

#0401

**CAPITAL TITLE AGENCY INC.**

When recorded, return to:

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**DECLARATION OF ESTABLISHMENT OF CONDOMINIUM**

**AND**

**DECLARATION OF COVENANTS, CONDITIONS,**

**AND RESTRICTIONS**

**FOR**

**THE VILLAS AT SAVONA UNIT OWNERS CONDOMINIUM**

THIS DECLARATION OF ESTABLISHMENT OF CONDOMINIUM AND DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR THE VILLAS AT SAVONA ("Declaration"), is made and entered into as of the date hereinafter set forth by Chandler Condominiums, LLC, a California limited liability company ("Chandler"), having an address at 22800 Savi Ranch Parkway, Suite 210, Yorba Linda, California 92887 ("Chandler") and Graham Development Corporation, an Arizona Corporation, having an address at 2625 N. 24<sup>th</sup> St. #9, Mesa, AZ 85213 ("Graham" and hereinafter collectively referred to as the "Declarant").

## RECITALS

The Declarant is the fee developer of the above-referenced condominium project located at that certain real property situated in the City of Chandler, County of Maricopa, State of Arizona, which is more particularly described in Exhibit "A" attached hereto and incorporated herein. Chandler is the fee simple title owner of the subject property.

The Declarant desires to submit and subject the Property, together with all buildings, improvements, and other permanent fixtures of whatsoever kind thereon now or hereafter constructed upon the Property, and all easements, rights, and privileges appurtenant thereto to a condominium pursuant to the provisions of § 33-1201 et seq. of the Arizona Revised Statutes, as such statutes may be amended from time to time.

The Declarant desires to establish for its own benefit and for the mutual benefit of all Owners or Occupants of the Property, or any part thereof, certain covenants, conditions, restrictions, easements, rights, privileges, assessments, and liens over and upon the Property as set forth herein, which shall run with and be a burden on the Property.

The Declarant desires and intends that the Owners, Occupants, Mortgagees, Beneficiaries, and Trustees under the mortgages or trust deeds, as the case may be, and all other Persons hereafter acquiring any interest in the Property shall at all times enjoy the benefits of, and shall hold their interest subject to, this Declaration and the rights, easements, privileges, and restrictions set forth herein, which Declaration is recorded in furtherance of establishing a general plan of condominium ownership for the Property; and for establishing rules for the use, occupancy, management, and enjoyment thereof, all for the purpose of enhancing, perfecting, and protecting the value, desirability, and attractiveness of the Property and quality of life therein.

NOW, THEREFORE, the Declarant, as owner of the Property, and for the purposes set forth, declares as follows:

### ARTICLE I.

#### Definitions

As used herein, unless the context otherwise requires:

L01 "Act" shall mean and refer to the Arizona Condominium Act as adopted within the State of Arizona at § 33-1201 et seq. of the Arizona Revised Statutes, as the same may be amended from time to time. The provisions of the Act are hereby incorporated into this Declaration and made a part hereof.

I.02 "Allocated Interest" or "Allocated Interests" shall mean and refer to the undivided interest or interests in the Common Elements respectively allocated to the Units and each Unit.

I.03 "Articles" shall mean and refer to the ARTICLES OF INCORPORATION OF THE VILLAS AT SAVONA UNIT OWNERS ASSOCIATION, which will be a non-profit corporation, the members of which will be comprised of Chandler, Graham and/or any and all subsequent owners of condominium units.

I.04 "Association" shall mean and refer to VILLAS AT SAVONA UNIT OWNERS ASSOCIATION, an Arizona non-profit corporation, the members of which will be comprised of Chandler, Graham, and/or any and all subsequent owners of condominium units. The Association will be incorporated under the name of THE VILLAS AT SAVONA UNIT OWNERS ASSOCIATION, an Arizona non-profit corporation, prior to the conveyance of the first Unit by the Declarant.

I.05 "Association Rules" shall mean and refer to any rules and regulations adopted by the Association pursuant to this Declaration or the By-Laws governing maintenance and use of the Units and Common Elements, as the same may be from time to time amended.

I.06 "Assessments" shall mean and refer to the charges against the Owners to defray the Common Expenses as well as miscellaneous special Assessments and charges permitted hereunder, special Assessments for capital improvements, and special Assessments for the purpose of restoring and reconstructing the Property in the event of casualty or loss, all as provided in this Declaration.

I.07 "Board" shall mean and refer to the Board of Directors of the Association elected pursuant to the By-Laws, and possessing general management powers to act on behalf of the Association.

I.08 "Building" shall mean and refer to the principal structures located or constructed on the Property and forming part of the Property as shown on the Plat, whether or not such structures are composed of one (1) or more floors or stories.

I.10 "By-Laws" shall mean and refer to the By-Laws adopted by the Association pursuant to § 33-1246 of the Act promulgated for the purpose of regulating the affairs of the Association as the same may be amended from time to time.

I.11 "Common Elements" shall mean and refer to all portions of the Property comprising the Condominium other than the Units.

I.12 "Common Expense Liability" shall mean and refer to the liability for Common Expenses allocated to each Unit as hereinafter set forth in this Declaration.

L13 "Common Expenses" shall mean and refer to the actual and estimated costs for: (a) maintenance, management, operation, repair, replacement, and betterment of the Common Elements which are maintained by the Association including, but not limited to, painting, landscaping, repairs, replacements, alterations, additions, reconstruction, services, supplies, labor, materials, equipment, and other related items; (b) deficiencies arising by reason of nonpayment of Assessments by an Owner including the costs of forcing compliance with this Declaration; (c) management and administration of the Association including, but not limited to, compensation paid by the Association to managers, accountants, attorneys, and employees; (d) water and all other utility service excepting telephone service and utilities other than separately metered utilities for the Units, trash pickup and disposal, gardening, and other related services; (e) insurance and bonds required by this Declaration or any other additional insurance and bonds obtained by the Board in its discretion; (f) the establishment and maintenance of reasonable reserves as the Board shall deem appropriate in its discretion to meet the costs and expenses of maintenance, repairs, and replacements of those Common Elements which must be maintained, repaired, and replaced on a periodic basis; and (g) such other miscellaneous costs and charges incurred by the Association or the Board pursuant to this Declaration, the By-Laws, or Association Rules in furtherance of the purposes of the Association or in discharge of the duties and powers of the Association.

L14 "Condominium" shall mean the condominium project established by this Declaration pursuant to the Act, which condominium shall be known as THE VILLAS AT SAVONA CONDOMINIUM.

L15 "Declarant" shall mean and refer collectively to Chandler Condominiums, LLC, a California limited liability company and Graham Development Corporation, an Arizona Corporation, their successors or assigns in interest, or any other Person or entity or group of Persons or entities who reserves, is granted, or succeeds to any Special Declarant Right.

L16 "Declaration" shall mean and refer to this instrument by which the Property is submitted to a condominium including any and all exhibits attached hereto and incorporated herein, and any and all amendments and supplements hereto.

L17 "Development Rights" shall mean and refer to those rights hereby reserved by the Declarant as enumerated and set forth in Article XIV of this Declaration.

L18 "First Mortgagee(s)" shall mean and refer to an institutional holder of a first mortgage or deed of trust on a Unit which is a bank, savings and loan association, insurance company, established mortgage company, a lender approved by the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Veterans Administration or the United States Department of Housing and Urban Development, or other entity chartered and regulated under state or federal law, and their successors and assigns. The first mortgagee on the subject property

currently is South Bay Bank.

I.19 "Limited Common Elements" shall mean and refer to any portion of the Common Elements specifically designated as a Limited Common Element in this Declaration for the exclusive use of one or more but fewer than all of the Units and Owners.

I.20 "Occupants" shall mean and refer to a Person or Persons other than an Owner, in possession of a Unit.

I.21 "Owner" shall mean and refer to the Person or Persons who are vested with record title, in fee simple, to a Unit according to the records of the County Recorder of Maricopa County, Arizona, including a Person or Persons who are the purchaser or purchasers of a Unit under a valid and outstanding recorded purchase Contract (as defined in § 33-741 of the Arizona Revised Statutes) with respect thereto, but shall not include a Person or Persons whose interest in the Unit is limited to security for the performance of an obligation. Declarant shall be considered the record Owner of any Unit after the recordation of this Declaration prior to its initial conveyance by the Declarant.

I.22 "Plat" shall mean and refer to the plat of the Property designating thereon eighty-four (84) Units, each of which is identified by number. Said Plat, as attached hereto as Exhibit "B," shall be deemed a part of this Declaration pursuant to § 33-1219 of the Act, and shall be recorded simultaneously with the recording of this Declaration. Said Plat shall also refer to any new or amended Plat pursuant to § 33-1219(D) of the Act.

I.23 "Person" shall mean and refer to a natural person, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity capable of holding title to real property. In the case of a Subdivision Trust, as defined in § 6-801 of the Arizona Revised Statutes, "Person" as defined herein shall mean and refer to the Beneficiary of the Trust who holds the right to subdivide, develop, or sell the real estate which is the subject of the Trust rather than the Trust or Trustee.

I.24 "Property" shall mean and refer to the single parcel of real property situated in the City of Chandler, County of Maricopa, State of Arizona, which is legally described on Exhibit "A" attached hereto and incorporated herein, and which constitutes the real property committed to the Condominium pursuant to this Declaration and the Act, together with all the Buildings, improvements, and permanent fixtures ever located thereon, and all easements and rights appurtenant thereto.

I.25 "Restrictions" shall mean and refer to the covenants, conditions, restrictions, assessments, easements, and liens as set forth in this Declaration.

I.26 "Servicer" shall mean and refer to the Person or entity servicing a first mortgage or a

first deed of trust constituting a lien upon a Unit (including the First Mortgagee or first beneficiary, if applicable) or his successors or assigns.

I.27 "Special Declarant Rights" shall mean and refer to those rights reserved by the Declarant as enumerated and set forth in this Declaration.

I.28 "Substantially Completed" shall mean and refer to when a Certificate of Occupancy is issued in regard to a particular Unit.

I.01 "Unit" shall mean and refer to a part of the Property, including one (1) or more rooms situated in the Buildings comprising part of the Property, designated or intended for separate ownership or occupancy as a dwelling Unit, together with a respective undivided Allocated Interest in the Common Elements, and any exclusive or non-exclusive use appurtenant thereto. Each Unit shall consist of the air space enclosed and bounded by the horizontal and vertical planes as shown or indicated on the Plat in relating to said Unit; provided, however, that the Unit boundaries shall be further defined in Section 3.03 of this Declaration and § 33-1212 of the Act.

## ARTICLE II.

### Creation of The Condominium Regime

II.01 Submission. Declarant hereby submits and subjects the Property to a condominium pursuant to the Act, and in furtherance thereof, declares and establishes these restrictions, and Declarant hereby declares and agrees that the Property and all of the Units shall be owned, held, conveyed, transferred, sold, leased, mortgaged, encumbered, occupied, used, and improved subject to the terms and conditions of the Restrictions, which Restrictions shall constitute covenants and conditions running with the land and which shall be binding upon and inure to the benefit of the Declarant, the Association, and each Owner, including their respective heirs, executors, administrators, personal representatives, successors, and assigns.

## ARTICLE III

### Description of the Building, the Units, the Common Elements and the Limited Common Elements

III.01 Name. The Property shall be known as THE VILLAS AT SAVONA CONDOMINIUM.

III.02 Description of the Buildings. The location of each of the Buildings is set forth on the Plat. The horizontal boundaries shall be the planes of the top elevations of the Buildings, as shown on the Plat, and the plane of the base elevation of the Buildings as shown on the Plat. The vertical boundaries shall be the exterior of the outside walls, except where there are balconies or patios which extend beyond the exterior of the outside walls, the vertical boundaries shall be the plane of the outer edges of the balcony or porch extended upward to the upper horizontal boundary as shown on the Plat.

III.03 Description of the Units. The location of each of the Units within the Buildings is set forth on the Plat. The horizontal boundaries of each Unit shall be the underside of the finished but undecorated ceiling, and the top of the finished but undecorated floor of the Unit as shown on the Plat. The vertical boundaries of each Unit shall be the interiors of the finished but undecorated walls located on the perimeter lines of the respective Units as shown on the Plat. The garage designated on the Plat to service each Unit shall be deemed to constitute a part of such Unit.

