” means Coconino County, Arizona.

“Declarant” means Habitat for Humanity of Northern Arizona, Inc., an Arizona nonprofit corporation, and its successors and any Person to whom it may transfer any Special Declarant Right by a Recorded instrument.

“Declaration” means this Declaration of Condominium and Easements for Habitat at Timber Sky Condominium, as amended and supplemented from time to time.

“Development Rights” means any right or combination of rights to do any of the following, provided it is consistent with the provisions of the Ground Lease:

- (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) Make the Condominium part of a larger condominium or planned community;
- (e) Amend the Declaration during the Period of Declarant Control to comply with the Condominium Act or any other applicable law or to correct any error or inconsistency in the Declaration if the amendment does not adversely affect the rights of any Unit Owner;
- (f) 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.

“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.

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

“Ground Lease” is the Lease stated in the Recitals, and any subsequently recorded amendments thereto.

“Ground Lessor” means the holder, at the time in question, of the lessor’s interest under the Ground Lease.

“Ground Lessee” means each Unit Owner of a Unit that may exist from time to time now or in the future.

“Identifying Number” means the number or symbol shown on the Plat that identifies a particular Unit.

“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, landscaping, hedges, plants, trees and shrubs of every type and kind, lighting fixtures, sprinkler and irrigation systems, parking areas and sidewalks.

“Invitee” means any person whose presence within the Condominium is approved by or is at the request of the Association, or a particular Owner, Sublessee or Occupant, including, without limitation, family members, guests, employees and contractors.

“Land” means the land described on Exhibit A attached hereto and all easements and rights appurtenant thereto.

“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 (including, Section 2.8) or by operation of the Condominium Act for the exclusive use of one or more but fewer than all of the Units.

“Member” means a Person who is or becomes a member of the Association.

“Occupant” means a person, other than an Owner, in possession of a Unit at the request or consent of the Owner.

“Owner” or “Unit Owner” means the owner of beneficial or equitable title (and legal title if the same has merged with the beneficial or equitable title) to a Unit. The City will not be considered the Owner or Unit Owner unless the City also acquires fee title in and to the Residence. Unit Owner shall not include Persons having an interest in a Unit merely as security for the performance of an obligation, or a Sublessee of a Unit pursuant to a Sublease with a Unit Owner. In the case of Units for which title is vested in a trustee pursuant to A.R.S. § 33-801, et seq., the Trustor shall be deemed to be the Unit Owner.

“Parking Space” means a portion of the Common Elements intended for the parking of a single motor vehicle.

“Period of Declarant Control” means the time period commencing on the date this Declaration is Recorded and ending on the earlier of: (a) ninety (90) days after the date by which seventy-five percent (75%) of the Units have been conveyed to Unit Owners other than Declarant; or (b) four (4) years after all Declarants have ceased to offer Units for sale in the ordinary course of business.

“Period of Habitat Oversight” means the period of time commencing on the date that the first Unit is conveyed to a Purchaser and expiring on the earlier of: (a) ten (10) years after Habitat no longer has a right of first refusal to acquire a Unit or the right or option to repurchase any Unit from a Unit Owner, as evidenced by a Recorded agreement against a Unit or (b) the date that Habitat executes and Records an instrument terminating the Period of Habitat Oversight.

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

“Plat” means the condominium plat for Habitat at Timber Sky Condominium, a Leasehold Condominium, recorded on December __, 2025, as Instrument No. [REDACTED], in the records of the County Recorder of Coconino County, Arizona, and any amendments, supplements or corrections thereto.

“Purchaser” means any Person (other than the Declarant) who becomes a Unit Owner.

“Qualified Homebuyer” means any person that has an income (at time of purchase of a Unit, as reported by such households) equal to or less than one hundred percent (100%) of Area Median Income.

“Recording” or **“Records”** means placing an instrument of public record in the office of the County Recorder of Coconino County, Arizona and **“Recorded”** means having been so placed of public record.

“Regular Assessment” means the assessment levied against the Units pursuant to **Section 7.2**.

“Residence” means an individual single-family home and related structures, fixtures, landscaping and other improvements, situated upon a Unit. The Residence includes all patios, spaces, interior partitions and other 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.

“Rules” means the rules and regulations adopted by the Board of Directors, as amended from time to time.

“Sublease” means any agreement whatsoever for the use, occupancy, rental, or lease of all or any portion of a Unit, including, but not limited to, agreements for any of the foregoing purposes through services such as Airbnb or VRBO (or other similar services), subleases, and licenses. A sublease may be written, oral, or arise from allowing occupancy to continue.

“Sublessee” means any Person who is subleasing or occupying all or any portion of the Unit with consent of a Unit Owner.

“Special Declarant Rights” means any right or combination of rights to do any of the following, provided it is consistent with the provisions of the Ground Lease:

- (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;
- (e) Appoint or remove any officer of the Association or any member of the Board of Directors during the Period of Declarant Control;
- (f) Exercise the rights described in **Section 3.4**.

“Timber Sky Association” means Timber Sky Community Association, an Arizona nonprofit corporation, its successors and assigns, which is the homeowners association under the Timber Sky Declaration organized under A.R.S. § 33-1801 et seq.

“Timber Sky Declaration” has the meaning provided in the Recitals.

“Unit” means the leasehold interest created by the Ground Lease in all the land contained within each such unit (as each such unit is designated on the Plat), the fee title to the Residence (once constructed) on such unit, the undivided leasehold interest in the Common Elements and Limited Common Elements created by the Ground Lease, and all rights under the Condominium. The boundaries of each Unit are described in **Section 2.5**.

“Unit Owner Expenses” means fees, charges, late charges and monetary penalties or interest that is imposed pursuant to A.R.S. § 33-1242(A)(10), (11), (12), but excludes any amount that is included in a Common Expense Lien.

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

2.1 Submission of Property . The Declarant hereby submits the Condominium Property to the provisions of the Condominium Act for the purpose of creating a condominium in accordance with the provisions of the Condominium Act and hereby declares that the Condominium Property shall be held and conveyed subject to the terms, covenants, conditions and restrictions set forth in this Declaration. The Declarant designates each Unit for separate ownership or occupancy. Declarant further declares that all of the easements, restrictions, conditions and covenants in this Declaration shall run with the Condominium Property and shall be binding upon and inure to the benefit of the Declarant and all Unit Owners, Sublessees and Occupants and all other Persons having or acquiring any right, title or interest in the Condominium Property or any part thereof, their heirs, successors, successors in title and assigns. Each Person who acquires any right, title or interest in the Condominium Property, or any part thereof, agrees to abide by all of the provisions of the Condominium Documents. This Declaration shall be binding upon and shall be for the benefit of and enforceable by the Association. Declarant makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of the Condominium Documents, or as to the compliance of any of the provisions of the Condominium Documents with public laws, ordinances and regulations applicable thereto.

2.2 Name of Condominium . The name of the Condominium created by this Declaration is Habitat at Timber Sky Condominium.

2.3 Name of Association . The name of the Association is Habitat at Timber Sky Condominium Association, an Arizona nonprofit corporation.

2.4 Identifying Numbers of Units . The Identifying Numbers of the Units are shown on the Plat.

2.5 Unit and Common Element Boundaries .

(a) Each Unit is a “land condominium” and the boundaries of each Unit are as delineated on the Plat. Each Unit is an individual parcel of land as delineated on the Plat, including all rights above and below the surface of the land to the extent permitted by law.

(b) The Common Elements borders as shown on the Plat are approximate. The actual borders may vary from those shown on the Plat.

(c) 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.

(d) In the event of any inconsistency or conflict between the provisions of this Section and the Plat regarding the description of the boundaries of the Unit, this Section shall control.

2.6 Allocation of Common Element Interest and Common Expense Liabilities .

(a) Allocation. Each Unit is hereby allocated an equal (1/40) undivided leasehold interest in the Common Elements (pursuant to the Ground Lease) as tenants in common and in the Common Expenses. If Declarant reduces or increases the number of Units shown on the plat pursuant to its rights under this Declaration, then each Unit shall automatically be assigned a new equal undivided interest.

(b) No Severance. A Unit shall at all times include ownership of the equal undivided interest in the Common Elements. The undivided fraction of interest in the Common Elements allocated to any Unit shall always be deemed conveyed or encumbered along with any conveyance or encumbrance of that Unit, even if the conveyance or encumbrance makes no reference thereto. Except as permitted by the Condominium Act, the Common Elements are not subject to partition, and any purported conveyance, encumbrance, judicial sale or other voluntary or involuntary transfer of an undivided interest in the Common Elements made without the Unit to which that interest is allocated is void.

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

2.8 Allocation of Limited Common Elements .

(a) If and to the extent applicable, the following portions of the Common Elements are Limited Common Elements allocated to the exclusive use of one or more, but less than all, of the Units as follows:

(1) Any chute, flue, pipe, duct, wire, conduit or other fixture (including, but not limited to, hot water heaters, heating and air conditioning units and related equipment, solar energy systems or devices and natural 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; and

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

(b) Use of Limited Common Elements. Each Owner shall have the right to the exclusive use and possession of the Limited Common Elements (if any) allocated to the Unit, subject to the

rights granted to the Declarant or the Association by the Condominium Documents. All Limited Common Elements must be used in accordance with the Declaration and the Rules.

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

(d) **Reallocation By Declarant.** Declarant shall have the right to allocate as a Limited Common Element any part of the Common Elements (including, but not limited to, Parking Spaces) which has not previously been allocated as a Limited Common Element. Any such allocation shall be made by an amendment to this Declaration executed by the Declarant. The Association and all Owners acknowledge and agree the Declarant shall have the right to charge a fee for making an allocation of a Parking Space as a Limited Common Element and that all such fees shall be the sole property of the Declarant and neither the Association nor any Owner shall have any right or claim to such fees.

2.9 Liability for Master Planned Community Assessments . Each Unit Owner acknowledges and agrees that it is also subject to the Timber Sky Declaration and that it will be obligated to pay various assessments, fees, and other charges as provided in the Timber Sky Declaration to the Timber Sky Association.

ARTICLE 3 **EASEMENTS AND DEVELOPMENT RIGHTS**

3.1 Construction and Maintenance Easement . There is hereby granted and created an easement upon, across, over and under the Land and all improvements located thereon, for the Declarant (during the Period of Declarant Control) and to Habitat (during the Period of Habitat Oversight) and to the Ground Lessor (if Ground Lessor deems it necessary and the same is approved by Habitat during the Period of Habitat Oversight) for completion of construction and maintenance of Units, Common Elements, and Limited Common Elements. All such work shall be done so as to minimize any inconvenience to the Owner and Occupants of any Unit. The easements in this Section shall in no way affect any other Recorded easements on the Common Elements.

3.2 Utility Easement . There is hereby granted and created an easement upon, across, over and under the Land and all improvements located thereon for the installation, replacement, repair or maintenance of utility lines and systems, including, but not limited to, natural gas, water, sewer, telephone and electric wires, pipes, lines, conduit and fixtures, heating and air conditioning equipment, lines and fixtures, chutes, and cable television or other communication lines and systems (“**Utility Systems**”). By virtue of this easement, it shall be expressly permissible for the providing utility or service company, the Association or the Declarant to install and maintain, repair and replace Utility Systems on the Common Elements and in the Units to serve the Common Elements or to serve one or more other Units, but no Utility Systems may be installed or located on the Common Elements or the Units except as initially designed and constructed by the Declarant or as approved by the Declarant so long as the Declarant owns any Unit or thereafter, by the Board of Directors. The maintenance, repair or replacement of Utility Systems located within a Unit that serve the Common Elements or one or more other Units by the Declarant, the Association or a Unit Owner shall be done so as to minimize any inconvenience to the Owner and Occupants of the Unit in which such Utility Systems are located, and except in the case of an emergency, neither the Association, the Declarant nor any Unit Owner shall enter a Unit for the purpose of the maintenance, repair or

replacement of Utility Systems without at least 48 hours prior written notice to the Unit Owner. The easements in this Section shall in no way affect any other Recorded easements on the Common Elements.