As such, and pursuant to § 33-1212 of the Act, all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other materials constituting any part of the finished surfaces of the walls, floors, or ceilings of a Unit shall be deemed to constitute a part of such Unit. (All other portions of the walls, floors, or ceilings of any Unit shall be deemed to constitute a part of the Common Elements.) Further, subject to the preceding, all spaces, interior partitions, and other fixtures and improvements within the boundaries of a Unit shall be deemed to constitute a part of such Unit.

III.04 Description of Common Elements. The Common Elements shall consist of the entire Property excluding the Units.

III.05 Description of Limited Common Elements. Any portion of any chute, flue, duct, wire, conduit, bearing wall, bearing column, or other fixture which lies partially within and partially outside the designated boundaries of any Unit which serves only such Unit shall be deemed to constitute a Limited Common Element allocated solely to such Unit. (Any portion of any chute, flue, duct, wire, conduit, bearing wall, bearing column, or other fixture which lies partially within and partially outside of the designated boundaries of any Unit which serves more than one Unit or any portion of the Common Elements shall be deemed to constitute a part of the Common

Elements.) Any shutters, awnings, window boxes, door steps, stoops, porches, balconies, entryways or patios, storage or utility rooms, and all exterior doors and windows or other fixtures designed to serve a single Unit, but located outside the boundaries of such Unit shall be deemed to constitute Limited Common Elements allocated exclusively to such Unit. The allocation of Limited Common Elements to a Unit shall not be amended, modified or otherwise altered without the prior consent of the Owner of the Unit to which the Limited Common Elements are allocated.

III.06 Allocated Interest of Each Unit in the Condominium. The following designation of the Allocated Interest which each Unit bears to the Common Elements within the Condominium, which Allocated Interest is based upon the fractional percentage of 1/84 for each Unit, shall constitute the Allocated Interest of each Owner in the Common Elements; provided, however, in the event that Units are added or withdrawn from the Condominium, the denominator of the foregoing fraction shall increase or decrease by the number of Units so added or withdrawn.

III.07 Common Elements and Unit Maintenance.

(a) Common Elements. Except as otherwise provided herein, the Association (or the City of Chandler if the HOA fails to do so), shall be responsible for the maintenance, repair, and replacement of the Common Elements. Without any approval of the Owners, the Association may: (i) reconstruct, repair, replace, and refinish any Common Elements; (ii) maintain, repair, and landscape any shared entry area for the Property (whether established through easement, license, or otherwise); and (iii) do any other acts deemed necessary to preserve, beautify, and protect the Common Elements. The Board shall be the sole and absolute judge, in its reasonable discretion, as to the appropriate maintenance of the Common Elements. Notwithstanding anything contained in this section, the Association will have no obligations to perform any maintenance or repair work that is performed by any municipality or provider utility company responsible for the maintenance of any utilities or improvements located within any Common Elements. No Owner may alter, remove, injure, damage, or interfere in any way with any landscaping, lawns, plants, irrigation systems, sprinklers, shrubs, trees, and the like, if any, placed on the Common Elements.

Additionally, the City of Chandler is hereby given full and complete authorization to enter the common areas to perform maintenance and/or repair as the City deems necessary or appropriate in its sole and reasonable discretion.

(b) Repairs Necessitated by Owner. In the event that the need for maintenance or repair to the Common Elements is caused through the acts or omissions of an Owner, the Owner's permittees, negligent or otherwise culpable, or any pet of the Owner, the cost of the maintenance or repairs, including the deductible portion of any applicable insurance policy, shall be added to and become a part of the assessment against the Unit owned by that Owner, without regard to the availability of any insurance proceeds payable to the Association for the cost of the maintenance of repairs. In addition to the foregoing, if the Owner of a given Unit is held liable to the Association by



a court of competent jurisdiction for maintenance or repair work performed by the Association to any other Unit (i.e., a Unit not owned by that Owner), the amount of that judgment shall be added to and become a part of the assessment against the Unit owned by that Owner.

(c) Disclaimer. The City of Chandler is not responsible for and will not accept maintenance of any private facilities, streets, landscaped areas, etc. within this project.

(d) Maintenance of Unit. Each Owner shall maintain, repair, and replace, at the Owners' expense and without disturbance to the rights of other Owners:

(1) All portions of the Owner's Unit;

(2) The interior portions of the Unit, including, without limitation: (i) service equipment such as a dishwasher, laundry, refrigerator, microwave, oven, and stove, whether or not these items are built-in fixtures, tubs, toilets, sinks, floor coverings, and surfaces except the floor slab and subfloor; and (ii) all interior surfaces including but not limited to windows, doors, inside paint, and other inside wall finishes;

(3) All windows and glass doors (including the cleaning of the interior and exterior of any windows and glass doors);

(4) The air conditioning unit (including compressors and condensers), heater, and hot water servicing the Unit;

(5) The decorating within the Unit including, without limitation, painting, wallpapering, paneling, floor covering, draperies, window shades, curtains, lamps, and other furniture and interior decorating. Subject to the provisions of this Declaration, each Owner shall be entitled to the exclusive use of the interior surfaces of the perimeter and interior walls, floors, and ceilings within the Owner's Unit, and each Owner shall maintain these surfaces in good condition at the Owner's sole expense. Maintenance by the Owners may be subject to the rules and regulations of the Association as may be necessary for the common good of the Property; and

(6) The interior space of the garage designated for parking by an Owner.

III.08 Utilities. All utilities for individual Units, except water service charges (which will be metered collectively and paid by the Association as a Common Expense Item), will be metered separately to each Unit and such utility charges shall be the responsibility of the respective Owners.

#### ARTICLE IV.

##### Management

IV.01 Association. The Association will be formed pursuant to the provisions of § 33-1241 through § 33-1259, inclusive, of the Act to serve as the governing body for all Owners and shall make provisions for its (or the City of Chandler if the HOA fail to do so) maintenance, repair, replacement, administration, and operation of the Common Elements, assessment of expenses, payment of losses, division of profits, acquisition of hazard insurance, and disposition of such hazard insurance proceeds, and other matters as provided in the Act, the Declaration, the By-Laws and the Association Rules. The Association shall not be deemed to be conducting a business of any kind, and all funds received by the Association shall be held and applied by it for the Owners in accordance with the Declaration, the By-Laws and the Association Rules.

IV.02 Membership. Each Owner shall be a member of the Association so long as each Owner remains an Owner and such membership shall automatically terminate when the applicable Owner ceases to be an Owner, and upon the transfer of such ownership interest, the new Owner succeeding to such ownership interest shall likewise succeed to such membership in the Association.

IV.03 Voting. All Owners shall be entitled to one (1) vote for each Unit owned. When more than one (1) Person owns an interest in a Unit, each such Person shall be a Member of the Association but the vote for such Unit shall be exercised as the co-Owners themselves determine, but in no event shall more than one (1) vote be cast with respect to any Unit. The Association shall not be required to recognize the vote or written assent of any such co-Owner except the vote or written assent of the co-Owner designated in a writing executed by all such co-Owners and delivered to the Association.

IV.04 Declarant's Appointment and Removal Rights. Notwithstanding anything herein to the contrary, pursuant to § 33-1243(D) of the Act, Declarant shall be entitled to remove or appoint the directors of the Board or officers of the Association until such as time as the earlier of the following:

- (a) On the date which is ninety (90) days subsequent to the date after the conveyance of seventy-five percent (75%) of the Units to Owners other than the Declarant;
- (b) On the fourth (4th) anniversary following the date of cessation by any Declarant or Owner to offer Units for sale in the ordinary course of business; or
- (c) When the Declarant notifies the Association in writing that it relinquishes its rights granted under this section.

IV.05 Board of Directors. The governing body of the Association shall be the Board

electd or appointed pursuant to this Declaration or the By-Laws. The Board shall consist of not less than three (3) members and not more than seven (7) members. The Board may act in all instances on behalf of the Association in accordance with the provisions of the Act, this Declaration, the By-Laws and the Association Rules. The Board may adopt such rules and regulations as it deems necessary, provided, however, that such rules and regulations shall not conflict with the Act, this Declaration or the By-Laws. The Board may act on behalf of the Association to exercise those powers and duties as set forth in the Act, this Declaration, the By-Laws or the Association Rules.

IV.06 Qualification of Directors. Except for Board Members appointed by the Declarant, each Director shall be an Owner (or if an Owner is a corporation, partnership, or trust, a Director may be an officer, partner, trustee or beneficiary of such Owner). If a Director shall cease to meet such qualifications during his term, he will thereupon cease to be a Director and his place on the Board shall be deemed vacant.

IV.07 Independent Manager. The Board may employ a responsible Person or entity as manager to manage, operate, and maintain the Common Elements, with all of the administrative functions and such other powers and duties as the Board may delegate from time to time and for such fees as the Board may establish consistent with other provisions of this Declaration. Any agreement for management of the Property shall be in writing and shall provide for termination by either the Association or the management agent without cause or payment of a termination fee on not more than thirty (30) days written notice, shall not exceed a term of one (1) year, and shall be renewable by written agreement of the parties for successive periods of one (1) year.

IV.08 Action By Owners. The Association shall act to adopt or amend the By-Laws and the Association Rules. The By-Laws and Association Rules shall be adopted by the initial Board and shall be amended only by a majority vote of all of the Owners of Units. The Board may act on behalf of the Association to exercise those powers and duties as set forth in the By-Laws subject, however, to the limitations set forth in the Act.

IV.09 Annual Meeting. The first meeting of the Association shall be held not later than one hundred and twenty (120) days after the first conveyance of a Unit from the Declarant to an Owner is recorded. Thereafter, the annual meeting shall be held as provided in the By-Laws, and at least once each year following the first meeting of the Association as set forth in § 33-1248 of the Act.

IV.10 Right of Association to Enter Units. The Association acting through the Board or its duly authorized agent shall have the right at reasonable times upon reasonable notice (and at any time in case of any emergency) to enter upon or in any Unit to abate any infractions or correct any violation of any of the Restrictions herein set forth, and in connection therewith, shall have the further right to assess all costs incurred against the Owner, such Assessment to be secured by the lien provided in Section 5.01.

IV.11 Reserve Fund. The Association shall maintain an adequate reserve fund for maintenance, repairs, and replacement of those Common Elements that must be replaced on a periodic basis and such reserve shall be funded as part of monthly Assessments.

IV.12 Right of Board to Exclude Use. The Board shall have the right to exclude from the use of the recreational facilities any Owner who is delinquent in the payment of any Assessment levied in accordance with Article V hereof, or who is in violation of the Association Rules.

## ARTICLE V.

### Covenants for Assessments

V.01 Creation of Lien and Personal Obligation For Assessments. Each Owner, including the Declarant, of any Unit, by acceptance of a deed or other instrument creating in such Owner the interest required to be deemed an Owner, whether or not it shall be so expressed in any such deed or other instrument, is deemed to covenant and agree to pay to the Association (or to the City of Chandler if the HOA fails to do so), such Assessments to be fixed, established, and collected at least annually as provided in this Declaration. The Assessments, together with interest thereon, late charges, attorneys' fees, court costs, and other costs of collection as hereinafter provided, shall be a continuing lien upon the Unit against which each such Assessment is made in favor of the Association pursuant to § 33-1256 of the Act. Each such Assessment, together with such interest, late charges, costs, and attorneys' fees, shall also be the personal obligation of the Owner of such Unit at the time the Assessment becomes due. The personal obligation shall not pass to the successor in title of an Owner unless expressly assumed by such successor.

V.02 Liability of Declarant for Assessments. With respect to assessments when any portion of the 84 units are not substantially constructed or completed (as evidenced by a lack of a Certificate of Occupancy), notwithstanding the provisions of Section 5.01 of this Declaration to the contrary, the Declarant shall only be obligated to pay twenty-five percent (25%) of the Assessments levied against units which are substantially constructed or completed. If any Unit ceases to qualify for the reduced twenty-five percent (25%) rate of Assessment during any annual Assessment period, the Assessment attributable to the Unit shall be prorated on the basis of the number of days in the annual Assessment period that the Unit was not substantially completed and the number of days in the annual Assessment period for which the Unit was substantially completed.