3.3 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 driveways as from time to time may be paved and intended for such purposes, except that such easements shall not extend to any Limited Common Elements. Such easements shall run in favor of and be for the benefit of the Owners, Sublessees, Occupants, and Invitees.

3.4 Right to Peaceful Enjoyment .

(a) Every Owner, Sublessee, Occupant shall have a right to peaceful enjoyment and use of the Common Elements, 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, with the consent of Habitat during the Period of Habitat Oversight, to convey the Common Elements or subject the Common Elements to a mortgage, deed of trust, or other security interest, if such action is approved by Owners entitled to cast at least eighty percent (80%) of the votes in the Association. Any such action by the Association shall be done in the manner and subject to the limitations set forth in the Condominium Act;

(3) The right of the Association, with the consent of Habitat during the Period of Habitat Oversight, and with the consent of Lessor, to grant non-exclusive easements in, under, or over all or a portion of the Common Elements if the Board of Directors determines that the granting of the easement is necessary for the development or maintenance of the Common Elements or beneficial to the Owners, Sublessees and Occupants;

(4) All rights and easements set forth in this Declaration including, but not limited to, the rights and easements granted to the Declarant by Section 3.4; and

(5) The right of the Association to suspend the right of an Owner, Sublessee or Occupant to use the Common Elements (except for access to and from its Unit) for any period during which the Owner, Sublessee or Occupant is in violation of any provision of the Condominium Documents.

(b) Each Owner's undivided interest in and to the Common Elements shall not be conveyed, transferred, alienated or encumbered separately 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.

(c) Notwithstanding the provisions of this **Section 3.3**, no Owner, Sublessee or Occupant of a Unit or their guests or invitees shall have the right to use any Limited Common Elements not allocated to the exclusive use of their Unit.

3.5 Declarants' Rights and Easements

(a) So long as the Declarant is constructing or marketing Units for sale or lease, Declarant and its employees and agents shall have the right and an exclusive easement to construct, locate, relocate and maintain sales and/or leasing offices, construction trailers and storage areas and related facilities on the Common Elements. This shall include the right to enclose and lock portions of the Common Elements upon which these rights are being exercised. Declarant reserves the right to maintain model Units, management offices, storage areas and sales and leasing offices in any Units owned or leased by Declarant and on any portion of the Common Elements in such number, of such size and in such locations as Declarant deems appropriate. Declarant may store materials and equipment in any Parking Spaces allocated as Limited Common Elements to Units owned or leased by the Declarant or in any Parking Spaces which have not been allocated as Limited Common Elements. Declarant and its employees and agents shall have the right and an easement to install or post advertising, marketing or directional signs, other signs, flags, awnings, lights and banners on the Common Elements in connection with its marketing of Units for sale or lease or to host events on the Common Elements designed to attract prospective tenants and/or purchasers to the Condominium.

(b) So long as the Declarant is marketing Units in the Condominium for sale or lease, 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 Parking Spaces for use by prospective Unit purchasers, Declarant's employees and others engaged in sales, leasing, maintenance, construction or management activities. Declarant shall have the right to lease to an Owner, Sublessee or Occupant or any other Person any Parking Spaces which have not been allocated as a Limited Common Element.

(c) 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. 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.

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

(e) The Declarant and its employees, agents, contractors and subcontractors shall have an easement through the Common Elements and the Units for the purpose of assessing, testing (including invasive testing), inspecting and evaluating any potential construction defect or need for maintenance on the Condominium, and completing any renovations, warranty work or modifications to the Common Elements or Units which Declarant deems necessary or desirable.

(f) The Declarant and its employees, agents, contractors and subcontractors shall have the right and an easement on, over, and through the Common Elements as may be reasonably necessary for the purpose of performing the Declarant's obligations under the Condominium Act and the Condominium Documents and for the purpose of exercising Special Declarant Rights whether arising under the

Condominium Act or reserved in this Declaration. The rights granted to or reserved by the Declarant in this **Section 3.4** are in addition to any rights granted to or reserved by the Declarant elsewhere in the Condominium Documents.

(g) 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. Except as expressly set forth in this Declaration, there is no time limit within which any Development Right or Special Declarant Right must be exercised or will lapse, and there are no conditions or limitations on the exercise of any Development Right or Special Declarant Right, except for all conditions and limitations set forth in the Ground Lease.

(h) 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. The rights of the Declarant set forth in this **Section 3.4** shall be enforceable by injunction, by any other remedy available at law or in equity (including, but not limited to, the right to sue for damages) and/or by any means provided in this Declaration.

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

3.7 Easements and Rights of the Association for Pest Control . 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. The Association may cause the temporary removal of any Owner, Sublessee or Occupant for such periods and at such times as necessary for prompt, effective treatment of wood-destroying pests or organisms. The cost of the temporary relocation is to be borne by the Owner of the Unit affected. Not less than seven (7) days nor more than thirty (30) days notice of the need to temporarily vacate shall be given to the Owners, Sublessees and Occupants of the Units affected. The notice shall state: (a) the reason for the temporary relocation; (b) the date and time of the beginning of the treatment; (c) the anticipated date and time of termination of treatment; and (d) that the Owners, Sublessees or Occupants will be responsible for their own accommodations during the temporary relocation.

3.8 Common Elements Easement in Favor of Unit Owners .

(a) The Common Elements shall be subject to the following easements in favor of the Units benefited:

(1) For the installation, repair, maintenance, use, removal or replacement of pipes, ducts, heating and air conditioning systems, electrical, telephone, cable television 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.

(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; 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 Units or impair or structurally weaken the Units.

(3) For the performance of the Unit Owner's 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.

(b) The exercise of the easements created by Section 3.7(a) shall be subject to the other provisions of this Declaration and the Rules. Notwithstanding any other provision of this Declaration to the contrary, no Owner, Sublessee or Occupant or any other Person (except for the Association) shall penetrate, alter or damage any part of the Common Elements. Penetrating the perimeter building walls or any party wall between Units could damage the soundproofing of the Units, cause water intrusion into the Common Elements or the Units or damage the insulation in such walls.

3.9 Units and Limited Common Elements Easement in Favor of Association .

(a) The Units and the Limited Common Elements are hereby made subject to the following easements in favor of the Association and Declarant and their respective directors, officers, agents, employees and independent contractors:

(1) 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 and in order to verify that the provisions of the Condominium Documents are being complied with by the Unit Owners, Sublessees and Occupants of the Unit;

(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) For correction of conditions (including, without limitation, broken or leaking water pipes, broken hot water heaters or obstructed sewer lines) in one or more Units or Limited Common Elements which have damaged or if left uncorrected could damage, the Common Elements, the Limited Common Elements or other Units; and

(4) For the purpose of enabling the Declarant, 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.

(b) Except in case of emergency, the Declarant and the Association shall only enter a Unit at reasonable times and upon reasonable notice to the Unit Owner or, if the Unit is leased, to the Sublessee. In the event of an emergency, the Declarant and Association may enter a Unit without prior notice to the Unit Owner or the Sublessee, but promptly following the Declarant's or Association's entry into the Unit, the Declarant or Association, as applicable, shall notify the Unit Owner or the Sublessee of

the nature of the emergency condition which required entry without notice. The Declarant or Association, as applicable, shall be responsible for the repair of any damage to a Unit or the Common Elements caused by the Declarant's or Association's, as applicable, exercise of its rights under this Section.

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

3.11 Easements for Utilities and Maintenance . On behalf of all Owners, the Association may create and dedicate easements over the Common Elements: (a) for the benefit of all service providers for the installation, repair, replacement and maintenance of sanitary sewers, water, electric, gas and telephone lines and facilities, heating and air-conditioning facilities, cable, telephone or master television antenna or satellite lines or cables, and drainage facilities, and for ingress to and egress from the Condominium in connection therewith, and (b) for ingress to and egress from the Condominium for the benefit of all municipal, state and federal vehicles, including, without limitation, all emergency and service type vehicles as may be required from time to time to service the Condominium and the Owners, Sublessees and Occupants including, without limitation, for U.S. Mail distribution and collection and private or municipal refuse collection, without the joinder or consent of any First Mortgagee or other Person.

ARTICLE 4 **USE AND OCCUPANCY RESTRICTIONS**

4.1 In General . So long as the Condominium remains annexed into the Timber Sky Association, all Units shall be subject to the use and occupancy restrictions set forth in *ARTICLE 8* of the Timber Sky Declaration in addition to the use and occupancy restrictions set forth in this *ARTICLE 4*. The Timber Sky Association shall have the right and power to adopt rules and regulations governing and further restricting the use and occupancy of the Condominium. In the event of any conflict between the Condominium use and occupancy restrictions, or Condominium rules and regulations vis-a-vis any Timber Sky use and occupancy restrictions, or Timber Sky Association rules and regulations the more restrictive provision shall control. In the event the Condominium is de-annexed from the Timber Sky Association, this Section 4.1 shall have no further force or effect from and after the date of de-annexation.

4.2 Residential Use . All Units and Residences shall be used, improved and devoted exclusively to residential use. No trade or business may be conducted on any Unit or in or from any Residence, except that the Owner or Occupant of a Residence may conduct a business activity within the Residence so long as: (1) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Residence; (2) the business activity is a legal activity and conforms to all applicable zoning ordinances or requirements for the Land; (3) the business activity does not involve persons coming to the Residence to purchase goods or services or the door-to-door solicitation of Owners or Occupants in Timber Sky; (4) the use of the Residence for trade or business in no way destroys or is incompatible with the residential character of the Residence or the surrounding neighborhood; (5) the trade or business is conducted only inside the Residence, and does not involve the viewing, purchasing or taking delivery of goods or merchandise at, to, from or in any Residence; (6) the trade or business is conducted by an Occupant of the Residence with no employee working in or from such Residence who is not an Occupant thereof; (7) the volume of vehicular or pedestrian traffic or parking generated by such trade or business does not result in congestion or be in excess of what is customary in a residential neighborhood; (8) the trade or business does not utilize flammable liquids or hazardous materials in quantities not customary to a residential use; and (9) the use of the Residence for a trade or business does not violate any other provision of the Condominium Documents.

The terms "business" and "trade" as used in this Section shall be construed to have ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether: (1) such activity is engaged in full or part time; (2) such activity is intended or does generate a profit; or (3) a license is required for such activity. Subleases shall not be considered a trade or business within the meaning of this Section.

4.3 Improvements and Alterations

(a) No Owner, Sublessee, Occupant or other Person shall construct or install any Improvements on the Common Elements or alter, modify or remove any Common Elements without the prior written approval of Habitat (during the Period of Habitat Oversight) and the Board of Directors (after the Period of Habitat Oversight) and any approvals required under the Timber Sky Declaration.

(b) No Owner, Sublessee or Occupant shall make any additions, alterations or improvements to its Unit (except for interior painting and decorating of a Unit that does not impair the structure integrity or mechanical systems of the Unit), unless prior to the commencement of each addition, alteration or improvement, the Owner, Sublessee or Occupant receives the prior written approval of Habitat (during the Period of Habitat Oversight) and the Board of Directors (after the Period of Habitat Oversight) and any additional approvals required under the Timber Sky Declaration. All additions, alterations or improvements to a Unit must be performed by contractors licensed by the Arizona Registrar of Contractors. Any Owner making any additions, alterations or improvements within his Unit shall be responsible for any damage to other Units and to the Common Elements which results from any such alterations, additions or improvements.

(c) No Owner, Sublessee or Occupant shall overload the electric wiring in the Units, or operate machines, appliances, accessories or equipment in such manner as to cause, in the judgment of the Board of Directors, an unreasonable disturbance to others or connect any machines, appliances, accessories or equipment to the heating or plumbing system, without the prior consent of the Board of Directors, acting in accord with the direction of the Board of Directors.

(d) Habitat (during the Period of Habitat Oversight) and the Board of Directors (after the Period of Habitat Oversight) may condition any proposed additions, alterations or improvements to a Unit or the Common Elements in any reasonable manner, including, without limitation: (1) retaining approval rights of the contractor to perform the work; (2) restricting the time during which such work may be performed or the length of time during which the work must be completed; (3) requiring the placement of a security deposit; (4) receipt of plans and specifications prepared and sealed by a professional engineer or architect duly licensed by the State of Arizona; and (5) requiring that the Owner requesting the change obtain, prior to commencing any work, and maintain until completion of such work, comprehensive general liability insurance in such amounts as may be required by Habitat (during the Period of Habitat Oversight) and the Board of Directors (after the Period of Habitat Oversight).

(e) Proposed additions, alterations and improvements to a Unit or the Common Elements shall be made in compliance with all laws, rules, ordinances and regulations of all governmental authorities having jurisdiction, may only be made once all required permits have been obtained and must be in compliance with any conditions imposed by the Association with respect to design, structural integrity, sound attenuation, water-proofing, construction details, lien protection or otherwise. The Owner of a Unit to which additions, alterations or improvements are made shall defend, indemnify and hold harmless the Association and its directors, officers, employees and agents, the Declarant and all other Owners, Sublessees or Occupants for, from and against any and all liability, loss or damage resulting from such

additions, alterations or improvements and shall be solely responsible for the maintenance, repair and insurance of such additions, alterations and improvements.

(f) In addition to all other remedies provided in the Condominium Documents or at law or in equity, the Habitat (during the Period of Habitat Oversight) and the Board of Directors (after the Period of Habitat Oversight) shall have the right to (1) stop any work that is not in compliance with the terms contained in this **Section 4.3** or applicable law, (2) deny access to contractors performing such work, and (3) levy reasonable monetary penalties against the Owner or Occupant who caused such work to be performed. Neither Habitat, Declarant, the Association nor any of their respective officers, directors, employees, agents, contractors, consultants or attorneys shall be liable to any Owner or any other Person by reason of mistake in judgment, failure to point out or correct deficiencies in any plans or other submissions, negligence, or any other misfeasance, malfeasance or nonfeasance arising out of or in connection with the approval or disapproval of any plans or submissions.

4.4 Trash Containers and Collection . No garbage or trash shall be placed or kept on the Common Elements except in covered containers of a type, size and style, 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, 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 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. All trash, garbage or rubbish must be kept in sanitary containers and must be bagged and deposited in designated trash chutes or receptacles. No rubbish, trash or garbage shall be kept on any Unit. The Rules may contain provisions governing the disposal of trash, garbage and rubbish in the Condominium. The Association shall endeavor to provide Unit Owners and Occupants with an opportunity for recycling and shall not prohibit recycling.

4.5 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 uses permitted by this Declaration, and except that which Declarant or the Association may require for the construction, operation and maintenance of the Common Elements.

4.6 Animals .

(a) Except as expressly permitted by this Section, no animals, birds, reptiles, fish, fowl, poultry or livestock shall be maintained or kept in any Unit or on any other portion of the Condominium. For purposes of this Section, a “**Permitted Pet**” shall mean a dog, cat, fish or small bird of a variety commonly kept as a household pet. Permitted Pets may be kept in a Unit if they are kept, bred or raised solely as domestic pets and not for commercial purposes. Permitted Pets may include an emotional support animal or service animal as may be allowed under the Americans with Disabilities Act. Not more than a total of two (2) dogs or two (2) domestic cats, or a combination thereof (but not to exceed two (2) total) shall be kept or maintained in a Unit.

(b) No Permitted Pet shall be allowed to make an unreasonable amount of noise, cause an odor which is detectable outside the Unit, or be an annoyance to a person of ordinary sensibilities. No Permitted Pet shall be allowed to run loose on any part of the Common Elements. All dogs shall be kept on a leash when outside a Unit and all dogs shall be directly under the control of the Owner, Sublessee or Occupant at all times. Any Person bringing a Permitted Pet onto the Common Elements shall immediately remove any feces or urine deposited on the Common Elements by the Permitted Pet, and such Person shall be liable to the Association for the cost of any cleaning of the Common Elements or the repair of any damage to the Common Elements caused or required by the Permitted Pet. Any Unit where a Permitted Pet is kept or maintained shall at all times be kept in a neat and clean condition. No structure for the care,

housing, confinement, or training of any Permitted Pet shall be maintained on any portion of the Common Elements or in any Unit so as to be visible from the exterior of the Unit or any other Unit. Each Owner, Sublessee, Occupant or other Person bringing or keeping a Permitted Pet within the Condominium shall be absolutely liable to other Owners, Sublessees, and Occupants and their invitees for any damage to Persons or Condominium Property caused by such Permitted Pet.

(c) Upon the written request of any Owner, the Board of Directors shall determine whether, for the purposes of this Section, a Permitted Pet makes an unreasonable amount of noise, causes an odor which is detectable outside the Unit or is an annoyance to a person of ordinary sensibilities. Notwithstanding any other provision of this Section, no Permitted Pet which the Board of Directors determines, in its sole discretion, is of a breed which has a propensity to attack persons or other animals or otherwise constitutes a threat to the safety of persons or other animals shall be kept in a Unit or on any other portion of the Condominium. Any Permitted Pet which has bitten or attacked a person or other animal or any Permitted Pet which the Board of Directors, in its sole discretion, determines has a propensity to attack persons or other animals or otherwise constitutes a threat to the safety of persons or other animals in the Condominium Property or which because of incessant barking or other behavior constitutes an unreasonable annoyance or nuisance to Owners, Sublessees or Occupants or their guests shall be removed from the Condominium by the owner of the Permitted Pet within five (5) days after written demand for removal of the Permitted Pet is given to the owner by the Board of Directors. Each Owner and Occupant acknowledges and agrees that the Association must report any instance of a Permitted Pet or any other animal attacking or biting any person or other animal to the appropriate governmental agencies.

4.7 Diseases and Insects . No Unit Owner shall permit any condition to exist upon the Condominium, which could induce, breed or harbor infectious plant or animal diseases or noxious insects. Each Unit Owner shall perform such pest control activities in his Unit as may be necessary to prevent insects, rodents, and other pests from being present in the Unit.

4.8 Parking Spaces; Motor Vehicles .

(a) As of the date of this Declaration, all Parking Spaces are Common Elements and none have been allocated as Limited Common Elements to particular Units. During the Period of Declarant Control, Declarant may allocate Parking Spaces as Limited Common Elements as set forth in Section 2.8(d).

(b) No Parking Spaces may be used by any Person who is not an Owner, Sublessee, Occupant, or Invitee.

(c) As used in this Section, the term “**Authorized Vehicles**” means motorized land vehicles designed and used primarily for non-commercial passenger transport, such as automobiles, sport utility vehicles, passenger vans designed to accommodate ten (10) or fewer people, two-wheel motorcycles, electric bicycles, and pickup trucks having a manufacturer's rating or payload capacity of one ton or less, all of which shall not exceed (7) feet in height. Authorized Vehicles may be parked only in Parking Spaces. No Authorized Vehicle of an Owner, Sublessee or Occupant of a Unit shall be parked in a Parking Space other than a Parking Space allocated to such Unit as a Limited Common Element. No vehicles of any kind other than Authorized Vehicles shall be parked, stored or kept on any other part of the Common Elements.

(d) No Authorized Vehicle shall be parked in a Parking Space if such vehicle does not completely and clearly fit within the painted parking lines designated for the Parking Space or otherwise physically fit wholly in the Parking Space. Parking Spaces shall be used solely for the parking of Authorized Vehicles and shall not be used for storage. No maintenance, repair, restoration or construction of any Authorized Vehicle should be conducted in the Parking Spaces or any other part of the Common Elements.

(e) No mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, recreational vehicle, boat, boat trailer, or other similar equipment or vehicle may be parked, kept, maintained, constructed, reconstructed, or repaired on any part of the Condominium.

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

4.9 Signs . Except for signs which under applicable law the Association may not prohibit, no signs shall be permitted on the exterior of a Unit or in the interior of a Unit if the signs would be visible from the exterior of the Unit, or on any other portion of the Condominium without the prior written approval of the Board of Directors.

4.10 Lawful Use . No immoral, improper, offensive, or unlawful use shall be made of any part of the Condominium. All 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.

4.11 Nuisances and Offensive Activity . No nuisance shall be permitted to exist or operate upon the Condominium, and no activity shall be conducted upon the Condominium which is offensive or detrimental to any portion of the Condominium or to any Owner, Sublessee or Occupant or is an annoyance to any Owner, Sublessee or Occupant or which interferes with the quiet enjoyment of a Unit by the Owner, Sublessee or Occupant thereof, including any criminal or illegal activity by any Owner, Sublessee or Occupant or their guests. Except as part of a security system, no exterior speakers, horns, whistles, bells or other sound devices shall be located, used or placed on the Condominium without the prior written approval of the Board of Directors.

4.12 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. The exterior side of drapes, blinds, shades, screens or other window coverings must be white or beige. No enclosures, drapes, blinds, shades, screens or other items affecting the exterior appearance of a Unit shall be constructed or installed without the prior written consent of the Board of Directors. The Board of Directors may establish a "Condominium Standard" window treatment plan to ensure uniformity that will be complied with by all Owners. No tinting or film may be installed on any windows of a Unit without the prior written approval of the Board of Directors.

4.13 Outdoor Spaces within Units . No furniture, furnishings, umbrellas, pots, plants or other improvements may be kept and maintained on any outdoor space within any Unit except for a customary amount of furniture, furnishings, umbrellas, pots, plants and other improvements that are in good working order, are kept in a clean and neat condition, and otherwise comply with any Rules. No outdoor space within any Unit shall be used as a storage area for items or materials.

4.14 Unit Sales, Subleases and Occupancy Restrictions.

(a) Sales. To provide affordable housing and to create homeownership opportunities for the workforce of the community who otherwise would be denied such opportunities because of limited

financial resources, Units shall only be sold to Qualified Homebuyers, or to Habitat or City for the purposes of providing affordable housing.

(b) **Subleases.** To provide affordable housing and to create homeownership opportunities for the workforce of the community who otherwise would be denied such opportunities because of limited financial resources, (1) no Unit may be leased in part or whole by a Unit Owner, pursuant to a Sublease or otherwise and (2) no Persons, other than the Unit Owners and their children and other immediate family members or dependents, may occupy a Unit, (collectively, the “**Lease and Occupancy Restrictions**”), unless Habitat (during the Period of Habitat Oversight) and the City in their sole and absolute discretion, approve a Sublease (a “**Sublease Approval**”). No Sublease shall be approved for a period of longer than 60 days unless the Occupant has an income (as reported by such household) equal to or less than one hundred percent (100%) of Area Median Income.