V.03 Purpose of Assessments. The Assessments levied by the Association shall be used exclusively for the purposes of promoting the health, safety, and welfare of the Owners, the management, maintenance, care, preservation, and protection of the Property including, without limitation, the improvement and maintenance of the services and facilities devoted to this purpose and related to the use and enjoyment of the Common Elements, or in furtherance of any other duty or power of the Association.

V.04 Maximum Annual Assessment for Common Expenses.

(a) Each Owner's share of the Common Expenses shall be based on the amount of each Owner's Allocated Interest in the Common Elements as provided in Section 3.06; provided, however, that Common Expenses benefitting fewer than all of the Units shall be equally assessed exclusively against the Units benefitted from the expenditure.

(b) Until January 1 of the year immediately following the conveyance of the first Unit to any Unit Owner, the maximum annual Assessment for Common Expenses shall be One Hundred Sixty Dollars (\$160.00) per Unit.

(c) From and after January 1 of the year immediately following the conveyance of the first Unit to an Owner, the maximum annual Assessment may be increased each year by the greater of: (i) ten percent of the previous year's annual assessment or (ii) a percentage amount above the maximum Assessment for the previous year without a vote of the membership, which percentage amount reflects the increase in the Consumer Price Index - All Urban Customers - All Cities, published by the Bureau of Labor Statistics of the United States Department of Labor entitled "All Items" for January, 1999 (hereinafter referred to as the "Base CPI"). The increased maximum annual Assessment shall be determined by multiplying the previous maximum annual Assessment by a fraction, the numerator of which is the current CPI for January, 1999, and successive years, and the denominator of which is the Base CPI:

$$\text{Increased maximum annual Assessment} = \frac{\text{Previous maximum annual Assessment} \times \text{current CPI}}{\text{Base CPI}}$$

The increased maximum annual Assessment for each successive year shall be adjusted in accordance with the formula set forth above except that the Consumer Price Index number for the month and year of the expiration of each annual calendar period shall be substituted as the "Current CPI."

(d) From and after January 1 of the year immediately following the conveyance of the first Unit to an Owner, the maximum annual Assessment may be increased above the amount or amounts calculated pursuant to the formula in subsection (c) above by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

V.05 Special Assessments for Capital Improvements. In addition to the annual Assessments authorized above, the Association may levy, in any Assessment year, a special Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of

any construction, reconstruction, repair or replacement of a capital improvement upon the Common Elements, including fixtures and personal property related thereto, provided that any such Assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

V.06 Notice and Quorum for Any Action Authorized Under Sections 5.04 and 5.05. Written notice of any meeting called for the purpose of taking any action authorized under Sections 5.04 or 5.05 shall be sent to all members not less than thirty (30) days nor more than fifty (50) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum or the subsequent meeting shall be one-half (1/2) of the required quorum, at the preceding meeting. No such subsequent meeting shall be held more than fifty (50) days following the preceding meeting.

V.07 Uniform Rate of Assessment. Except as provided in Section 5.02, both annual and special Assessments shall be fixed at a uniform rate for all Units and may be collected on a monthly basis.

V.08 Certificate of Payment. The Association shall, upon reasonable demand and at reasonable times, furnish to any Owner liable for Assessments a certificate in writing signed by an officer or authorized agent of the Association setting forth whether the Assessments relating to a specified Unit have been paid and the amount of delinquency, if any. A reasonable charge may be collected by the Board for the issuance of each such certificate. Each certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid.

V.09 Date of Commencement of Assessments. Assessments as to the Units shall commence as to all such Units on the first day of the month following the conveyance of the first Unit by Declarant to Unit Owner. As provided in § 33-1255 of the Act, until the Association makes an Assessment, the Declarant shall pay all Common Expenses of the Property.

V.10 Reduction or Abatement of Regular Assessments. In the event the amount budgeted to meet Common Expenses for a particular year proves to be excessive in light of the actual Common Expenses, the Board in its reasonable discretion may either reduce the amount of the regular Assessments or may abate or reallocate collection of regular Assessments as it deems reasonably appropriate.

V.11 No Offsets. All Assessments shall be payable in the amount specified by the Assessment and no offsets against such amount shall be permitted for any reason including, without limitation: (a) a claim that the Association is not properly exercising its duties and powers as provided in this Declaration; or (b) an Owner has made or elects to make no use of the recreational

facilities.

V.12 Homestead Waiver. Each Owner, to the extent permitted by law, does hereby waive, to the extent of any liens created pursuant to this Declaration (whether such liens are now in existence or are created at any time in the future), the benefit of any homestead or exemption laws of the State of Arizona now in effect, or in effect from time to time hereafter.

## ARTICLE VI

### Effect of Non-Payment of Assessments and Remedies

VI.01 Delinquency. Any Assessment which is not paid when due is delinquent. Whenever an Assessment is delinquent, the Board may at its option invoke any or all of the sanctions provided for herein.

VI.02 Interest Charges. If any Assessment is not paid within fifteen (15) after it becomes due and payable, the Owner shall be obligated to pay the late charge then provided for in the By-Laws. The amount of such late charge until paid shall constitute part of the Assessment lien provided for in Section 5.01 of this Declaration.

VI.03 Interest. If any Assessment is not paid within thirty (30) days after it becomes due and payable, interest at the rate of eighteen percent (18%) per annum may be assessed on the amount owing from the due date until such time as it is paid.

VI.04 Action at Law. The Association may bring an action to recover a delinquent Assessment either personally against the Owner obligated to pay same or, upon compliance with the notice provisions herein, to foreclose the Assessment lien as a realty mortgage; provided, however, that the Association's choice of one (1) remedy shall not prejudice or constitute a waiver of the Association's right to exercise the other. The costs of preparing and filing the complaint shall be assessed against the delinquent Owner and such Owner's Unit, and reasonable attorneys' fees and court costs will thereafter be added to the amount in delinquency (plus interest and/or late charges, if appropriate) in the event that a judgment is obtained by the Association. Each Owner vests in the Association or its assigns the right and power to bring actions at law and/or lien foreclosures against such Owner or Owners for the collection of delinquent Assessments.

VI.05 Notice of Lien. No action shall be brought to foreclose an Assessment lien at a time less than thirty (30) days after the date that a certified or registered notice of claim of lien is deposited in the United States mail, postage prepaid, to the Owner of the applicable Unit and a copy thereof is recorded by the Association in the Office of the County Recorder of Maricopa County, Arizona.

VI.06 Foreclosure Sale. Any foreclosure sale provided for in this Declaration is to be conducted in accordance with applicable provisions relating to the foreclosure of realty mortgages in the State of Arizona, in accordance with § 33-1256 of the Act. The Association, upon approval by a majority vote of the Owners, may through its duly authorized agents have and exercise the power to bid on the Unit at the foreclosure sale and to acquire, hold, lease, mortgage, and convey such Unit.

VI.07 Suspension of Votes. The Board shall suspend for the entire period during which any Assessment remains delinquent the obligated Owner's right to vote on any matter at regular or special meetings of the Association.

VI.08 Suspension of Recreational Privileges. The Board shall also suspend for the entire period during which any Assessment remains delinquent the obligated Owner's right to the use of the recreational facilities of the Property.

## ARTICLE VII

### Insurance

VII.01 Insurance. Insurance shall be obtained by the Association upon the Property pursuant to the terms and conditions of this Article VII and as may be required by the Act.

VII.02 Authority to Purchase. The Board shall purchase and maintain certain insurance upon the Property including, but not limited to, the insurance described in Section 7.03 below, which insurance is to be purchased by the Association for the benefit of the Association, the Owners, and the First Mortgagees, as their interests may appear. Provisions shall be made for the issuance of Certificates of Endorsement to the First Mortgagee of any first mortgage. Such policies and endorsements thereon, or copies thereof, shall be deposited with the Association. The Board shall deliver a copy of the policies, or by and through its agent, advise the Owners of the coverage of said policies to determine whether particular items are included within the coverage so that the Owners may insure themselves as they see fit in the event certain items are not insured by the Association. Without limiting the generality of the foregoing, it shall be each Owner's responsibility to ascertain the Association's coverage pursuant to Section 6.06 and to provide Owner's liability insurance, theft, or other insurance covering personal property damage and loss, insurance for each Owner's personal liability, and such other insurance which is not carried by the Association and is otherwise desired by the Owner.

VII.03 Coverage. The Association shall obtain the following policies of insurance and shall maintain said policies in full force and effect:

- (a) A multi-peril policy covering the Property providing, at a minimum, fire and



extended coverage, and all other coverage in kind and amount customarily acquired or required for projects similar in construction, location and use including, but not limited to, vandalism and malicious mischief, in an amount not less than one hundred percent (100%) of the insurable value based upon replacement cost.

(b) A comprehensive policy of public liability insurance covering all of the Common Elements and public ways in the Property in a minimum of at least One Million Dollars (\$1,000,000.00) per occurrence, for personal injury and/or property damage. Such insurance policy shall contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association and its agents, or other Owners. The scope of such coverage shall include all other coverage in the kind and amount customarily acquired or required for projects similar in construction, location, and use.

(c) If there is a steam boiler in operation in connection with the Property, there must be in force boiler explosion insurance evidenced by the standard form of boiler and machinery insurance policy and providing, as minimum coverage, Fifty Thousand Dollars (\$50,000.00) per accident per location.

(d) If the Property is located in an area designated by the Secretary of Housing and Urban Development as an area prone to special flood hazards, a "blanket" policy of flood insurance on the Property must be maintained in the amount of the outstanding principal balances of the first mortgage loans on the Units comprising the Property or the maximum limit of coverage available under the National Flood Insurance Act of 1968, as amended, whichever is less.

(e) The Association must obtain fidelity coverage against dishonest acts on the part of directors, managers, trustees, employees, or volunteers responsible for handling funds belonging to or administered by the Association. The fidelity bond or insurance must name the Association as the insured and shall be written to provide protection which is, in no event, less than one and one-half (1-1/2) times the insured's estimated annual operating expenses and reserves. In connection with such coverage, an appropriate endorsement to the policy to cover any Person who serves without compensation shall be added if the policy would not otherwise cover volunteers.

(f) A Worker's Compensation Policy, if necessary, to comply with the requirements of Arizona law.

(g) Such other insurance as the Board shall determine from time to time to be desirable.

VII.04 Provisions Required. The insurance policies purchased by the Association shall, to the extent possible, contain the following provisions:

(a) The coverage afforded by such policies shall not be brought into contribution or proration with any insurance which may be purchased by Owners or First Mortgagees;

(b) The conduct of any one or more Owners shall not constitute grounds for avoiding liability on any such policies;

(c) There shall be no subrogation with respect to the Association, its employees or agents, Owners, and members of their household, their families and employees, or the policy or policies should name said Persons as additional insureds;

(d) A "severability of interest" endorsement shall be obtained which shall preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association, its agents or employees, or other Owners;

(e) A statement in the name of the insured shall be included in all policies, in form and substance similar to the following:

"THE VILLAS AT SAVONA UNIT OWNERS ASSOCIATION, for the use and benefit of the individual Owners" (designated by name, if required);

(f) A standard mortgagee clause which must be endorsed to provide any proceeds shall be paid to THE VILLAS AT SAVONA UNIT OWNERS ASSOCIATION, for the use and benefit of First Mortgagees as their interest may appear, or which must be otherwise endorsed to fully protect the interest of First Mortgagees, their successors and assigns;

(g) For policies of hazard insurance, a standard mortgagee clause shall provide that the insurance carrier shall notify the First Mortgagee named at least ten (10) days in advance of the effective date of any reduction in or cancellation of the policy;

(h) Any "no other insurance clause" shall exclude insurance purchased by Owners or First Mortgagees.