(c) A Sublease Approval, is contingent upon the following: (1) Subleases must be in writing and shall state that any violation of this Declaration or the Rules by the Sublessee or the other Occupants shall be a default under the Sublease; (2) there shall be no further subleasing or assignment of a Sublease; (3) at least ten (10) days before executing a Sublease, the Unit Owner shall provide Habitat and the City with the following information: (i) the commencement date and expiration date of the lease term; (ii) the name and contact information for any adults occupying the Unit during the lease term; and (iii) a description and license plate numbers of the Sublessee’s vehicles; (4) a Unit Owner who enters into a Sublease must provide the Sublessee with copies of this Declaration and the Rules; (5) a Unit Owner shall be liable for any violation of this Declaration or the Rules by the Sublessees or other Occupants of the Unit and their Invitees and, in the event of any such violation, the Unit Owner shall immediately take all necessary steps to correct any such violations or, if demanded by Habitat or the City, immediately take all necessary action (including, but not limited to, legal action) to remove from the Unit the s and all Occupants residing in the Unit pursuant to the lease; and (6) any other terms and conditions required by Habitat (during the Period of Habitat Oversight) and the City.

(d) The provisions of Section 4.14(b) shall not apply to the leasing or subleasing of a Unit by the Declarant or Ground Lessor

4.15 Time Sharing . No Unit shall be divided or conveyed on a time increment basis or measurable chronological periods or pursuant to any agreement, plan, program or arrangement under which the right to use, occupy or possess a Unit, or any portion thereof, rotates among various Persons on a periodically recurring basis for value exchanged, whether monetary or like-kind use privileges, according to a fixed or floating interval or period of time one hundred eighty (180) consecutive calendar days or less.

4.16 Hazardous Materials . No Owner, Sublessee or Occupant shall use or keep in a Unit or any Limited Common Element allocated to the Unit any kerosene, gasoline, or inflammable or combustible fluid or material or other hazardous materials, other than those required, in limited quantities, for normal cleaning of the Unit and the Limited Common Element.

4.17 Ground Lease Restrictions . Each Unit shall be subject to the use, occupancy and all other restrictions set forth in the Ground Lease as well as such other restrictions set forth in *ARTICLE 14* of this Declaration. In the event of any conflict or inconsistency between *ARTICLE 4* of this Declaration and any provision of the Ground Lease, the more restrictive provision shall control.

4.18 The Association . The Association shall not have the power or authority to amend this *ARTICLE 4* without the written consent of Habitat (during the Period of Habitat Oversight) and the City.

ARTICLE 5
MAINTENANCE AND REPAIR OF COMMON ELEMENTS AND UNITS

5.1 Duties of the Association

(a) Maintenance. The Association shall maintain, repair and replace all Common Elements, except for (1) the Limited Common Elements which the Unit Owners are obligated to maintain, repair and replace pursuant to **Section 5.2**, (2) any part of the Common Elements to be maintained, repaired and replaced by the City pursuant to the Driveway Maintenance Agreement, (3) any part of the Common Elements to be maintained, repaired and replaced by the Timber Sky Association pursuant to an agreement with the Timber Sky Association, and (4) any part of the Common Elements to be maintained as otherwise agreed to by any other governmental body or agency. The City of Flagstaff has agreed to provide scheduled maintenance and striping of the driveway and parking (“the Driveway”) pursuant to the terms and conditions set forth in a Driveway Maintenance Agreement. The Association shall be responsible for routine maintenance and all other maintenance of the driveway and parking spaces in the Condominium, including but not limited to snow plowing, curb and sidewalk repairs, and pothole repairs.

(b) When Maintenance is Required. Habitat (during the Period of Habitat Oversight) and the Board of Directors (after the Period of Habitat Oversight) shall be the sole judge as to the appropriate maintenance, repair, and replacement of all Common Elements to be performed by the Association, but all Common Elements shall be maintained in good condition and repair at all times. No Owner, Sublessee, Occupant or other Person shall obstruct or interfere with the maintenance, repair and replacement of the Common Elements. Except as may be provided in the Ground Lease, the Driveway Maintenance Agreement (while City is Ground Lessor), or any future agreement with the Ground Lessor, the Ground Lessor is not responsible for any maintenance.

(c) Notice of Water Leaks. Owners, Sublessees and Occupants shall immediately notify Habitat and the Association of any broken or leaking water pipes, toilets, clothes washers or hot water heaters and any water intrusion into the Units from the roofs or windows, and any Owner, Sublessee or Occupant who fails to provide such notification shall be liable to the Habitat and Association and the other Owners, Sublessees and Occupants for any damages that may be caused by such failure.

(d) Easement for Plumbing. In the event any plumbing pipes or fixtures serving a Unit are located within the boundaries of another Unit, then the Owner of the Unit served shall have an easement over, upon and through such other Unit for the maintenance, repair and replacement of such plumbing pipes and fixtures; provided, however, that except in case of emergency, the Owner of the Unit served shall give the Owner or Sublessee of the other Unit at least forty-eight hours’ notice prior to entering the other Unit.

(e) Inspections by Association. The Association shall (1) regularly inspect the parts of the Condominium that the Association is obligated to maintain, and which are visible and accessible without having to first remove building components or conduct invasive testing, for the existence of mold, mildew, and/or water intrusion (except when the water intrusion is part of the normal functioning of improvements and appliances such as showers, sinks, dishwashers, and other similar appliances and improvements) and/or water damage; (2) upon discovery, immediately repair in a good and workmanlike condition the source of any water intrusion in the parts of the Condominium that the Association is obligated to maintain; (3) remediate or replace, in accordance with the current industry accepted methods, any building material located in the parts of the Condominium that the Association is obligated to maintain that has absorbed water or moisture as a result of water intrusion; and (4) promptly and regularly remediate in accordance with current industry-accepted methods all mold and/or mildew discovered in the parts of the Condominium that the Association is obligated to maintain.

5.2 Duties of Unit Owners .

(a) Maintenance. Each Owner shall maintain, repair and replace, at his own expense, all portions of the Owner's Unit in a good, clean and sanitary condition. In addition, each Owner shall be responsible for the maintenance, repair and replacement of the Limited Common Elements allocated to his Unit, if any.

(b) Inspections by Owners. Each Unit Owner shall (1) regularly inspect the Owner's Unit and any part of the Common Elements that the Owner is obligated to maintain (if any), and which are visible and accessible without having to first remove building components or conduct invasive testing, for the existence of mold, mildew, and/or water intrusion (except when the water intrusion is part of the normal functioning of improvements and appliances such as showers, sinks, dishwashers, and other similar appliances and improvements) and/or water damage; (2) upon discovery, immediately repair in a good and workmanlike condition the source of any water intrusion in the Owner's Unit and any part of the Common Elements that the Owner is obligated to maintain (if any); (3) remediate or replace, in accordance with the current industry accepted methods, any building material located in the Owner's Unit and any part of the Common Elements that the Owner is obligated to maintain (if any) that has absorbed water or moisture as a result of water intrusion; and (4) promptly and regularly remediate in accordance with current industry-accepted methods all mold and/or mildew discovered in the Owner's Unit and any part of the Common Elements that the Owner is obligated to maintain (if any).

5.3 Repair or Restoration Necessitated by Owner . Each Owner shall be liable to the Association for any damage to the Common Elements or the Improvements, landscaping or equipment thereon which results from the negligence or willful misconduct of the Owner or of the Owner's Sublessees, Occupants or Invitees or from any violation of this Declaration or the Rules by an Owner or by the Owner's Sublessees, Occupants or Invitees. The cost to the Association of any such repair, maintenance or replacements required by such act of an Owner or of the Owner's Sublessees, Occupants or Invitees shall be assessed against the Owner as provided in Subsection 7.2.4. In addition, each Owner shall be liable to the other Unit Owners for any damage caused to such Owner's Unit which results from the negligence or willful misconduct of the Owner or the Owner's Sublessees, Occupants or Invitees.

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

5.5 Community Garden . Habitat (during the Period of Habitat Oversight) or Association may establish a community garden or other public amenity within various portions of the Common Elements and may grant a revocable license(s) to the public to have access to and use the community garden or public amenity, subject to local land use regulations. Habitat (during the Period of Habitat Oversight) or the Association may promulgate rules and regulations for the management and use of the community garden or public amenity, including, without limitation, when the same may be used and how any produce from such garden may be allocated. The Association and each Unit Owner, Sublessee, Occupant, and Invitee will be subject to such rules and regulations. Each Unit Owner, by accepting title to its Unit, acknowledges and agrees that the community garden or public amenity may be established and that members of the public may have the right to use the community garden or public amenity, and that no Unit Owner, may prevent, restrict, or impede the operation or use of the community garden. Association reserves the right to revoke any such revocable license granted by Habitat or Association to the public; provided, however, that the Association

as a condition of such revocation reimburses the City for any amounts previously provided by the City for such community garden or public amenity.

5.6 Habitat Maintenance Obligations; Association’s Duty to Take Over Habitat Maintenance Obligations . Notwithstanding anything to the contrary contained herein, and until Habitat provides a written notice to the Association electing to stop the Habitat Maintenance Obligations (defined below) (the “**Association Takeover Notice**”), Habitat agrees to be responsible, at its expense, for (1) repairing and replacing, as and when determined by Habitat in its sole discretion, the roof, any solar panels and solar equipment, and the outside siding (including exterior paint) of each Residence, to the extent repair or replacement arises from ordinary wear and tear and (2) replacing any appliances that are unable to be repaired in a commercially reasonable manner as determined by Habitat in its sole discretion, to the extent arising from ordinary wear and tear (collectively, the “**Habitat Maintenance Obligations**”). For the avoidance of doubt, each Owner will be required to repair all appliances to the extent Habitat determines, in its sole discretion, it is commercially reasonable to do so. Notwithstanding the provisions of this Section 5.6, if any Habitat Maintenance Obligations are caused other than through ordinary wear and tear, including, without limitation, due to the negligence or willful misconduct of an Owner or its residents, guests, invitees, or contractors, then such Owner will be liable for all costs and expenses incurred by Habitat (if it elects to perform) to perform the applicable Habitat Maintenance Obligations. Notwithstanding the foregoing or anything to the contrary contained herein, if at any time Habitat provides an Association Takeover Notice to the Association (which may be given by Habitat in its sole discretion), then from and after the date the Association receives such Association Takeover Notice the Association will be obligated to perform the Habitat Maintenance Obligations that arise or accrue from and after the date of the Association Takeover Notice. From and after the date Habitat sends an Association Takeover Notice to the Association, the Association shall levy a separate assessment against each Owner, which will be treated as an Assessment for all purposes hereunder and paid at the same time as each Regular Assessment, for the estimated costs and expenses to be incurred by the Association in any given year to perform the Habitat Maintenance Obligations (the “**Additional Maintenance Assessment**”). The amount of the Additional Maintenance Assessment will be determined, in good faith, by the Board, after the preparation of a budget containing the estimated costs and expenses.

ARTICLE 6 **THE ASSOCIATION**

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

6.2 Directors and Officers . 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, and such directors and officers do not have to be Unit Owners. The initial directors and officers of the Association shall be designated in the Articles, and such designation shall constitute the appointment of such directors and officers by the Declarant. When the Period of Declarant Control expires, the Unit Owners

shall elect the Board of Directors which shall consist of at least three but not more than five 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. For the limited purpose of determining whether a natural person is a Unit Owner and therefore eligible to serve on the Board of Directors, the spouse of a natural person who is a Unit Owner and any member, manager, shareholder, partner, director, officer or other authorized representative of a corporation, general partnership, limited partnership, limited liability company, limited liability partnership or other legal entity that is a Unit Owner shall be considered a Unit Owner. 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 the expiration of the Period of Declarant Control, and in that event the Declarant may require, for the duration of the Period of Declarant Control, that specified actions of the Association or the Board of Directors, as described in a Recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

6.3 Rules . The Board of Directors, from time to time and subject to the provisions of this Declaration and the Condominium Act, may adopt, amend, and repeal rules and regulations. The Rules may, among other things, restrict and govern the use of the Units and the Common Elements.

6.4 Identity of Members . Each Unit Owner shall be a Member of the Association. The membership of the Association at all times shall consist exclusively of the Unit Owners. Membership in the Association shall be mandatory. An Owner shall automatically, upon becoming an 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. The Ground Lessor is not a Member of the Association unless it acquires fee title to a Residence.

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

ARTICLE 7

ASSESSMENTS

7.1 Preparation of Budget.

(a) 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: (1) 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; (2) the cost of wages, materials, insurance premiums, services, supplies and other expenses required for the administration, operation, maintenance and repair of the Condominium; (3) the amount required to render to the Unit Owners all services required to be rendered by the Association under the Condominium Documents; and (4) such amounts as may be necessary to provide reserves for contingencies and replacements. The budget shall separately reflect any Limited Common Element Expenses to be assessed against the benefited Units. 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.

(b) Within fifteen (15) days after the adoption of the budget for each fiscal year of the Association (except for the first fiscal year), the Board of Directors shall send to each Owner a summary of the budget and a statement of the amount of the Regular Assessment assessed against the Owner's Unit in accordance with **Section 7.2**. The failure or delay of the Board of Directors to adopt a budget for any fiscal year or to send each Owner a summary of the budget or a notice of the amount of the Regular Assessment for any fiscal year as required by this Subsection shall not constitute a waiver or release in any manner of an Owner's obligation to pay his allocable share of the Common Expenses as provided in **Section 7.2**, and each Owner shall continue to pay the Regular Assessment for his Unit as established for the previous fiscal year until notice of the Regular Assessment for the new fiscal year has been given to the Owners by the Board of Directors.

7.2 Regular Assessment .

(a) 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 this Declaration) shall be assessed against each Unit in proportion to the Unit's Common Expense Liability as set forth in **Section 2.6**. 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 Regular Assessment for that fiscal year and the revised Regular Assessment shall commence on the date designated by the Board of Directors.

(b) The Regular Assessments shall commence as to all Units on the day that the first Unit is conveyed to a Purchaser. The first Regular 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 Regular Assessments or Special Assessments be paid in installments.

(c) Except as otherwise expressly provided for in **Section 5.1** or elsewhere 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 **Section 7.2(a)**.

(d) If any Common Expense is caused by the misconduct of any Owner, the Association shall assess that Common Expense exclusively against such Owner's Unit. 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. If the use of any Unit increases the cost to the Association of the insurance maintained by the Association pursuant to *ARTICLE 8*, the increased cost shall be assessed solely to such Unit.

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

(f) The Association shall acquire and pay for the following: (1) water, sewer, electric, and other utility service for the Common Elements; (2) refuse and rubbish collection for the Common Elements and the Units, including an opportunity for recycling; and (3) water and sewer service for the

Units. Each Unit will be separately metered for electric service, and all charges for electric service to a Unit shall be billed directly to the Unit Owner by the electric company and shall be paid by the Unit Owner. The Units are not separately metered for water service.

7.3 Special Assessments . The Association may levy a Special Assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement of the Common Elements, including fixtures and personal property related thereto, or for any other lawful Association purpose, provided that any Special Assessment (other than a Special Assessment levied pursuant to **Section 9.1** as a result of the damage or destruction of all or part of the Common Elements) shall have first been approved by 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 Owners.

7.4 Purposes for which Association's Funds May be Used. The Association may use the funds and property collected and received by the Association (including, but not limited to, all Assessments, fees, loan proceeds, surplus funds and all funds and property received from any other source) for the purpose of: (a) discharging and performing the Association's duties and obligations under the Condominium Documents or applicable law; (b) exercising the rights and powers granted to the Association by the Condominium Documents or applicable law; (c) providing or promoting activities and services the Board of Directors deems appropriate, necessary or desirable to foster or promote the common good and general welfare of the Condominium and the Owners, Sublessees and Occupants; (d) contracting for services (including, without limitation, recycling, trash collection or cable television) to be provided to Owners, Sublessees and Occupants; and (e) taking such other action as the Board of Directors deems necessary, appropriate or desirable for the management and administration of the Association or the benefit of the Association or the Condominium.

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

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

(b) Subject to A.R.S. §§ 33-1202 and 33-1256 and other applicable law, the Association shall have a Common Expense Lien on each Unit for any Assessment levied against that Unit from the time the Assessment becomes due. The Association shall have the right, at its option, to enforce collection of any delinquent Assessments and any other sums due to the Association in any manner allowed by law including, but not limited to: (1) 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 Common Expense Lien securing any such delinquent amounts; or (2) bringing an action to foreclose the Common Expense Lien in the manner provided by law for the foreclosure of a realty mortgage. The Association's Common Expense Lien may be foreclosed in the same manner as a mortgage on real estate but only if the Unit Owner has been and remains delinquent in payment of Assessments for a period of one year or in the amount of \$1,200 or more, whichever occurs first, as determine on the date the foreclosure action is filed. The Association's Board of Directors shall exercise reasonable efforts to community with the Unit Owner and offer a reasonable payment plan before filing a foreclosure action. If an Assessment is payable in installments, the full amount of the Assessment is a lien from the time the first installment of the Assessment becomes due. Notwithstanding any provision in the Condominium Documents, Unit Owner Expenses are

not enforceable as Common Expense Liens under this Section. The Association has a lien for Unit Owner Expenses after the entry of a judgment in a civil suit for those Unit Owner Expenses from a court of competent jurisdiction and the Recording of that judgment as otherwise provided by law. The Association's judgment lien for Unit Owner Expenses may not be foreclosed and is effective only on conveyance of any interest in the real property.

(c) Subject to A.R.S. §§ 33-1202 and 33-1256 and other applicable law, The Common Expense Lien shall have priority over all liens, other interests and encumbrances except for: (1) liens and encumbrances Recorded before the recording of this Declaration; (2) liens for real estate taxes and other governmental assessments and charges; and (3) the lien of any First Mortgage or seller's interest in a first contract for sale Recorded prior to the Common Expense Lien or a Recorded first deed of trust on the Unit. Any First Mortgagee or any other Person acquiring title or coming into possession of a Unit through foreclosure of the First Mortgage, purchase at a foreclosure sale or trustee's 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 and charges against the Unit which became payable prior to the acquisition of such Unit by the First Mortgagee or other Person. Any assessments and charges against the Unit which accrue prior to such sale or transfer shall remain the obligation of the defaulting Unit Owner. The Association may not transfer ownership or control of debt for Common Expense Liens or Unit Owner Expenses.

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

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

7.8 Initial Working Capital Fund. To provide the Association with initial operating funds, each Purchaser shall pay to the Association, immediately upon becoming the Owner of the Unit, a sum equal to 1/6th of the annual Regular Assessment for the Unit (unless Habitat (during the Habitat Oversight Period) or the Board (after the Habitat Oversight Period) sets a different amount) (the "**Working Capital Fee**"). The Working Capital Fee shall be non-refundable and shall not be considered as an advance payment of any Assessments levied by the Association pursuant to this Declaration. Notwithstanding the foregoing, Habitat and the City shall be exempt from the payment of any Working Capital Fee. The amounts paid to the Association pursuant to this Section may be used for any purpose for which Association funds may be used pursuant to **Section 7.6**.

7.9 Reserve Contribution.

(a) **Initial Contribution.** To provide for additional reserves of the Association, each Purchaser shall pay to the Association, immediately upon becoming the Owner of the Unit, a contribution (the "**Reserve Contribution**") to the reserves to be established pursuant to **Section 7.11**.

(b) No Reserve Contribution shall be payable with respect to: (1) the transfer or conveyance of a Unit by devise or intestate succession; (2) a transfer or conveyance of a Unit to a family trust, family limited partnership or other Person for bona fide estate planning purposes; (3) a transfer or conveyance of a Unit to a corporation, partnership or other entity in which the grantor owns a majority interest unless the Board determines, in its sole discretion, that a material purpose of the transfer or conveyance was to avoid payment of the Reserve Contribution in which event a Reserve Contribution shall be payable with respect to such transfer or conveyance; (4) the conveyance of a Unit by a trustee's deed following a trustee's sale under a deed of trust; or (5) a conveyance of a Unit as a result of the foreclosure of a realty mortgage or the forfeiture or foreclosure of a purchaser's interest under a Recorded contract for the conveyance of real property subject to A.R.S. § 33-741, et seq.

(c) Nonrefundable. All Reserve Contributions shall be deposited in the Reserve Account established pursuant to Section 7.11. Reserve Contributions shall be non-refundable and shall not be considered as an advance payment of Assessments.

7.10 Transfer Fee . Each Purchaser shall pay to the Association, or, at the option of the Association, to the Association's managing agent, immediately upon becoming the Owner of the Unit a transfer fee in the amount set from time to time by Habitat (during the Habitat Oversight Period) or the Board (after the Habitat Oversight Period) 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.

7.11 Reserves

(a) Reserves Account; Reserve Study. Habitat (during the Habitat Oversight Period) and the Board (after the Habitat Oversight Period) 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 7.9, the Initial Working Capital Fund payments paid pursuant to Section 7.8 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. The Board of Directors periodically shall obtain a reserve study, which study shall at a minimum include (1) identification of the major components of the Common Elements which the Association is obligated to repair, replace, restore or maintain which, as of the date of the study, have a remaining useful life of less than thirty (30) years; (2) identification of the probable remaining useful life of the identified major components as of the date of the study; (3) an estimate of the cost of repair, replacement, restoration, or maintenance of the identified major components during and at the end of their useful life; (4) an estimate of the total annual contribution necessary to defray the cost to repair, replace, restore, or maintain the identified major components during and at the end of their useful life, after subtracting total reserve funds as of the date of the study.

(b) Accounting. 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 8

INSURANCE

8.1 Scope of Coverage.

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

(1) A special form policy of property insurance with sprinkler leakage, debris removal and water damage endorsements, insuring the Common Elements. Such property insurance shall cover the interests of the Association, the Board of Directors and all Unit Owners and their mortgagees, as their interests may appear (subject, however, to the loss payment adjustment provisions in favor of an Insurance Trustee), in an amount equal to one hundred percent (100%) of the then current replacement cost of the Common Elements (exclusive of the land, excavations, foundations and other items normally excluded from such coverage), without deduction for depreciation. Such policy must be consistent with state and local insurance laws and at least equal to such coverage as is commonly required by prudent institutional mortgage investors in the area in which the Condominium is located. The Board of Directors shall also obtain and maintain such coverage on all personal property owned by the Association.

(2) Broad form comprehensive general liability insurance, for a limit to be determined by the Board, but not less than \$1,000,000 for any single occurrence and \$2,000,000 in aggregate for the policy term insuring the Association, the Board of Directors, the manager or management agent and their respective agents and employees, and the Unit Owners from liability arising out of or in connection with the use, ownership, maintenance or operation of the Common Elements. Such insurance shall cover all occurrences commonly insured against resulting in death, bodily injury, property damage and/or personal and advertising injury. Such policy shall include (i) a cross liability clause to cover liabilities of the Owners as a group to an Owner; (ii) medical payments insurance; (iii) blanket contractual liability coverage; and (iv) contingent liability coverage arising out of the use of hired and nonowned automobiles.

(3) Worker's compensation insurance to the extent necessary to meet the requirements of the laws of Arizona and, if the Association has any employees, a policy of employer's liability insurance with coverage limits determined by the Board of Directors, but not less than the limits required for excess coverage under the Umbrella Liability Policy.

(4) Directors' and officers' liability insurance in an amount not less than \$1,000,000 covering all the directors and officers of the Association and naming the managing agent of the Association as an additional insured.

(5) 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 Unit Owners.