VII.05 First Mortgagee Protection. The Association shall provide each First Mortgagee, upon request, with a letter wherein the Association agrees to give written notice to each First Mortgagee, or Servicer of a mortgage, or any entity or Person designated by such First Mortgagee or Servicer, whenever damage to a Unit covered by a first mortgage exceeds One Thousand Dollars

(\$1,000.00) or damage to the Common Elements and related facilities exceeds Ten Thousand Dollars (\$10,000.00). Each hazard insurance policy shall be written by a hazard insurance carrier which has a financing rating by Best's Insurance Reports of Class VI or better, or if such rating be discontinued, by a successor thereto or a similar such rating service. Each insurance carrier must be specifically licensed or authorized to transact business within the State of Arizona. In no event shall policies be purchased or utilized by the Association where, under the terms of the carrier's charter, by-laws, or policy, contributions or Assessments may be made against the Owner or First Mortgagee or any entity or Person purchasing or guaranteeing any first mortgage; whereby the terms of the carrier's charter, by-laws or policy, loss payments are contingent upon action by the carrier's board of directors, policy holders or members; or where the policy contains any limiting clauses (other than standard insurance conditions) which could prevent any Owner or the First Mortgagee, its successors or assigns, from collecting insurance proceeds. The mortgagee clause of each insurance policy shall be properly endorsed, and there must have been given necessary notices of transfer, and any other action taken required to be taken to fully protect, under the terms of the policies and applicable law, the interest of all First Mortgagees, successors, and assigns. Where permissible, the insurance carrier shall be required to name the Servicer of a first mortgage, as follows: "(name of Servicer) or assigns," as First Mortgagee under the mortgagee clause. If permissible, where a deed of trust is utilized, the insurance carrier shall be required to designate the mortgagee clause "(name of Servicer), beneficiary" or "(name of trustee) for the benefit of (name of Servicer)" instead of naming the trustee under the deed of trust in the mortgagee clause. All insurance drafts, notices, policies, invoices, and all other similar documents, or their equivalent, shall be delivered directly to each Servicer involved, regardless of the manner in which the mortgagee clause is endorsed. The Servicer's address on any First Mortgagee endorsement on a policy shall be utilized in the endorsements in lieu of the address of the First Mortgagee, if so requested by the First Mortgagee. First Mortgagees may pay overdue premiums, or may secure new insurance coverage upon the lapse of the policy, with respect to any insurance required to be maintained by the Association as provided for in this Article VII and First Mortgagees so making expenditures therefor shall be owed immediate reimbursement by the Association.

VII.06 Non-Liability of Association and Board. Notwithstanding the duty of the Association to obtain insurance coverage as stated herein, neither the Association nor any Board Member shall be liable to any Unit Owner or any other party if any risks or hazards are not covered by insurance or if the amount of insurance is not adequate. It shall be the responsibility of each Unit Owner to ascertain the coverage and protection afforded by the Association's insurance and to procure and pay for such additional insurance coverage and protection that said Owner may desire.

VII.07 Premiums Upon Insurance Policies Purchased by the Association. Premiums upon insurance policies purchased by the Association shall be paid by the Association as a Common Expense except that the amount of increase over any annual or other premium occasioned by the use, misuse, occupancy, or abandonment of a Unit or its appurtenances, or of the Common Elements by an Owner, shall be assessed against that particular Owner.

VII.08 Insurance Claims. The Association, acting by and through its Board, is hereby irrevocably appointed agent for each Owner and for each holder of a first mortgage or other lien upon a Unit, and for each Owner of any other interest in the Property, subject to the provisions contained herein, to adjust all claims arising under the provisions contained herein, to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims, the Board having full and complete power to act for the Association in this regard.

VII.09 Benefit. Except as otherwise provided herein, all insurance policies purchased by the Association shall be for the benefit of the Association, the Owners and First Mortgagees, as their interests may appear.

## ARTICLE VIII

### Easements

VIII.01 General Easements to Common Elements. Subject to this Declaration, the By-Laws and the Association Rules, non-exclusive, reciprocal easements are hereby reserved and created for the purpose of support, ingress and egress, access, use, and enjoyment in favor of each Owner, upon, across, over, under, and through the Common Elements, including the use of all pipes, wires, ducts, flues, cables, conduits, and public utility lines and recreational facilities, which easements shall be appurtenant to each Unit. The Association, acting through the Board or its authorized agent, and public utility companies providing service to the Property, shall have non-exclusive easements with the right of access to each Unit to make inspections, to remove violations, to maintain, repair, replace, or effectuate the restoration of the Common Elements accessible in such Unit; provided, however, such rights shall be exercised in a reasonable manner and at reasonable times with prior notification, unless emergency situations demand immediate access.

VIII.02 Public Utilities. Easements and rights over the Property for the installation and maintenance of electricity lines, telephone lines, cable television lines, water lines, gas lines, sanitary sewer lines, drainage facilities, and such other public utilities needed to serve the Property are hereby reserved unto the Association, together with the right to grant and transfer same; provided, however, such easements and rights shall not unreasonably interfere with the use of the Common Elements and the Units by the Unit Owners or Unit Occupants.

VIII.03 Easements for Encroachments. If any portion of the Common Elements shall hereafter encroach upon any Unit, or if any Unit on the Common Elements, as a result of the manner in which the Buildings have been constructed or due to settling, shifting, alteration, replacement, repair, or restoration by Declarant or the Association, a valid easement for encroachment shall exist so long as the Buildings stand.

VIII.04 Development Easements for the Declarant. So long as the Declarant continues to offer Units for sale in the ordinary course of business, there are hereby reserved to the Declarant, together with the right to grant and transfer the same to others, including Declarant's sales agents, representatives, and assigns, easements and rights upon, over, under, and through the Property (exclusive, however, of Units not owned by the Declarant for construction, maintenance, display (including the use of the Units as models), sales, and exhibit purposes (including the use of signs and other advertising devices) in connection with the development and sale or lease of Units; provided, however, that no such use by Declarant or her, his, or its agents shall otherwise restrict the Unit Owners or Unit Occupants in the reasonable use and enjoyment of their Units.

VIII.05 Patios and Balconies. The Unit Owners have exclusive easements upon, within, across, and over the storage or utility rooms and the patios and balconies which are appurtenant to, and considered a Limited Common Element of, their respective Unit or Units, as designated and indicated on the Plat.

## ARTICLE IX.

### Use Restrictions

IX.01 Conditions of Use and Occupancy. The use and occupancy of the Property shall be in conformance with all deed restrictions and zoning and other ordinances, rules, and regulations of all appropriate governmental agencies and, subject to the foregoing, shall be in accordance with the provisions set forth in this Article IX so long as the Condominium created hereby exists.

IX.02 Residential Use. The Property shall be used exclusively for residential purposes and each Unit shall be improved, used, and occupied as a separate dwelling Unit. Unless specifically approved by the Board, no part of the Property may be used for any business, commercial, manufacturing, storing, vending, or any non-residential purposes. However, nothing contained herein shall be construed to prevent the Declarant, its agent, or employees, from engaging in all forms of maintenance and sales activities within the Property, including use of the Units owned by the Declarant as models until the Declarant ceases to offer Units for sale in the ordinary course of business.

IX.03 Signs. No sign of any kind shall be displayed to public view from any portion of the Property without the approval of the Board. Nothing herein contained shall prevent the Declarant, and its agents, employees, and assigns from utilizing reasonable signs, flags, markers, and sales devices in furtherance of sales activities until such time as the Declarant's rights set forth in Section 4.04 of this Declaration terminate as provided in that section.

IX.04 Nuisance. No nuisances shall be allowed on the Property nor any use or practice which is a source of annoyance to Unit Owners or occupants or which interferes with the peaceful possession and proper use of the Property by its Owners or occupants. All parts of the Property shall be kept in a clean and sanitary condition, and no rubbish, refuse, or garbage shall be allowed to accumulate, nor shall any hazard be allowed to exist. No Owner of a Unit shall permit or suffer anything to be done or kept upon his Unit or to make any use of his Unit which will increase the rate of insurance upon the Property or any part thereof. No Unit Owner shall permit animal feces to be deposited upon or remain upon the Property or any part thereof.

IX.05 Leasing. Any agreement for the leasing or rental of any Unit (hereinafter referred to in this section as a "Lease") shall be in writing and provide that the terms of such Lease or rental shall be subject in all respects to the provisions of this Declaration, the By-Laws, and the Association Rules. Any Lease shall further provide that any failure by the Occupant thereunder to comply with the terms of the foregoing documents shall be a default under the Lease. A Unit may not be leased for transient or hotel purposes which shall be defined as rental for any period of less than thirty (30)

days. Any Unit Owner who shall lease his Unit shall be responsible for assuring compliance by the Occupant with this Declaration, the By-Laws, and the Association Rules, to the extent permitted by law. Failure by a Unit Owner to take legal action, including the institution of a forcible entry and detainer proceeding against the Occupant in violation of this Declaration, the By-Laws, or the Association Rules within ten (10) days after receipt of written demand to do so from the Board, shall entitle the Association, acting by and through the Board, to take any and all such actions, including the institution of proceedings and forcible entry and detainer on behalf of such Unit Owner against his Occupant. Any expenses incurred by the Association, including reasonable attorneys' fees and costs of suit, shall be repaid to it by such Unit Owner. Failure of such Owner to make such repayment within ten (10) days after receipt of a written demand therefor shall entitle the Board to levy a special Assessment against such Owner and his Unit for all such expenses incurred by the Association. In the event such special Assessment is not paid within thirty (30) days of its due date, the Board may resort to all remedies of the Association for collection therefor.

IX.06 Temporary Structures. No structure or building of a temporary character, including a tent or shack, shall be placed upon the Property or used therein unless the same and its proposed use are approved by the Board. Nothing herein contained shall be construed as to prevent the Declarant from using temporary structures or trailers for construction or sales purposes or engaging in all forms of maintenance and sales activities within the Property.

IX.07 Parking.

(a) Each Unit includes (1) garage parking space and (1) carport, or (2) garage parking spaces that will be used by the Unit Owner of the Unit for parking of Family Vehicles. The garage door must remain closed except while the garage is in use for cleaning, entry, and exit. No garage may be used for storage or any other use that restricts or prevents the garage from being used for parking Family Vehicles. Additional Family Vehicles that cannot be parked in the garage assigned to the Unit may be parked in any unassigned or unallocated parking areas on the Property so long as the Family Vehicles are operable and are, in fact, operated from time to time. A "Family Vehicle" means any domestic or foreign cars, station wagons, sport wagons, pick-up trucks, vans, mini-vans, jeeps, sport utility vehicles, motorcycles, and similar non-commercial and non-recreational vehicles that are used by the Owner of the applicable Unit or the Owner's permittees for family and domestic purposes only.

(b) Unless otherwise permitted by the Board, no motor vehicle (including a motorcycle), trailer, camper, boat, or similar item, and no bicycle, shall be permitted to remain upon the Property except in spaces designated for such use; provided, however, temporary parking of motor vehicles shall be permitted. For purposes hereof, "temporary parking" shall mean parking of vehicles belonging to invitees of Owners and Occupants, parking of delivery trucks, service vehicles and other commercial vehicles being used in the furnishing of goods and services to the Association or to the Unit Owners and Occupants as well as parking of vehicles belonging to and being used by

Unit Owners, Occupants, and invitees for loading and unloading purposes. Except for temporary parking as hereinabove defined, no buses, vans, trucks, or other vehicles having a carrying capacity in excess of three-quarter (3/4) tons or designed for commercial purposes shall be maintained or parked upon the Property except with the prior written approval of the Board. The Board may adopt Association Rules relating to the admission and temporary parking of vehicles within the Property.

Nothing herein contained shall be construed as preventing the Declarant from using temporary structures or trailers for maintenance and/or sales purposes or engaging in all forms of maintenance and sales activities within the property.

IX.08 External Fixtures. No external items such as, but not limited to, television and radio antennas, flag poles, clotheslines, wiring, insulation, air conditioning equipment, water softening equipment, fences, awnings, ornamental screens, screen doors, porch or patio or balcony enclosures, sunshades, walls, landscaping and planting, other than those provided in connection with the original construction of the Property, and any replacements thereof, and other than those approved by the Board and any replacements thereof, shall be constructed, erected, or maintained on the Property, including any Buildings thereof. The foregoing notwithstanding, nothing herein shall be construed as preventing the Declarant and its agents and assigns from engaging in all forms of maintenance and sales activities within the Property. The Association may maintain in effect or cause to be maintained in effect a cable television systems or systems, which shall provide connections to each Unit via underground or internal wall wiring, or a combination thereof.

IX.09 Window Covers. Only curtains, drapes, and shades may be installed as window covers. No window shall be covered by paint, foil, sheets, or similar items. The Board may adopt Association Rules regulating the type, color, and design of external surface of window covers.

IX.10 External Laundering. Unless otherwise permitted by the Board, external laundering and drying of clothing and other items is prohibited.

IX.11 Outside Speakers and Amplifiers. No radio, stereo, broadcast, or loudspeaker units and no amplifiers of any kind shall be placed upon or outside, or be directed to the outside of any Building without the prior written approval of the Board.