(6) 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, except for claims against Unit Owners by members of their households for employee dishonesty or forgery.

(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) 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.

(ix) An “Agreed Amount Endorsement” and “Inflation Guard Endorsement” if such endorsements are available and are commonly required by prudent institutional mortgage investors in the area in which the Condominium is located.

(7) 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.

(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.

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

(d) Notwithstanding any of the other provisions of this *ARTICLE 8* to the contrary, there may be named as an insured, on behalf of the Association, the Association's authorized representative, including any trustee with whom the Association may enter into any Insurance Trust Agreement or any successor to such trustee who shall have exclusive authority to negotiate losses under any policy providing such property or liability insurance and to perform such other functions as are necessary to accomplish such purpose. Each Unit Owner appoints the Association, or any insurance trustee or substitute insurance trustee designated by the Association, as attorney-in-fact for the purpose of purchasing and maintaining such insurance, including: (1) the collection and appropriate disposition of the proceeds thereof; (2) the negotiation of losses and execution of releases of liability; (3) the execution of all documents; and (4) the performance of all other acts necessary to accomplish such purpose.

(e) The Association and its directors and officers shall have no liability to any Owner or First Mortgagee or other Person having a lien on a Unit if, after a good faith effort, (1) the Association is unable to obtain insurance required hereunder because the insurance is no longer available; (2) if available, the insurance can be obtained only at a cost that the Board, in its sole discretion, determines is unreasonable under the circumstances; or (3) the Members fail to approve any increase in the Regular Assessment needed to pay the insurance premiums.

(f) The Board of Directors shall determine annually whether the amounts and types of insurance the Association 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.

(g) All insurance policies obtained by the Association pursuant to this *ARTICLE 8* shall be obtained from generally acceptable insurance carriers.

8.2 General Requirements. All insurance provided for in this *ARTICLE 8* shall be written under valid and enforceable policies issued by insurance companies authorized and licensed to transact business in the State of Arizona with a financial strength rating of A-VIII or better from A.M. Best Company and/or A- or better from Standard & Poor's. All such policies shall provide for a minimum of thirty (30) days advance written notice to the Association prior to the cancellation or material change of any insurance coverage under the policy.

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

8.4 Insurance Obtained by Unit Owners . Each Unit Owner shall obtain and maintain property insurance covering full replacement cost of its Unit.

8.5 Payment of Insurance Proceeds . Any loss covered by property insurance obtained by the Association in accordance with this **Article 8** 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 Board shall have the right to negotiate a settlement of the loss with the insurer and shall be entitled to receive all insurance proceeds paid by the insurer with respect to such loss. The Association or any Trustee under an Insurance Trust Agreement executed pursuant to **Subsection 8.1.4** shall hold any insurance proceeds in trust for the Unit Owners and lienholders as their interests may appear, and the proceeds shall be disbursed and applied as provided for in the Condominium Act.

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

ARTICLE 9

DESTRUCTION OF IMPROVEMENTS

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

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

9.3 Distribution of Insurance Proceeds in the Event of Termination of the Condominium . Notwithstanding any provisions of this **Article 9** to the contrary, in the event of termination of the Condominium, 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 Condominium Act.

9.4 Negotiations with Insurer . The Association shall have full authority to negotiate in good faith with representatives of the insurer of any totally or partially destroyed building or any other portion of the Common Elements, and to make settlements with the insurer for less than full insurance coverage on the damage to such building or any other portion of the Common Elements. Any settlement made by the Association in good faith shall be binding upon all Owners and First Mortgagees. Insurance

proceeds for any damage or destruction of any part of the Condominium covered by property insurance maintained by the Association shall be paid to the Association and not to any First Mortgagee or other lienholder. The Association shall hold any proceeds in trust for the Unit Owners and lienholders as their interests may appear. Except as otherwise provided in **Sections 9.1 and 9.2**, all insurance proceeds shall be disbursed first for the repair or restoration of the damaged Common Elements, and Unit Owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the damaged or destroyed Common Elements have been completely repaired or restored or the Condominium is terminated.

9.5 Repair of Units . Installation of improvements to, and repair of any damage to, the interior of a Unit not covered by property insurance maintained by the Association shall be made by and at the individual expense of the Owner of that Unit and shall be completed as promptly as practicable and in a lawful and workmanlike manner. Any installation or repair of improvements by an Owner shall be subject to the provisions of **Section 4.3**.

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

ARTICLE 10 **EMINENT DOMAIN**

10.1 Total Taking of a Unit . If a Unit is acquired by eminent domain, or if part of a Unit is acquired by eminent domain leaving the Owner with a remnant which may not be practically or lawfully used for any purpose permitted by this Declaration, the award must compensate the Owner for 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 Condominium Act. Any remnant of a Unit remaining after part of a Unit is taken becomes a Common Element.

10.2 Partial Taking of a Unit . Except as provided in **Section 10.1**, if part of a Unit is acquired by eminent domain, the award must compensate the Owner for the reduction in the value of 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.

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

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

10.5 Priority and Power of Attorney . Nothing contained in this *ARTICLE 10* 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 of an Owner.

ARTICLE 11

DISPUTE RESOLUTION

11.1 Defined Terms . As used in this *ARTICLE 11*, the following terms shall have the meaning set forth below:

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

(2) **“Declarant Party”** means: (i) the Declarant and Habitat and their respective members, managers, officers and employees; (ii) an Affiliate of Declarant; (iii) any general contractors, subcontractors, material suppliers, labor suppliers, architects, engineers, surveyors, consultants or other Persons who furnished labor or services or supplied materials in connection with the initial design, development and/or construction of the Units and other Improvements in the Condominium or in connection with any addition, renovation, repair or reconstruction of the Units or other Improvements in the Condominium; or (iii) any employee or other representative of the Declarant who serves as a director or officer of the Association.

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

11.2 Agreement to Resolve Certain Disputes Without Litigation . The Association, all Unit Owners and all Declarant Parties agree that it is in the best interests of the Association, the Unit Owners and the Declarant Parties to encourage the amicable resolution of Claims and to resolve Claims without the emotional and financial costs of litigation. Therefore, the Association, all Unit Owners and all Declarant Parties agree that all Claims shall be resolved exclusively in accordance with the dispute resolution procedures set forth in this *ARTICLE 11*. The Association, all Owners and all Declarant Parties waive their right to have Claims resolved in court and to have a jury trial. Declarant and each Owner acknowledges and

agrees that the provisions of this *ARTICLE 11* shall be binding upon current and future Owners and upon the Association, whether acting for itself or on behalf of any Owner or Owners.

11.3 Notice of Claim . The Association or any Owner who contends or alleges to have a Claim (a “**Claimant**”) against any Declarant Party shall notify each applicable Declarant Party (a “**Respondent**”) in writing of the Claim (the “**Claim Notice**”), stating plainly and concisely: (a) the nature of Claim, including, date, time, location, Persons involved, and Respondent’s role in the Claim; (b) the factual and legal basis of the Claim; and (c) what Claimant wants Respondent to do or not do to resolve the Claim. If the Claim involves an Alleged Defect, the Claim Notice shall state plainly and concisely: (a) the nature and location of the Alleged Defect; (b) the date on which the Association or Owner giving the Notice of Claim first became aware of the Alleged Defect; and (c) whether the Alleged Defect has caused any damage to any persons or property. If the Alleged Defect is alleged to be the result of an act or omission of a person licensed by the State of Arizona under Title 20 or Title 32 of the Arizona Revised Statutes (a “**Licensed Professional**”), then the Claim Notice from the Association must be accompanied by an affidavit from a Licensed Professional in the same discipline as the Licensed Professional alleged to be responsible for the Alleged Defect. The affidavit must contain the information required to be contained in a preliminary expert opinion affidavit submitted pursuant to Section 12-2602B of the Arizona Revised Statutes. Within a reasonable period of time after receipt of the Notice of Claim, which period shall not exceed sixty (60) days, the Respondent and the Claimant shall meet at a mutually acceptable place within the Condominium to discuss the Claim and attempt to reach a resolution.

11.4 Right to Enter, Inspect, Repair and/or Replace . To the extent a Notice of Claim relates to or arises out of an Alleged Defect (a “**Construction Dispute**”), the provisions and procedures of this **Section 11.4** shall apply. At any time after the delivery of the Notice of Claim, the Respondent and its representatives shall have full access to the property that is the subject of the Notice of Claim and shall have the right, but not the obligation, to conduct inspections, testing and/or destructive and invasive testing in a manner deemed appropriate by the Respondent (provided the Respondent shall repair or replace any property damaged or destroyed during such inspection or testing), which rights shall continue until such time as the Claim is resolved. If the Respondent elects to take any corrective action, it shall do so in a prompt manner considering the circumstances and the Respondent and its representatives and contractors shall be provided access to the Condominium and the property that is the subject of the Notice of Claim to take and complete such corrective action. Nothing set forth in this **Section 11.4** shall be construed to impose any obligation on any Declarant Party to inspect, test, repair, or replace any item of the Condominium subject to a Construction Dispute. The right of a Declarant Party and its employees, agents, contractors and consultants to enter, inspect, test, repair and/or replace reserved in this Section shall be irrevocable and may not be waived or otherwise terminated except by a written document, in recordable form, executed and Recorded by the Declarant Party.

11.5 Binding Arbitration .

(a) In the event a Claim is not resolved by direct negotiations between the Claimant and the Respondent, the Claimant, if the Claimant desires to pursue the Claim further shall submit the Claim to binding arbitration in accordance with this **Section 11.5**. If the Claimant fails to timely submit the Claim to arbitration pursuant to the Federal Arbitration Act (9 U.S.C. §1, et. seq.). The Arbitration shall be initiated and conducted in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association as modified or as otherwise provided in this **Section 11.5**, unless the Notice of Claim involves a Construction Dispute by an Owner against a Declarant Party, in which case the arbitration shall be conducted in accordance with the Construction Industry Arbitration Rules and the Supplementary Consumer/Residential Construction Rules of the American Arbitration Association as modified or as otherwise provided in this **Section 11.5**. In no event shall the demand for arbitration be made after the date

when institution of legal or equitable proceedings based on the Notice of Claim would be barred by the applicable statutes of limitations or repose.

(b) A Person with any Claim may only submit such Claim in arbitration on such Person's own behalf. No Person may submit a Claim in arbitration as a representative or member of a class, and no Claim may be arbitrated as a class action.

(c) Any arbitration proceeding may not be joined or consolidated with the Claims of the Association or any other Owner unless specifically agree to in writing by all parties to the Claim.

(d) The Declarant Parties, the Association and the Owners agree that any arbitration of a Claim is a private proceeding whose results shall be binding only on the parties to the arbitration and shall not be afforded binding effect as to any issue or result by any non-party to the arbitration.

(e) To the extent any Construction Dispute relates to or involves the conduct or work of any contractor, subcontractor, or supplier, any such contractors, subcontractors, or suppliers may be joined in the arbitration.

(f) The Association, each Owner and the Declarant acknowledge that arbitration involves certain expenses (including payment of fees to the American Arbitration Association and compensation of the arbitrator or arbitrators) depending on the nature of and amount of claims asserted which may be substantial and in excess of court fees for filing of a lawsuit. The payment of such arbitration related expenses shall be governed by the Rules of the American Arbitration Association. The American Arbitration Association fee schedule and rules may be found at www.adr.org.

(g) 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, that such fees bear to percentage of success achieved by the prevailing party measured as an amount recovered in excess of the amount offered, taking into consideration the final result of arbitration or other relevant factors. The arbitrator shall not award any punitive damages. The arbitrator shall not award indirect, consequential or special damages regardless of whether the possibility of such damage or loss was disclosed to, or reasonably foreseen by, the party against whom the claim is made. The arbitrator shall assess the costs of the proceedings (including the fees of the arbitrator) against the non-prevailing party.