IX.12 Repairs. No repairs of any detached machinery, equipment, or fixtures, including, without limitation, motor vehicles, shall be made upon the Property.

IX.13 Oil and Mineral Activity. No oil drilling, oil development operations, oil refining, quarrying, or mining operations of any kind shall be permitted upon the surface of the Property, nor shall oil wells, tanks, tunnels, mineral excavations, or shafts be installed upon the surface of the Property or within Five Hundred (500) feet below the surface of the Property. No derrick or other structure designated for use in boring for water, oil, or natural gas shall be erected, maintained, or



permitted upon the Property.

IX.14 Animals. No animals, livestock, or poultry of any kind shall be raised, bred, or kept upon the Property, except that dogs, cats, or other household pets may be kept within a Unit provided they are not raised, bred, kept, or maintained for any commercial purpose, and provided that a Unit Owner shall not maintain more than two (2) household pets in any Unit which pets may not weigh more than 40 lbs each. Notwithstanding the foregoing, no animal or fowl may be kept within a Unit which, in the good faith judgment of the Board, results in an annoyance or is obnoxious to Owners or Occupants within the Property. All animals permitted to be kept by this section shall be kept on a leash when on any portion of the Property except within a Unit. The Board may adopt Association Rules applicable to the provisions of this section and to the keeping of pets within the Property, and their enforcement.

IX.15 Rules and Regulations. The Association shall have the power to make and adopt reasonable Association Rules with respect to activities which may be conducted on any part of the Property. The Board's determination as to whether a particular activity being conducted or to be conducted violates or will violate such Association Rules shall be conclusive unless, at a regular or special meeting of the Association, Unit Owners representing a majority of the voting power of the Association vote to the contrary.

IX.16 Any and all restrictions regarding easements on, over or around the subject property including the common areas do not and shall not conflict with the City of Chandler's intended use of the property.

## ARTICLE X.

### Destruction of Improvements

X.01 Damage and Repair. If all or any part of the Property or any property in which the Association owns an interest is damaged or destroyed by fire or other hazard, the determination as to whether said Property shall be repaired or reconstructed shall be made in accordance with the provisions of this Article X.

X.02 Common Elements. If the damaged property is part of the Common Elements or any property in which the Association owns an interest, it shall be repaired or reconstructed, unless it is determined in the manner provided in Section 10.03 below that the Condominium shall be terminated (in the event the damaged Property contains no Units).

X.03 Units. If the damaged property is a Building or a Building containing Units, the damage shall be repaired and reconstructed, unless sixty (60) days after the loss or damage, eighty percent (80%) of the Unit Owners, and their respective First Mortgagees, of all of the Units

(including 100% of all of the Owners of Units or allocated Limited Common Elements which will not be rebuilt, and their respective First Mortgagees) vote not to repair or reconstruct the damaged property; then, and in such event, the Condominium will be terminated as provided in this Article X.

X.04 Construction. Any repair or reconstruction must be substantially in accordance with the plans and specifications for the original improvements, or if not, then according to plans and specifications approved by the Board and a majority of the Unit Owners. If the loss or damage is only to those parts of a Unit or Units for which the responsibility of maintenance and repair is borne by the Unit Owner, then the Unit Owner shall be responsible for repair and reconstruction; provided, however, to the extent that any insurance proceeds collected are attributable to the Units and not the Common Elements, the share of the proceeds attributable to the Units shall be used for repairs and reconstruction of the Units. Immediately after determination is made to repair or reconstruct damage to property for which the Association has the responsibility for repair and reconstruction, the Association shall obtain reliable and detailed estimates of the costs of the repair or reconstruction. In the case of damaged Common Elements, if the proceeds of insurance are not sufficient to defray the estimated costs of construction and repair by the Association, Assessments shall be made against the Unit Owners in sufficient amounts to provide funds to pay the estimated costs. Additional Assessments may be made at any time during or following the completion of construction. Such Assessments against Unit Owners for damage to Units shall be in proportion to the cost of reconstruction and repair of their respective Units. Such Assessments on account of damage to Common Elements shall be in proportion to the Unit Owners' Allocated Interest in the Common Elements.

X.05 Insurance Trustee. Except for loss or damage which is less than one percent (1%) of the value of the Property, all insurance proceeds payable on account of damage or loss to the Property shall be paid to any bank in Arizona which is selected as a Trustee by the Board, which bank is hereinafter referred to as the "Insurance Trustee." The Insurance Trustee shall not be liable for payment of premiums, for the renewal or the sufficiency of policies, or for the failure to collect any insurance proceeds. Insurance proceeds payable on account of loss or damage which equals less than one percent (1%) of the value of the Property shall be payable to and be used by the Association to repair such loss or damage. The duty of the Insurance Trustee shall be to receive the insurance proceeds that are paid, and to hold them in trust for and on behalf of the Owners and the First Mortgagees; an undivided share of such proceeds on account of damage to Common Elements shall be allocated to the Unit Owners according to their respective Allocated Interest therein. Proceeds, if any, on account of damage to Units shall be held for the Unit Owners of said damaged Units in proportion to the costs of repairing the damage suffered by each Unit Owner, which costs shall be determined by the Association. In the event a mortgagee endorsement has been issued as to the Unit, the share of the Owner shall be held in trust for the Owner and for their First Mortgagee, as their interest may appear.

X.06 Manner of Disbursement. The proceeds from Assessments and insurance received

by the Insurance Trustee shall be disbursed in the following manner: a) that portion of the insurance proceeds, if any, representing damage, the reconstruction and repair of which is the responsibility of the Unit Owner, shall be paid by the Insurance Trustee to the Owner, or if there is a mortgagee endorsement then to the Unit Owner and the First Mortgagee jointly, who may use such proceeds as they may determine; provided, however, to the extent that any damage to the Unit affects in any way the Common Elements or any other Unit Owner's Unit, the proceeds must be used for the reconstruction and repair of such damage; b) the portion of insurance proceeds representing damage, the reconstruction and repair of which is the responsibility of the Association, shall be disbursed in payment of the costs of such repair and reconstruction in the manner required by the Board and upon the approval of an architect qualified to practice architecture in the State of Arizona and employed by the Association to supervise the work; and c) the Insurance Trustee shall not be required to determine whether a disbursement is to be made, the identify of the payee, or the amount to be paid, but may rely upon a Certificate of the Board acting for and on behalf of the Association stating such information.

X.07 Performance of the Work. All repairs and construction work shall be done by licensed contractors, of good reputation. Payment bonds, performance bonds, and statutory lien bonds may, but need not, be required in the discretion of the Board, but any and all work performed shall be done pursuant to written contractual agreements.

X.08 Termination. If it is determined pursuant to the provisions of Section 10.03 of this Article X that the Building or Buildings containing Units shall not be repaired or reconstructed because of damage or destruction, then and in such event, this Condominium shall be terminated pursuant to the provisions of the Act.

## ARTICLE XI

### First Mortgagees

XI.01 Rights in General. Notwithstanding any other provisions of this Declaration, the Articles, By-Laws, Association Rules, or management agreements to the contrary, the provisions set forth in this Article XI shall apply to and benefit each holder of a first mortgage upon a Unit.

XI.02 No Right of First Refusal Permitted. The right of a Unit Owner to sell, transfer, or otherwise convey his Unit shall not be subject to any right of first refusal or similar restriction to any other Person or entity.

XI.03 Foreclosure or Trustee Sale. Any First Mortgagee or third party purchaser at a foreclosure sale or trustee sale under a Deed of Trust who obtains title to a Unit pursuant to the remedies provided for in the first mortgage for foreclosure of the mortgage will not be liable for such Unit's unpaid dues, charges, or Assessments, which may accrue prior to the acquisition, including the

expiration of any period of redemption, of title to such Unit by the First Mortgagee.

XI.04 Prior Approvals. Unless all of the First Mortgagees who have provided written notification to the Association of their respective desire to be informed of and to approve in advance the matters hereinafter set forth in this Section 11.04 (based upon one (1) vote for each first mortgage owned), and eighty percent (80%) of the Unit Owners of all of the Units, or such higher percentage as may be required in this Declaration or by applicable law, have given their prior written approval, the Association shall not be entitled to:

(a) by act or omission, seek to abandon or terminate this Declaration or the Condominium hereby established except as set forth in Article X hereof;

(b) change the Allocated Interest or obligation of any individual Unit for the purpose of levying Assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards or determining the Allocated Interest of each Unit in the Common Elements, except as set forth in Article X hereof;

(c) by act or omission, seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Elements. The granting of an easement 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;

(d) use hazard insurance proceeds payable or paid due to losses to any of the Property or portion thereof whether to the Units or to the Common Elements, for other than the repair, replacement, or construction of such Property, except as provided herein or by the Act. First Mortgagees shall have the right to participate in the adjustment and settlement of any claim under any insurance maintained by the Association.

XI.05 Taxes, Assessment, and Charges. All taxes, Assessments, and charges which may become liens prior to a first mortgage under local law shall relate only to the individual Unit and not to the Condominium as a whole.

XI.06 Priority. No provision of the documents set forth in Section 11.01 hereof shall give Unit Owner, or any other party, priority over any rights of the First Mortgagee of the Unit pursuant to its first mortgage in the case of a distribution to such Unit Owner of insurance proceeds or condemnation awards for losses or taking of the Units or Common Elements.

XI.07 Amenities. All amenities pertaining to and located on the Property, such as driveways, recreation, and service areas, if any, are a part of the Property and shall be covered by and be subject to a mortgage on a Unit to the same extent as are the Common Elements.

XI.08 Written Notification. A First Mortgagee, upon request, shall be entitled to written notification from the Association of (1) any default in the performance by the Unit mortgagor pursuant to the documents specified in Section 11.01 hereof, which default is not cured by said Unit mortgagor with a period of thirty (30) days; (2) any condemnation or eminent domain proceeding affecting any portion of the Property; or (3) any substantial damage or destruction to the Common Elements to the extent and as provided in Section 7.05 hereof.

XI.09 Books and Records. The Association shall make available to Owners, First Mortgagees, and insurers and guarantors of the first mortgage upon any Unit, current copies of this Declaration, the Articles, By-Laws, and the Association Rules governing the Condominium, as may be in effect from time to time, and other books, records, and financial statements of the Association. The Association shall also be required to make available to any and all prospective purchasers of any Unit current copies of this Declaration, the Articles, By-Laws, and Association Rules governing the Condominium, and the most recent annual audited financial statement, if such is prepared. The term "available" as utilized within this Section 11.09 shall be deemed to mean and refer to, at a minimum, that the above-referenced documentation be made available by the Association for inspection, upon request, during normal business hours, or under other reasonable circumstances.

XI.10 No Personal Liability. Except as otherwise provided in this Article XI, a First Mortgagee shall not in any case or manner be personally liable for the payment of any Assessment or charge, nor the observance or performance of any covenant, restriction, regulation, or rule in this Declaration, the Articles, By-Laws, Association Rules or any management agreement, except for those matters which are enforceable by injunctive or other equitable relief, not requiring the payment of money.

XI.11 Breach. An action to abate the breach of any of the Restrictions set forth in this Declaration may be brought against the purchasers who have acquired title through foreclosure of a first mortgage and the subsequent Sheriff's Sale (or through any equivalent proceedings), and the successors in interest to said purchasers, even though they acquired an interest in such Unit through foreclosure or proceedings in lieu thereof.

XI.12 Exercise of Ownership Rights and Privileges. During the pendency of any proceedings to foreclose a first mortgage (including any period of redemption) or if the trustee under the first deed of trust has given notice of sale as required by law, the First Mortgagee, or a receiver appointed in any such action, may, but need not, exercise any or all of the rights and privileges of the Owner in default of the Unit including, but not limited to, the right to vote as a member of the Association in the place and stead of the defaulting Owner.

XI.13 Obligation to Pay Assessments and Charges. At such time as the First Mortgagee shall become record Owner of a Unit, the First Mortgagee shall be subject to all of the terms and

conditions of this Declaration including, but not limited to, the obligation to pay all Assessments and charges accruing thereafter in the same manner and on the same terms as any other Owner.

XI.14 Prior Assessment Liens. The First Mortgagee, or any other party acquiring title to a Unit through foreclosure of the first mortgage or through any equivalent proceedings, such as, but not limited to, the taking of a deed in lieu of foreclosure or acquiring title at a Trustee's Sale under a first Deed of Trust, shall acquire title free and clear of any lien authorized by or arising out of any of the provisions of this Declaration which secures the payment of an Assessment for charges accrued prior to the final conclusion of any such foreclosure or equivalent proceedings, including the expiration day of any period of redemption. Nevertheless, in the event the Owner against whom the original Assessment was made is the purchaser or redemptioner, the lien shall continue in effect and the said lien may be enforced by the Association or the Board against the Unit and for Assessment that was due prior to the final conclusion of any such foreclosure or equivalent proceedings. Further, any such unpaid Assessment shall continue to exist as a personal obligation of the defaulting Owner of the respective Unit to the Association, and the Board may use reasonable efforts to collect the same from said Owner even after said Owner is no longer a member of the Association.

XI.15 Subordination of Assessment Liens. The lien of the Assessments provided for herein shall be subordinate to the lien of any first mortgage now or hereinafter placed upon any Unit; provided that such first mortgage is in favor of a bank, savings and loan association, insurance company, mortgage banker, other institutional lender, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or their successors and assigns, or is guaranteed or insured respectively by the Veterans Administration or the United States Department of Housing and Urban Development/Federal Housing Administration, or their respective successors and assigns. The lien of the Assessments provided for herein shall not be affected by any sale or transfer of the Unit except that a sale or a transfer pursuant to the foreclosure of a first mortgage, as herein defined, shall extinguish the subordinate lien of the Assessments provided for herein which became payable prior to such sale or transfer. Any such sale or transfer pursuant to a foreclosure of a first mortgage shall not relieve the purchaser or transferee from the lien of, any common expense charges secured by the lien of the Assessments provided for herein which thereafter becomes due.

XI.16 No Reversion or Foreclosure. Notwithstanding any other provisions in the documents specified in Section 11.01 hereof, no provision of this Declaration or of said documents relating to costs, use, set-back, minimum size, building materials, architectural, aesthetic, or similar matters provide for reversion or foreclosure of title to a Unit in the event of violation thereof. No breach or any other violation of any provisions of the documents specified in Section 11.01 hereof shall affect, impair, defeat, or render invalid the interest or lien of any First Mortgagee.

XI.17 Rights, Privileges, and Powers of First Mortgagees; Interpretation. Notwithstanding and prevailing over any and all provisions hereof, no amendment to this Declaration shall be made or become effective which in any way affects, diminishes, or impairs any of the rights, privileges, or

powers granted to any First Mortgagee, or which in any way is inconsistent with the customary rules, regulations, or requirements of institutional First Mortgagees or their assigns or successors, without the prior written consent of all First Mortgagees. First Mortgagees shall have the right to enforce against Owners, the Association, and all others, any and all provisions of this Declaration including, without limitation, the provisions set forth in this Article XI. Said enforcement by First Mortgagees may be by injunction, mandatory or prohibitory, or any other lawful procedure. The Articles, By-Laws, and the Association Rules shall be governed by this Declaration herewith shall be null and void.

## ARTICLE XII.

### Eminent Domain

XII.01 Effect of Condemnation. If a portion of the Common Elements should be taken by the exercise of the power of eminent domain, or should be transferred and conveyed to a condemning authority in the anticipation of such exercise, the entire award made as compensation for such taking including, but without limitation, any amount awarded as severance damages, or the entire amount received and paid in anticipation of such taking, after deducting therefrom in each case, reasonable and necessary costs and expenses, including, but without limitation, attorneys' fees, appraisers' fees, and court costs (which net amount is hereinafter referred to in this Article XII as the "Award") shall be paid to the Board as Trustee for all Owners and First Mortgagees. If the portion of the Common Elements taken or conveyed shall not be comprised of or include, all or any part of a Building, as soon as practicable, the Board shall cause the Award to be utilized for the purpose of repairing and restoring the Property, including, if the Board deems it necessary or desirable, the replacement of any improvements so taken or conveyed; provided, however, all First Mortgagees then of record with reference to the Units, shall be notified in writing, and if a majority object to such repairing or restoring within ten (10) days after written notice, then the Board may act only with the approval of such a majority. If the portion of the Common Elements taken or conveyed is comprised of, or includes all or any part of a Building, the Board shall cause the award to be utilized for the purpose of repairing and restoring the Property, unless the Owner or Owners of the Unit or Units taken by eminent domain, and their respective First Mortgagee or Mortgagees, as their interests may appear, object to such repairing or restoring within ten (10) days after written notice; in which event said Award shall be applied and paid to said affected Owners and First Mortgagees in proportion to their respective Allocated Interest in the Common Elements appurtenant to their respective Unit ownership as set forth in Section 3.06 hereof. In the event of a partial taking of Common Elements comprised of or including all or any part of a Building, the Allocated Interests of the Units not taken or acquired by Eminent Domain shall be reallocated as provided and set forth in § 33-1206 of the Act. If all of the Buildings and all of the Units of this Condominium contained therein are acquired or taken by the power of eminent domain, the Condominium shall be terminated pursuant to the provisions of § 33-1228 of the Act; provided, however, that any net award or proceeds payable to a Owner upon termination of the Condominium shall be paid, as appropriate, to the Owners and their

respective First Mortgagees, as their interest may appear.

### **ARTICLE XIII**

#### **Limitations Upon Partition and Severance**

**XIII.01 No Partition.** The right to partition the Property is hereby suspended, except that the right to partition shall revive and the Property may be sold as a whole when the conditions for such action set forth in Article XIII dealing with eminent domain have been met; provided, however, nothing contained in this section shall be construed as limiting partition by joint Owners, upon the prior written approval of an applicable lender, of one (1) or more Units as to individual ownership of such Units, provided the Condominium is not terminated thereby.

**XIII.02 No Severance.** The elements of a Unit and other rights appurtenant to the ownership of a Unit, including exclusive easements over the Common Elements, if any, are inseparable, and each Owner agrees that he, she, or it shall not, while this Declaration is in effect, make any conveyance of less than the entire Unit and such appurtenances. Any conveyance made in contravention of this section shall be void.

**XIII.03 Proceeds of Partition Sale.** If an action brought for the partition of the Property by sale, whether upon the occurrence of any event of destruction and a decision not to reconstruct or the taking of all or a portion of the Property by eminent domain, Owners shall share in the proceeds of such sale in the same proportion as their respective Allocated Interest in the Common Elements, but in such event, the liens and provisions of all lenders or Assessment liens encumbering Units within the Property so encumbered shall extend to each applicable Owner's Allocated Interest in the proceeds of such partition and sale. The interest of an Owner in such proceeds shall not be distributed to such Owner except upon the payment of any Assessment lien or lien of a lender encumbering such proceeds.

### **ARTICLE XIV.**

#### **Reservation of Development and Special Declarant Rights**

**XIV.01 Reservation of Development Rights.** Pursuant to the provisions of §§ 33-1202(14) of the Act, the Declarant hereby reserves the following Development Rights with respect to the Property, such reservation to remain in effect until such time as the Declarant's rights set forth in Section 4.04 of this Declaration terminate as provided in that section:

- (a) Create Easements, Units, Common Elements or Limited Common Elements within the Condominium. This includes, but is not limited to, the right to create



additional easements over and upon the Common Elements or Limited Common elements of this Condominium as may be required by governmental or quasi-governmental entities, or The Villas at Savona Unit Owners Association, if such newly created easements do not adversely affect the rights of any Owner.

- (b) Subdivide Units, convert Units into Common Elements or convert Common Elements into Units.
- (c) Withdraw real estate from the Condominium.
- (d) Make the Condominium part of a larger condominium or planned community.
- (e) The right to amend this Declaration to comply with any applicable law or to correct any error or inconsistency herein, if such amendment does not adversely affect the rights of any Unit Owner.
- (f) The right to amend this Declaration 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.

XIV.02 Reservations of Special Declarant Rights. The Declarant hereby reserves the following Special Declarant Rights, such reservation to remain in effect until such time as the Declarant's rights set forth in Section 4.04 of this Declaration terminate as provided in that section:

- (a) The right to exercise any Development Right as provided and set forth in Section 14.01 above.
- (b) The right to maintain sales offices, management offices, signs advertising the Condominium, and models, as otherwise provided and set forth in this Declaration.
- (c) The right to utilize easements through the Common Elements for the purpose of maintaining improvements within the Condominium, as otherwise set forth in this Declaration.
- (d) The right to appoint or remove any officer of the Association or any member of the Board.
- (e) The right to relocate boundaries between adjoining Units, pursuant to § 33-1222 of the Act, or to subdivide Units, pursuant to § 33-1223 of the Act, or to amend

the Plat to exercise a Development Right.

XIV.03 Easement in favor of Declarant. Pursuant to § 33-1226 of the Act, the Declarant hereby retains and easement over, on, under and through the Common Elements for the purpose of performing its obligations in this Declaration or exercising the Declarant's Special Rights.

## ARTICLE XV.

### General Provisions

XV.01 Enforcement. Subject to the provisions of Sections XV.18 through XV.21 the Association or any Unit Owner shall have the right to enforce, by proceedings at law or in equity, all Restrictions and other provisions now or hereafter imposed by this Declaration, or any amendments thereto, including the right to prevent the violation of any such Restrictions, and the right to recover damages and other sums for such violation. The Association or any Owner shall also have the right to enforce by proceedings at law or in equity the provisions of the By-Laws and Association Rules and any respective amendments thereto.

XV.02 No Waiver. Failure by the Association or by any Unit Owner to enforce any Restriction or provision herein contained, or contained in the By-Laws or Association Rules, in any certain instance or on any particular occasion, shall not be deemed a waiver of such right of enforcement as to any such future breach of the same or any other Restriction provisions.

XV.03 Cumulative Remedies. All rights, options, and remedies of the Declarant, the Association, the Unit Owners or the First Mortgagees under this Declaration are cumulative, and no one of them shall be exclusive of any other, and the Declarant, the Association, the Unit Owners and the First Mortgagees shall have the right to pursue any one or all of such rights, options, and remedies or any other remedy or relief which may be provided by law, whether or not stated in this Declaration.

XV.04 Severability. Invalidation of any one or a portion of the Restrictions or provisions set forth in this Declaration or in the By-Laws or Association Rules by judgment or court order shall in no way affect any other Restrictions or provisions contained herein or therein which shall remain in full force and effect.

XV.05 Covenants to Run With the Land; Term. The Restrictions and other provisions of this Declaration shall run with and bind the Property as equitable servitudes and also as covenants running with the land and shall inure to the benefit of and be enforceable by the Association or any Owner, their respective legal representatives, heirs, successors and assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time the Restrictions and other

provisions shall be automatically extended for successive periods of ten (10) years, unless an instrument, signed and acknowledged by Owners of seventy-five percent (75%) or more of the Units within the Property has been recorded within one (1) year prior to the end of any such period, agreeing to change or revoke the Restrictions and other provisions of this Declaration in whole or in part.

XV.06 Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a plan for the operation of a residential condominium community and for the maintenance of the Property. The Article and Section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions or interpretation or construction.

XV.07 Interpretation. In any event, if there is any conflict between or among the Act, this Declaration, the Articles, the By-Laws, or the Association Rules, the provisions of the Act shall govern and prevail; thereafter, priority shall first be given to this Declaration, then to the Articles, then to the By-Laws, and then to the Association Rules.

XV.08 Gender and Number. Whenever the context of this Declaration requires, the singular shall include the plural, and vice-versa, and the masculine shall include the feminine and the neuter and vice-versa.

XV.09 Nuisance. The result of every act or omission whereby any provision or Restriction contained in this Declaration or any provision contained in the Articles, By-Laws, or Association Rules is violated, in whole or in part, is hereby declared to be and shall constitute a nuisance, and every remedy allowed at law or in equity against a nuisance, either public or private, shall be applicable with respect to the abatement thereof, and may be exercised by the Association, or any Owner. Such remedy shall be deemed cumulative to all other remedies set forth in this Declaration and shall not be deemed exclusive.

XV.10 Attorneys' Fees. In the event any action is instituted to enforce any of the provisions contained in this Declaration, the By-Laws, or Association rules, the party prevailing in such action shall be entitled to recover from the other party thereto, as part of the judgment, reasonable attorneys' fees and costs of suit.