(h) The filing of a proper demand for arbitration in accordance with this **Section 11.5** and the rules of the American Arbitration Association shall act to toll any applicable statutes of limitation or repose.

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

11.7 Approval of Arbitration or Litigation . The Association shall not deliver a Claim Notice to any Declarant Party or commence any legal action or arbitration proceeding or incur legal expenses (including without limitation, attorneys' fees) in connection with any Claim without the written approval of Owners entitled to cast more than seventy-five percent (75%) of the total votes in the Association, excluding the votes of any Owner who would be a defendant in such proceedings. Before requesting the approval of the Owners required by this **Section 11.7**, the Association must provide written notice to all Owners, which notice shall (at a minimum) include the following: (1) a description of the nature of the

Claim; (2) a description of the attempts of the Respondent to resolve the Claim; (3) the name and professional background of the attorney proposed to be retained by the Association to pursue the Claim and a description of the relationship between such attorney and any member of the Board of Directors; (4) a description of the fee arrangement between such attorney and the Association; (5) the estimated attorneys' fees and expert fees and costs necessary to pursue the Claim and the source of funds that will be used to pay such fees and expenses; (6) the estimated time necessary to conclude the action or proceeding; and (7) an affirmative statement from the Board of Directors that the action or proceeding is in the best interest of the Association and its Members. The Association shall not borrow money or use reserve funds to pay the fees and costs of the arbitration or litigation. In the event that the Association commences any legal action or arbitration proceeding involving a Claim, all Owners must notify prospective purchasers of their Lot of such legal action or arbitration proceeding and must provide such prospective purchasers with a copy of the notice received from the Association in accordance with this **Section 11.7**.

11.8 Conflicts . In the event of any conflict between this *ARTICLE 11* and any other provision of the Condominium Documents, this *ARTICLE 11* shall control. In the event of any conflict between the provisions of this *ARTICLE 11* and the terms of any express warranty provided to a Purchaser by a Declarant or any third party home warranty company in connection with the purchase of a Unit from a Declarant, the provisions of the express warranty shall control; provided, however, that if the Claim is being asserted by the Association, the approval of the members of the Association required by **Section 11.6** must be obtained prior to the Association demanding arbitration of the Claim or filing any legal action with respect to the Claim.

BY ACCEPTANCE OF A DEED OR BY ACQUIRING A UNIT, EACH PERSON, FOR HIMSELF, HIS HEIRS, PERSONAL REPRESENTATIVES, SUCCESSORS, TRANSFEREES AND ASSIGNS, AGREES TO HAVE ANY CLAIM RESOLVED ACCORDING TO THE FEDERAL ARBITRATION ACT, THE ARIZONA REVISED STATUTES PERTAINING TO THE ARBITRATION OF DISPUTES TO THE EXTENT NOT INCONSISTENT WITH THE FEDERAL ARBITRATION ACT AND THE PROVISIONS OF THIS *ARTICLE 11* AND WAIVES THE RIGHT TO PURSUE ANY DECLARANT PARTY IN ANY MANNER OTHER THAN AS PROVIDED IN *ARTICLE 11*. THE ASSOCIATION, EACH UNIT OWNER AND DECLARANT AND CITY ACKNOWLEDGE THAT BY AGREEING TO RESOLVE ALL CLAIMS AS PROVIDED IN THIS *ARTICLE 11*, THEY ARE GIVING UP THEIR RESPECTIVE RIGHTS TO HAVE SUCH CLAIM TRIED BEFORE A JURY. THE ASSOCIATION, EACH UNIT OWNER AND DECLARANT FURTHER WAIVE THEIR RESPECTIVE RIGHTS TO AN AWARD OF PUNITIVE AND CONSEQUENTIAL DAMAGES RELATING TO A CLAIM. BY ACCEPTANCE OF A DEED OR BY ACQUIRING A UNIT, EACH UNIT OWNER VOLUNTARILY ACKNOWLEDGES THAT HE IS WAIVING ANY RIGHTS HE MAY POSSESS TO PUNITIVE AND CONSEQUENTIAL DAMAGES OR OTHER EXEMPLARY RELIEF OR THE RIGHT TO A TRIAL BEFORE A JURY RELATING TO A CLAIM.

IF A UNIT OWNER OR THE ASSOCIATION FILES A CIVIL ACTION ASSERTING ANY CLAIM AGAINST DECLARANT OR CITY INSTEAD OF COMPLYING WITH THE DISPUTE RESOLUTION PROVISIONS OF THIS *ARTICLE 11* (OR THE OTHER DISPUTE RESOLUTION PROVISIONS, AS APPLICABLE), THE PARTY AGGRIEVED BY THE FILING MAY APPLY TO THE COCONINO COUNTY SUPERIOR COURT FOR AN ORDER DISMISSING THE CIVIL ACTION AND COMPELLING THE FILING PARTY TO SUBMIT THE CLAIM TO THE DISPUTE RESOLUTION PROVISIONS APPLICABLE THERETO. THE APPLYING PARTY SHALL BE ENTITLED TO IMMEDIATE ENTRY OF AN ORDER OF DISMISSAL AND A MANDATORY AWARD OF ATTORNEY'S FEES AND TAXABLE COSTS INCURRED IN COMPELLING COMPLIANCE WITH THE APPLICABLE DISPUTE RESOLUTION PROVISION.

IN THE EVENT THE ARBITRATION PROVISIONS OF THIS *ARTICLE 11* ARE HELD NOT TO APPLY OR ARE HELD INVALID OR UNENFORCEABLE FOR ANY REASON, ALL DISPUTES SHALL BE TRIED BEFORE A JUDGE IN A COURT OF COMPETENT JURISDICTION WITHOUT A JURY. EACH OWNER IN THE ASSOCIATION, BY ACCEPTING A DEED TO ANY PORTION OF THE PROPERTY, HEREBY WAIVE AND COVENANT NOT TO ASSERT THEIR CONSTITUTIONAL RIGHT TO TRIAL BY JURY OF ANY DISPUTES, INCLUDING, BUT NOT LIMITED TO, DISPUTES RELATING TO CONSTRUCTION DEFECTS, MISREPRESENTATION OR DECLARANT'S FAILURE TO DISCLOSE MATERIAL FACTS. THIS MUTUAL WAIVER OF JURY TRIAL SHALL BE BINDING UPON THE RESPECTIVE SUCCESSORS AND ASSIGNS OF SUCH PARTIES AND UPON ALL PERSONS AND ENTITIES ASSERTING RIGHTS OR CLAIMS OR OTHERWISE ACTING ON BEHALF OF DECLARANT, ANY OWNER, THE ASSOCIATION OR THE RESPECTIVE SUCCESSORS AND ASSIGNS.

ARTICLE 12
RIGHTS OF FIRST MORTGAGEES

12.1 Notification to First Mortgagees . The Association shall provide each Mortgagee or guarantor of the Mortgage on any Unit with timely written notice of the following:

- (a) Any condemnation loss or any casualty loss which affects either a material portion of the Condominium or the Unit securing its Mortgage;
- (b) Any 60-day delinquency in the payment of Assessments or charges owed by the Owner of any Unit on which it holds the Mortgage;
- (c) Any lapse, cancellation or material modification of any insurance policy maintained by the Association; and
- (d) Any proposed action which requires the consent of a specified percentage Mortgagees as set forth in **Section 12.2**.

12.2 Approval Required for Amendment to Declaration, Articles or Bylaws . Subject to Habitat's oversight rights and other restrictions set forth in *ARTICLE 14*:

- (a) Any amendments to the Condominium Documents of a material adverse nature to Mortgagees must be agreed to by Mortgagees that represent at least fifty-one percent (51%) of the votes in the Association allocated to Units that are subject to Mortgages.
- (b) Any action to terminate the legal status of the Condominium after substantial destruction or condemnation occurs or for other reasons must be agreed to Mortgagees that represent at least fifty-one percent (51%) of the votes of Units subject to Mortgages.
- (b) Any Mortgagee who receives a written proposal for an amendment to the Condominium Documents who fails to submit a response to the proposal within sixty (60) days after the Mortgagee receives proper notice of the proposal shall be deemed to have approved the proposed amendment, provided the notice was delivered by certified or registered mail, with a "return receipt" requested.

12.3 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, or as provided in this Declaration or the Condominium Act, unless at least two-thirds (2/3) of all First Mortgagees (based upon one vote for

each First Mortgage owned) or Unit Owners (other than the Declarant or other sponsor, developer or builder of the Condominium) of the Units have given their prior written approval, the Association shall not be entitled to:

- (1) By act or omission, seek to abandon or terminate this Declaration or the Condominium;
- (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;
- (3) Partition or subdivide any Unit;
- (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;
- (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 Unit 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.

12.4 Prohibition Against Right of First Refusal . Any right of first refusal in the Condominium Documents will not apply to/adversely impact the rights of a Mortgagee or its assignee to: (a) foreclose or take title to a Unit pursuant to the remedies in the Mortgage; (b) accept a deed or assignment in lieu of foreclosure in the event of default by a mortgagor; or (c) sell or lease a Unit acquired by the Mortgage or its assignee.

12.5 Insurance Proceeds and Condemnation Awards . 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.

ARTICLE 13

GENERAL PROVISIONS

13.1 Enforcement .

(a) The Association may enforce the Condominium Documents in any manner provided for in the Condominium Documents or by law or in equity, including, but not limited to:

- (1) imposing reasonable monetary penalties after notice and an opportunity to be heard is given to the Unit Owner or other violator. A Unit Owner shall be responsible for payment of any fine levied or imposed against a Sublessee

or Occupant of the Owner's Unit or by any Invitee of the Unit Owner or any Sublessee or Occupant;

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

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

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

(5) exercising self-help or taking action to abate any violation of the Condominium Documents provided, however, that judicial proceedings must be instituted before any items of construction can be altered or demolished;

(6) requiring a Unit Owner, at the Unit Owner's expense, to remove any Improvement installed or constructed in such Owner's Unit or in any Limited Common Element allocated to the Owner's Unit in violation of this Declaration and to restore the Unit or the Limited Common Element to its previous condition and, upon failure of the Unit Owner to do so, the Board of Directors or its designee shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as previously existed and any such action shall not be deemed a trespass and all costs incurred by the Association shall be paid to the Association by the Unit Owner upon demand by the Association;

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

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

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

(10) recording a written notice of a violation 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 legal description of the Unit against which the notice is being recorded; (ii) a brief description of the nature of the violation; and (iii) 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.

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

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

(d) All rights and remedies of the Association under the Condominium Documents or at law or in equity are cumulative, and the exercise of one right or remedy shall not waive the Association's right to exercise another right or remedy. The failure of the Association or 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 otherwise 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.

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 13.4**.

13.4 Termination of Condominium . Except in the case of a taking of all the Units by eminent domain, the Condominium may be terminated only by the agreement of Unit Owners of Units to which at least one hundred percent (100%) of the votes in the Association are allocated together with the consent of Habitat during the Period of Habitat Oversight (and the City after the Period of Habitat Oversight). An agreement to terminate the Condominium must be evidenced by the execution or ratifications of a termination agreement, in the same manner as a deed by the requisite number of Unit Owners. Notwithstanding the foregoing, upon any termination of the Ground Lease, the Condominium will automatically terminate and the provisions of **Section 3.5** of the Ground Lease will apply. Termination of the Condominium shall not result in termination of the Affordable Housing Restriction.