XV.11 Notices. Any notice to be given to any Owner, a First Mortgagee, or the Association under the provisions of this Declaration shall be in writing and shall be delivered as follows:

- (a) Notice to any Owner shall be delivered personally or placed in the first class United States mail, postage prepaid, to the most recent address furnished by such Owner in writing to the Board for the purpose of giving notice, or if no such address shall have been furnished, then to the street address of such Unit. Any notice so

deposited in the mail shall be deemed delivered Seventy-Two (72) hours after such deposit. In the case of co-Owners, any such notice may be delivered or sent to any one of the co-Owners on behalf of all co-Owners and shall be deemed delivered to all such co-Owners. This section 15.11 shall not apply to notice of meetings of the Owners which may be given by regular mail or other method permitted by the Bylaws or Arizona law.

(b) Notice to a First Mortgagee shall be delivered by first class United States mail, postage prepaid, to the most recent address furnished by such First Mortgagee in writing to the Board for the purpose of notice, or if any such address shall not have been furnished, to any office of the First Mortgagee in Maricopa County, Arizona, or if no such office is located in Maricopa County, Arizona, to any office of such First Mortgagee. Any notice so deposited in the mail shall be deemed delivered Seventy-Two (72) hours after such deposit.

(c) The declaration of an officer or authorized agent of the Association declaring under penalty of perjury that a notice has been mailed to any Owner or Owners, or to a First Mortgagee or First Mortgagees, to the address or addresses for the giving of notice pursuant to this section, shall be deemed conclusive proof of such mailing.

(d) Notice to the Association shall be delivered by registered or certified United States mail, postage prepaid, addressed to Graham Development Corporation, 2625 N. 24<sup>th</sup> ST. #9, Mesa, AZ 85213 attn: Robert Graham, or to such other address as in subsequently provided by the Association to the Owners and First Mortgagees in the manner hereinabove provided. Any notice so deposited in the mail shall be deemed delivered upon the date of receipt.

XV.12 Effect of Declaration. This Declaration is made for the purposes set forth in the recitals in this Declaration, and the Declarant make no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of this Declaration, or as to the compliance of any of these provisions with public laws, ordinances, regulations, and the like applicable thereto. The Declarant shall have no liability whatsoever if any of the provisions of this Declaration, the By-Laws, or Association Rules are determined to be unenforceable in whole or in part or under certain circumstances.

XV.13 Personal Covenant. To the extent the acceptance of a conveyance of a Unit creates a personal covenant between the Owner of such Unit and the Declarant, other Owners or the Association, such personal covenant shall terminate and be of no further force or effect from and after the date when a Person ceases to be an Owner except to the extent this Declaration provides for personal liability with respect to the Assessments incurred during the period a Person is an Owner.

XV.14 Nonliability of Officials. To the fullest extent permitted by law, neither the Board nor any officer of the Association shall be liable to any Unit Owner or the Association for any Owner or the Association for any damage, loss, or prejudice suffered or claimed on account of any decision, approval, or disapproval, course of action, act, omission, error, or negligence if such Board member of officer acted in good faith within the scope of his, her, or their duties.

XV.15 Unsegregated Real Property Taxes. Until such time as real property taxes have been segregated by the County Assessor of Maricopa County for the Units, the taxes shall be paid by the Association on behalf of the Owners. In connection with such payment, the proportionate share of such tax or installment thereof for a particular Unit shall be determined by multiplying the tax or installment in question by the respective Allocated Interest of such Unit in the Common elements. The Association may levy a special Assessment against any Owner who fails to pay his share of any real property taxes not paid pursuant to this section. In the event any special Assessment is not paid with thirty (30) days of its due date, the Board may resort to all remedies of the Association for the collection thereof.

XV.16 Use of Funds Collected by the Association. All funds collected by the Association, including Assessments and contributions to the Association paid by Unit Owners, if any, shall be held by the Association in a fiduciary capacity to be expended in their entirety for the nonprofit purposes of the Association in managing, maintaining, caring for, and preserving the Common Elements and for other permitted purposes as set forth in this Declaration. No part of said funds shall inure to the benefit of any Owner (other than as a result of the Association managing, maintaining, caring for, and preserving the Common Elements and other than as a result of expenditures made for other permitted purposes as set forth in this Declaration).

XV.17 Amendments. Subject to an express prohibition against a revocation or amendment of this Declaration by the HOA, Declarant or others concerning the City of Chandler's right herein to maintain and collect expenses or assessments from unit lot owners, and subject to the other provisions of this Declaration including, without limitation, the rights of First Mortgagees, and the Development rights reserved by the Declarant in Sections 14.01 and 14.02 hereof, this Declaration may be revoked or amended as follows:

- (a) Prior to the conveyance of the first Unit to a Unit Owner other than the Declarant, this Declaration and any amendments thereto may be amended or revoked by the execution by the Declarant of an instrument amending or revoking the same.
- (b) Subsequent to the conveyance of the first Unit in the property to a Unit Owner other than the Declarant, this Declaration may be amended at any time by the vote of the Unit Owners of not less than sixty-seven percent (67%) of the Units in the Condominium without regard to uniform effect.

(c) An amendment or revocation which only requires the execution of an instrument by the Declarant, as hereinabove provided, shall be effective when executed by the Declarant and when recorded in the Office of the County Recorder of Maricopa County, Arizona. An amendment which requires the affirmative written assent or vote of the Owners, as hereinabove provided, shall be effective when executed by the President and Secretary of the Association (who shall certify that the amendment has been so approved) and when the amendment has been recorded in the Office of the County Recorder of Maricopa County, Arizona.

(d) Notwithstanding the foregoing, any provisions of the Act, this Declaration, the Articles, By-Laws, or Association Rules which expressly requires the approval of a specified percentage of the voting power of the Association or First Mortgagees for action to be taken under such provisions can be amended only with the affirmative written assent vote of not less than the same percentage or percentages of the voting power of the Association and/or first Mortgagees.

(e) An amendment to the Declaration shall not terminate or decrease any unexpired Development Right, Special Declarant Control unless the Declarant approves the amendment in writing.

XV.18 Right to Cure Alleged Defects. It is Declarant's intent that the Common Elements (including the structural portions of each Building and any Limited Common Elements allocated to a Unit or Units), each Unit and all other Improvements constructed within the Condominium be built in compliance with all applicable building codes and ordinances and that they be of a quality that is consistent with good construction and development practices for production housing of this type. Nevertheless, due to the complex nature of construction and the subjectivity involved in evaluating such quality, disputes may arise as to whether a defect exists and Declarant's responsibility therefor. It is Declarant's intent to resolve all disputes and claims regarding "Alleged Defects" (as defined below) amicably, and without the necessity of time consuming and costly litigation. Accordingly, the Association, Board and all Owners shall be bound by the following claim resolution procedure:

(a) In the event that the Association, Board, or any Owner or Owners (collectively, "**Claimant**") claim, contend or allege that any portion of the Common Elements, any Unit, and/or any other Improvements constructed within the Condominiums are defective, or that Declarant, its agents, consultants, brokers, contractors or subcontractors (collectively, "**Agents**") were negligent or otherwise violated any contractual, statutory or other obligation imposed by tort, equity or otherwise in the planning, design, engineering, grading, construction, selling or other development thereof (collectively, an "**Alleged Defect**"), Declarant hereby reserves the right for itself to inspect, repair, and or replace such Alleged Defect as set forth herein. In the event that a Claimant discovers any Alleged Defect, Claimant shall

notify Declarant in writing within thirty (30) days of discovery of the Alleged Defect of the specific nature of such Alleged Defect ("Notice of Alleged Defect"). Within a reasonable time after the receipt by Declarant of a Notice of Alleged Defect, or the independent discovery of any Alleged Defect by Declarant, as part of Declarant's reservation of rights hereunder, Declarant shall have the right, upon reasonable notice to Claimant and during normal business hours, to enter onto or into, as applicable, the Common Elements (including Limited Common Elements) or any Unit for the purposes of inspecting and/or conducting testing and, if deemed necessary by Declarant, repairing and/or replacing such Alleged Defect. In conducting such inspection, testing, repairs and/or replacements, Declarant shall be entitled to take any actions as it shall deem reasonable and necessary under the circumstances.

(b) Nothing set forth in this Section 15.18 shall be construed to impose any obligation on Declarant to inspect, test, repair or replace any item or Alleged Defect for which Declarant is not otherwise obligated under applicable law or any limited warranty provided by Declarant in connection with the sale of Units. The right of Declarant to enter, inspect, test, repair and/or replace reserved hereby shall be irrevocable and may not be waived or otherwise terminated except by a writing, in recordable form, executed and Recorded by Declarant. In no event shall any statute of limitations be tolled during the period in which Declarant conducts any inspection or testing of any Alleged Defects.

XV.19 Legal Actions. All legal actions by Claimants (as defined in Section XV.18 above) shall be brought in accordance with and subject to Sections 15.20 and 15.21 below. In the event a Claimant initiates any legal action, cause of action, proceeding, reference or arbitration against Declarant alleging damages for: (i) an Alleged Defect, (ii) the diminution in value of any real or personal property resulting from such Alleged Defect, or (iii) any consequential damages resulting from Alleged Defect, any judgment or award in connection therewith shall first be used to correct and/or repair such Alleged Defect or to reimburse the Claimant for any costs actually incurred by such Claimant in correcting and/or repairing the Alleged Defect. In the event the Claimant is the Association, the Association must provide written notice to all Members prior to initiation of any legal action, cause of action, proceeding, or arbitration against Declarant which notice shall (at a minimum) include (i) a description of the Alleged Defect, (ii) a description of the attempts of Declarant to correct such Alleged Defect and the opportunities provided to Declarant to correct such Alleged Defect, (iii) a certification from an engineer licensed in the State of Arizona that such Alleged Defect exists along with a description of the scope of work necessary to cure such Alleged Defect and a resume of such engineer, (iv) the estimated cost to repair such Alleged Defect, (v) the name and professional background of the attorney retained by the Association to pursue the claim against Declarant and a description of the relationship between such attorney and the member(s) of the Board, (vi) a description of the fee arrangement between such attorney and the Association, (vii) the estimated attorneys' fees and expert fees and costs necessary to pursue the claim against

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

XV.20 Approval of Litigation. The Board shall not be authorized to incur legal expenses, including without limitation, attorneys' fees or bring any legal proceeding of a material nature for which the claimed or alleged damages or the current economic value of other available remedies would exceed \$15,000 in the aggregate, unless the Association has received the consent of no less than seventy-five (75%) of the Membership (other than Declarant) to commence such an action or to incur such expenses. The foregoing restriction shall not apply to: (i) actions to enforce the collections of Assessments or an Assessment Lien; (ii) actions to challenge ad valorem taxation of condemnation proceedings; (iii) actions to defend claims filed against the Association or to assert mandatory counterclaims therein; (iv) actions to enforce any specific covenant hereunder; or (v) or claims brought by a Unit Owner in his individual capacity concerning his Unit and Improvements located solely within his Unit; provided further that each Unit Owner shall be bound by the mandatory arbitration provisions set forth herein and in any contract of purchase. In the event of any conflict between the arbitration provisions of this Article 15 and the contract of purchase, the contract of purchase shall control. Otherwise, all provisions of this Article 15 shall be binding upon the Unit Owner. The Association must finance any legal proceeding with monies that are specifically collected for same and may not borrow money or use reserve funds or other monies that are collected for specific Association obligations other than legal fees. In the event that the Association commences any legal proceedings, all Owners must notify prospective purchasers of such legal proceedings and must provide such prospective purchasers with a copy of the notice received from the Declaration in accordance with Section 15.19 above.

XV.21 Binding Arbitration. In the event of a dispute between Declarant or its Agents, and any Unit Owner(s) or the Association regarding any controversy or claim, including any claim based on contract, tort or statute, arising out of or in any way related to the rights or duties of the parties under this Declaration, the design or construction of the Condominium, or an Alleged Defect, the matter will be resolved by binding arbitration which shall be conducted in accordance with the following rules:

- (a) The arbitration shall be initiated by either party delivering to the other a Notice of Intention to Arbitrate as provided for in the American Arbitration Association ("AAA") Commercial Arbitration Rules, as amended from time to time (the "AAA Rules"). The arbitration shall be conducted in accordance with the AAA Rules and A.R.S. 12-1501 et seq. In the event of a conflict between the AAA Rules and this Section 15.21, the provisions of this Section 15.21 shall govern.