13.5 Amendment .

(a) Except in cases of amendments that may be executed by a Declarant in the exercise of its Development Rights or under A.R.S. §33-1220, by the Association under A.R.S. § 33-1206 or A.R.S. § 33-1216(D), or by certain Unit Owners under A.R.S. § 33-1218(B), A.R.S. § 33-1222, A.R.S. §33-1223 or A.R.S. § 33-1228(B), and subject to Habitat's oversight rights and other restrictions set forth in *ARTICLE 14*, the Declaration, including the Plat, may be amended only by a vote of the Unit Owners to which at least sixty-seven percent (67%) of the votes in the Association are allocated.

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

Declaration adopted by the Unit Owners during the Period of Declarant Control must be approved in writing by the Declarant. After the expiration of the Period of Declarant Control, an amendment to this Declaration shall not amend or delete any provisions of *ARTICLE 12* or this **Section 13.5(b)** in the absence of the unanimous consent of the Unit Owners.

(c) 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. No amendment to *ARTICLE 11*, **Section 13.5(b)** or this **Section 13.5(c)** shall be effective unless the Declarant approves the amendment in writing even if the Declarant no longer owns any Unit at the time of such amendment.

(d) During the Period of Declarant Control, the Declarant shall have the right to amend the Declaration, including the Plat, to: (1) comply with the Condominium Act or any other applicable law if the amendment does not adversely affect the rights of any Unit Owner; (2) correct any error or inconsistency in the Declaration if the amendment does not adversely affect the rights of any Unit Owner; or (3) 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 Department of Veterans Affairs, the Federal Housing Administration, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.

(e) During the Period of Habitat Oversight, any amendment adopted by the Unit Owners pursuant to **Section 13.5(a)** must be approved by Habitat, as evidenced by Habitat's consent and acknowledged on such Recorded amendment.

(f) Any amendment adopted by the Unit Owners pursuant to **Section 13.5(a)** shall be signed by the President or Vice President of the Association and shall be Recorded within thirty (30) days after the adoption of the amendment. Any amendment made by the Declarant pursuant to **Section 13.5(d)** or the Condominium Act shall be executed by the Declarant and shall be Recorded.

(g) Notwithstanding anything to the contrary contained herein, and to the extent permitted by applicable law, this Declaration may be amended at any time by the City and Habitat without the consent of any other Unit Owners and such amendment will become effective upon recording; provided, however, that no person who was a Unit Owner at the time the amendment was recorded will be bound by such amendment unless such Unit Owner provides its written approval of such amendment, which approval will not be unreasonably withheld, conditioned or delayed and which written approval will be deemed given if such Unit Owner does not object to the amendment within thirty (30) days after receipt of a copy of such amendment. For the avoidance of doubt, any person that becomes a Unit Owner after the date an amendment is recorded will be bound by such amendment and deemed to have approved of such amendment.

13.6 Notices. All notices, demands, statements or other communications required to be given or served under this Declaration shall be in writing and shall be deemed to have been duly given and served if delivered personally, sent by Federal Express or other overnight delivery service, sent by United States mail, postage prepaid or sent by fax, electronic mail or other form of wireless communication, as follows: (a) if to an Owner, at the mailing address, email address or fax number which the Owner provides to the Secretary of the Association for the purpose of notice or, if no such mailing address, email address or fax number is provided, at the street address of the Unit of such Owner or; (b) if to the Association, at the principal place of business of the Association as shown on the records of the Arizona Corporation Commission or at such other mailing address, email address or fax number as may be designated by the Association in a written notice to the Owners pursuant to this Section. Notice given by personal delivery, overnight delivery service, fax, electronic mail or other form of wireless communication shall be deemed

to have been received by the Person to whom the notice was addressed when the notice is actually received. A notice given by United States mail 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 Owners shall constitute notice to all Owners of the same Unit.

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

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

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

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

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

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

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

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

ARTICLE 14

HABITAT OVERSIGHT RIGHTS; GROUND LEASE; CITY RIGHTS

14.1 Habitat Oversight . During the Period of Habitat Oversight, Habitat shall have the following rights and obligations:

- (a) To approve or disapprove any amendments to this Declaration;
- (b) To enforce each Unit Owner's compliance with this Declaration (including, without limitation the use and occupancy restrictions set forth in *ARTICLE 4*) and the Ground Lease, pursuant to all remedies available at law or in equity;
- (c) To work with the Association to provide oversight to ensure the Association's compliance with the Condominium Act, Condominium Documents, Ground Lease, and any other applicable law or restriction upon the Condominium;
- (d) To access to each Unit (by means of duplicate or master keys or other similar technology) upon reasonable prior oral or written notice to the Unit Owner of a particular Unit, or without such notice in case of a bona fide emergency, for the purpose of inspecting such Unit to assure compliance by such Unit Owner with the provisions of the Ground Lease and of this Declaration.
- (e) To otherwise exercise all rights and remedies of the Declarant under the Condominium Documents to the extent permitted by applicable law.
- (f) To otherwise exercise all rights and remedies of Habitat under the Condominium Documents to the extent permitted by applicable law.
- (g) To exercise all of the rights and remedies of the Association and the Board of Directors to the extent that the Association and the Board of Directors fails to perform the same, to the extent permitted by applicable law.

14.2 Ground Lease .

- (a) Each Unit Owner, upon acquisition of its Unit, hereby agrees to be bound by the Ground Lease and to have assumed and agreed to perform all obligations of "lessee" under the Ground Lease, but solely with respect to its Unit.
- (b) The following summary information pertaining to the Ground Lease is included herein, for reference purposes, pursuant to Section 33-1216 of the Condominium Act
 - (1) The Recording data for the Ground Lease is listed in the Recitals above;
 - (2) The initial term of the Ground Lease will expire fifty (50) years after the Effective Date of the Ground Lease (which is December __, 2075);
 - (3) The Land subject to the Ground Lease is LOT 1 OF THE FINAL PLAT FOR TIMBER SKY BLOCK 2, RECORDED ON JANUARY 28, 2025, AS INSTRUMENT NO. 4010656, IN THE OFFICIAL RECORDS, COCONINO COUNTY, ARIZONA.
 - (4) The Unit Owners do not have any right to acquire fee title to the Land or the right to acquire title to their Units free of the Ground Lease.

(5) No Unit Owner has any right to remove any buildings or other improvements that is part of a Unit, or is located on, under, or within the Common Elements or the Land, following the termination of the Ground Lease;

(6) The term of the Ground Lease may be extended for an additional forty-nine (49) year term as provided in the Ground Lease (and no Unit Owner has the right to extend the term, which decision whether or not to renew will be made by Habitat and the City);

(7) All rights of the Unit Owners upon the expiration or termination of the Ground Lease are as set forth in the Ground Lease (and without limiting the foregoing, upon expiration or termination of the Ground Lease title to each Unit will automatically vest in the Lessor under the Ground Lease); and

(8) Any sale of the Condominium Property as a whole, or any removal of the Condominium Property from the provisions of the Condominium Act, pursuant to this Declaration or the Act, are subject to the provisions of the Ground Lease, notwithstanding anything contained herein to the contrary.

14.3 Ground Lessor Rights . Ground Lessor shall be a third-party beneficiary of this Declaration and shall have the following rights:

(a) To approve or disapprove any amendments to this Declaration in its sole discretion;

(b) To enforce each Unit Owner's compliance with this Declaration and the Ground Lease, if Habitat fails to cause such Unit Owner to comply within thirty (30) days after receipt of written notice from Ground Lessor; and

(c) To pursue all remedies available at law or in equity related to the foregoing.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, Declarant has executed this Declaration as of the day and year first above written.

HABITAT FOR HUMANITY OF NORTHERN ARIZONA, INC., an Arizona nonprofit corporation

By: _____
Name: Eric Wolverton
Its: Chief Executive Officer

STATE OF ARIZONA)
) ss.
County of Coconino)

The foregoing instrument was acknowledged before me this _____ day of December, 2025, by Eric Wolverton, the Chief Executive Officer of Habitat for Humanity of Northern Arizona, Inc., an Arizona nonprofit corporation, for and on behalf of the corporation.

NOTARY SEAL:

Notary Public

**MASTER DECLARANT CONSENT TO DECLARATION OF CONDOMINIUM AND
EASEMENTS FOR HABITAT AT TIMBER SKY CONDOMINIUM**

VP 66 & Woody Mountain, LLC, the “Declarant” under the Declaration of Covenants, Conditions and Restrictions for Timber Sky, recorded on November 27, 2019 in the County Recorder’s Office, Coconino County, Arizona, Instrument No. 3859262, as amended, supplemented or otherwise modified from time to time, hereby consents to all of the terms and provisions of the foregoing Declaration of Condominium and Easements for Habitat at Timber Sky Condominium and the recordation thereof. The undersigned further ratifies and consents to all of the terms and provisions of the Plat, whether recorded prior to or after the date hereof.

VP 66 & WOODY MOUNTAIN, LLC, an Arizona limited liability company

By: Vintage Partners, LLC, an Arizona limited liability company
Its: Manager

By: Edward & Company, LLC, and Arizona limited liability company
Its: Administrative Member

By: _____
Name: _____
Its: Manager

STATE OF ARIZONA)
) ss.
County of MARICOPA)

The foregoing instrument was acknowledged before me this _____ day of December 2025, by _____, the Manager of Edward & Company, LLC, an Arizona limited liability company, the Administrative Member of Vintage Partners, LLC, an Arizona limited liability company, the Manager of VP 66 & Woody Mountain, LLC, an Arizona limited liability company, for and on behalf thereof.

NOTARY SEAL:

Notary Public

**CITY CONSENT TO DECLARATION OF CONDOMINIUM AND EASEMENTS FOR
HABITAT AT TIMBER SKY CONDOMINIUM**

City of Flagstaff, an Arizona municipal corporation, as fee owner of the real property legally described in Exhibit A attached hereto, hereby consents to all of the terms and provisions of the foregoing Declaration of Condominium and Easements for Habitat at Timber Sky Condominium and the recordation thereof.

CITY OF FLAGSTAFF, an Arizona municipal corporation

Joanne Keene, City Manager

Attest:

City Clerk

Approved as to form:

City Attorney

STATE OF ARIZONA)
) ss
County of Coconino)

On this ___ day of December, 2025, personally appeared before me Joanne Keene, who acknowledged herself to be the **City Manager of the City of Flagstaff**, and being authorized so to do, executed the foregoing instrument in the capacity therein stated, and for the purposes therein contained, by signing the name of the City as such officer.

NOTARY SEAL:

Notary Public

EXHIBIT A

LEGAL DESCRIPTION

UNIT 1 THROUGH 40, INCLUSIVE, AND TRACT A OF HABITAT AT TIMBER SKY CONDOMINIUM, A LEASEHOLD CONDOMINIUM, (1) ACCORDING TO THIS DECLARATION OF CONDOMINIUM AND EASEMENTS FOR HABITAT AT TIMBER SKY CONDOMINIUM, A LEASEHOLD CONDOMINIUM, AND (2) AS ESTABLISHED BY THAT CERTAIN FINAL PLAT FOR HABITAT AT TIMBER SKY CONDOMINIUM, A LEASEHOLD CONDOMINIUM, RECORDED CONCURRENTLY HEREWITH IN THE OFFICAL RECORDS OF THE COCONINO COUNTY RECORDER, AS AMENDED.

TOGETHER WITH AN UNDIVIDED INTEREST IN THE COMMON ELEMENTS, AS SET FORTH IN THE FOREGOING DECLARATION AND PLAT.

SUCH CONDOMINIUM BEING ESTABLISHED ON LOT 1 OF THE FINAL PLAT FOR TIMBER SKY BLOCK 2, RECORDED ON JANUARY 28, 2025, AS INSTRUMENT NO. 4010656, IN THE OFFICIAL RECORDS, COCONINO COUNTY, ARIZONA.