(b) The parties shall appoint a single arbitrator by mutual agreement; provided, however, that if the amount of the Alleged Defect exceeds \$500,000, then the matter shall be arbitrated by a panel of three arbitrators. If the parties have not agreed within ten (10) days of the date of the Notice of Intention to Arbitrate on the selection of an arbitrator (or arbitrators) willing to serve, the AAA shall appoint a qualified arbitrator or arbitrators to serve. Any arbitrator chosen in accordance with this Section 15.21 is referred to herein as the "Arbitrator." The Arbitrator shall be neutral and impartial. The Arbitrator shall be fully active in such Arbitrator's occupation or profession, knowledgeable as to the subject matter involved in the dispute, and experienced in arbitration proceedings. The foregoing shall not preclude otherwise qualified retired lawyers or judges. Any candidate for the role of Arbitrator shall promptly disclose to the parties all actual or perceived conflicts of interest involving the subject matter of the dispute or the parties. If an Arbitrator resigns or becomes unwilling to continue to serve as an Arbitrator, a replacement shall be selected in accordance with the procedure set forth in this Section 15.21. The Arbitrator shall be fully compensated for all time spent in connection with the arbitration proceedings in accordance with the Arbitrator's hourly rate not to exceed Three Hundred Dollars (\$300.00) per hour, unless otherwise agreed to by the parties, for all time spent by the Arbitrator in connection with the arbitration proceedings. Pending the final award, the Arbitrator's compensation and expenses shall be advanced equally by the parties.

(c) The Arbitrator shall actively manage the proceedings as the Arbitrator deems best so as to make the proceedings expeditious, economical and less burdensome than litigation. All papers, documents, briefs, written communications, testimony and transcripts, as well as any arbitration decisions, shall be confidential and not disclosed to anyone other than the Arbitrator, the parties or the parties' attorneys and expert witnesses (where applicable to their testimony), except that upon prior written consent of all parties, such information may be divulged to additional third parties. All third parties shall agree in writing to keep such information confidential. Hearings may be held at any place within Maricopa County, Arizona designated by the Arbitrator and mutually agreed to by the parties and, in the case of particular witnesses not subject to subpoena at the usual hearing site, at a place where such witnesses can be compelled to attend. All statutes of limitation applicable to claims which are subject to binding arbitration pursuant to this Section 15.21 shall apply to the commencement of arbitration proceedings under this Section 15.21. If arbitration proceedings are not initiated within the applicable period, the claim shall forever be barred.

(d) Within thirty (30) days after the Arbitrator has been appointed, a for the purpose of developing a plan for the management of the arbitration, which shall then

be memorialized in an appropriate order. The matters which may be addressed include, in addition to those set forth in the AAA Rules, the following: (i) definition of issues, (ii) scope, timing and types of discovery, if any, (iii) schedule and place(s) of hearings, (iv) setting of other timetables, (v) submission of motions and briefs, (vi) whether and to what extent expert testimony will be required, whether the Arbitrator should engage one or more neutral experts, and whether, if this is done, engagement of experts by the parties can be obviated or minimized, (vii) whether and to what extent the direct testimony of witnesses will be received by affidavit or written witness statement; and (viii) any other matters which may promote the efficient, expeditious, and cost-effective conduct of the proceedings.

(e) The Arbitrator shall promptly (within sixty (60) days of the conclusion of the proceedings or such longer period as the parties mutually agree) determine the claims of the parties and render a final award in writing. The Arbitrator shall not award any punitive damages nor any indirect, consequential or special damages regardless of whether the possibility of such damages or loss was disclosed to, or reasonably foreseen by the party against whom the claim is made; provided, however, that such damages may be deemed by the Arbitrator to be direct damages in an award reimbursing payments made by a party therefor to a third party. The Arbitrator shall assess the costs of the proceedings (including, without limitation, the fees of the Arbitrator) against the non-prevailing party, but each party shall bear the cost of its own attorneys' fees and expert witness fees.


XV.22 Dissolution of HOA. The Association may only dissolve in accordance with state law, and in no event shall the Association be entitled to dissolve unless another entity (e.g., corporation, LLC, trust, etc.) has agreed to, and is properly authorized and empowered to, assume the responsibilities and obligations related to the maintenance of the common areas.

IN WITNESS WHEREOF, the Declarant have executed this Declaration in its behalf all as of the 5<sup>th</sup> day of October, 2004.

Graham Development Corporation, an Arizona corporation

By:   
Robert L. Graham

Chandler Condominiums, LLC, a California limited liability company


By:   
John L. Rainaldi, Managing Member

STATE OF ARIZONA )  
 )  
County of Maricopa )

OCTOBER

BEFORE ME, the undersigned Notary Public, on this 8 day of February, 2004, personally appeared Róbert L. Graham, who acknowledged that he is the President of Graham Development Corporation, as and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes contained therein on behalf of said Arizona Corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

  
\_\_\_\_\_  
Notary Public

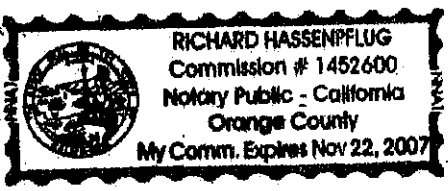
My commission expires: \_\_\_\_\_

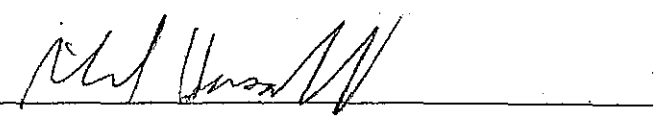


STATE OF CALIFORNIA )  
 ) SS.  
COUNTY OF ORANGE )

On October 8, 2004, before me, Richard Hassenpflug, notary public, personally appeared John L. Rainaldi, personally known to me (~~or proved to me on the basis of satisfactory evidence~~) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.



  
\_\_\_\_\_

(Official Notarial Seal)

**EXHIBIT "A"**

**VILLAS AT SAVONA UNIT OWNER CONDOMINIUM  
LEGAL DESCRIPTION**

**EXHIBIT A**  
**Legal Description of the Condominium**  
**The Villas at Savona**

- Building 2;** Units 101 and 102 and attached garages;  
Unit 201 and garage 201G;  
Unit 202 and garage 202G;  
Unit 203 and garage 203G;  
Unit 204 and garage 204G;
- Building 3;** Units 105 and 106 and attached garages;  
Unit 205 and garage 205G  
Unit 206 and garage 206G  
Unit 207 and garage 207G  
Unit 208 and garage 208G
- Building 4;** Units 109 and 110 and attached garages;  
Unit 209 and garage 209G  
Unit 210 and garage 210G  
Unit 211 and garage 211G  
Unit 212 and garage 212G
- Building 5;** Units 113 and 114 and attached garages;  
Unit 213 and garage 213G  
Unit 214 and garage 214G  
Unit 215 and garage 215G  
Unit 216 and garage 216G
- Building 6;** Units 117 and 118 and attached garages;  
Unit 217 and garage 217G  
Unit 218 and garage 218G  
Unit 219 and garage 219G  
Unit 220 and garage 220G
- Building 7;** Units 121 and 122 and attached garages;  
Unit 221 and garage 221G  
Unit 222 and garage 222G  
Unit 223 and garage 223G  
Unit 224 and garage 224G
- Building 8;** Units 125 and 126 and attached garages;  
Unit 225 and garage 225G  
Unit 226 and garage 226G  
Unit 227 and garage 227G  
Unit 228 and garage 228G
- Building 9;** Units 129 and 130 and attached garages;  
Unit 229 and garage 229G  
Unit 230 and garage 230G  
Unit 231 and garage 231G  
Unit 232 and garage 232G

- Building 10;** Units 133 and 134 and attached garages;  
Unit 233 and garage 233G  
Unit 234 and garage 234G  
Unit 235 and garage 235G  
Unit 236 and garage 236G
- Building 11;** Units 137 and 138 and attached garages;  
Unit 237 and garage 237G  
Unit 238 and garage 238G  
Unit 239 and garage 239G  
Unit 240 and garage 240G
- Building 12;** Units 141 and 142 and attached garages;  
Unit 241 and garage 241G  
Unit 242 and garage 242G  
Unit 243 and garage 243G  
Unit 244 and garage 244G
- Building 13;** Units 145 and 146 and attached garages;  
Unit 245 and garage 245G  
Unit 246 and garage 246G  
Unit 247 and garage 247G  
Unit 248 and garage 248G
- Building 14;** Units 149 and 150 and attached garages;  
Unit 249 and garage 249G  
Unit 250 and garage 250G  
Unit 251 and garage 251G  
Unit 252 and garage 252G
- Building 15;** Units 153 and 154 and attached garages;  
Unit 253 and garage 253G  
Unit 254 and garage 254G  
Unit 255 and garage 255G  
Unit 256 and garage 256G

**THE VILLAS AT SAVONA, a condominium, according to the Declaration of Condominium recorded in Document No. 2004-1305631 and according to the plat of record in the office of the County Recorder of Maricopa County, Arizona in Book 712 page 30.**

**TOGETHER WITH a proportionate interest in and to the common areas, as set forth in said Declaration of Condominium and as shown on said plat.**

**EXCEPT all oil, gas, other hydrocarbon substances, helium or other substances of a gaseous nature, coal, metals, minerals, fossils, fertilizers of every name and description and except all uranium, thorium or any other mineral which is or may be determined to be peculiarly essential to the production of fissionable materials whether or not of commercial value, as set forth in Section 37-231; ARS.**

**EXHIBIT "B"**

**VILLAS AT SAVONA UNIT OWNER CONDOMINIUM  
PLAT**



2954

When recorded, return to:

Gregory G. McGill, Esq.  
GREGORY G. MCGILL, P.C.  
4421 N. 75<sup>th</sup> Street, Suite 101  
Scottsdale, Arizona 85251  
Attorney for Declarant

**COURTESY RECORDING  
NO TITLE LIABILITY**

7/2/30

**ADDENDUM TO  
DECLARATION OF ESTABLISHMENT OF CONDOMINIUM**

**AND**

**DECLARATION OF COVENANTS, CONDITIONS,**

**AND RESTRICTIONS**

**FOR**

**THE VILLAS AT SAVONA UNIT OWNERS CONDOMINIUM**

This Addendum shall modify and supplement the CC&Rs recorded on December 16, 2004 at Recorder's No. 2004-1481100 in Maricopa County, Arizona, as follows:

1. **TRANSFER FEE:** Upon a sale of a unit at this condominium regime, there shall be a move-in fee charged to the purchaser in the amount of \$250 and made payable to the Declarant Graham Development Corporation in escrow.

2. **RESERVE FUND FEE:** Concurrently with the above-referenced obligation in escrow, there shall also be a fee charged to the purchaser in the amount of \$200 for The Villas at Savona Homeowners Association reserve account, made payable to The Villas at Savona Unit Owners Condominium.

RESTRICTIONS INDICATING A PREFERENCE, LIMITATION OR DISCRIMINATION BASED ON RACE, COLOR, RELIGION, SEX, HANDICAP, FAMILIAL STATUS, OR NATIONAL ORIGIN ARE HEREBY DELETED TO THE EXTENT SUCH RESTRICTIONS VIOLATE 42 USC 1604(C)

DATED this 23<sup>rd</sup> day of September, 2005.

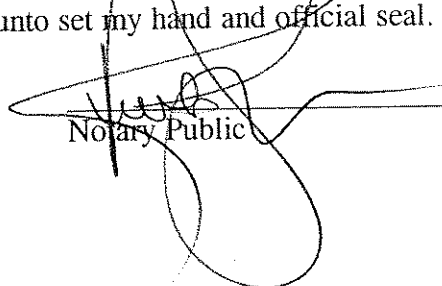
Graham Development Corporation, an  
Arizona corporation (the "Declarant")

By:   
Robert L. Graham

STATE OF ARIZONA            )  
  )  
County of Maricopa         )

BEFORE ME, the undersigned Notary Public, on this 23<sup>rd</sup> day of September, 2005, personally appeared Robert L. Graham, who acknowledged that he is the President of Graham Development Corporation, as and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes contained therein on behalf of said Arizona Corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

  
Notary Public

My commission expires:

