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DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS

ARPEGGIO CONDOMINIUMS

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
of  
ARPEGGIO CONDOMINIUMS

THIS DECLARATION ("Declaration") is made and entered into as of this 5th day of NOVEMBER, 1996 by ARPEGGIO LLC, a DELAWARE LIMITED LIABILITY, hereinafter referred to as "Declarant." COMPANY

RECITALS

A. Declarant is the owner of the parcel of real property situated in Maricopa County, Arizona, and described on Exhibit "A" attached hereto and by reference made a part hereof, hereinafter referred to as the "Property."

B. Declarant desires to develop or cause to be developed the Property into a Condominium.

C. Declarant desires to establish for its own benefit and for the mutual benefit of all future owners or occupants of the Property, or any part thereof, <sup>Unofficial Document</sup> certain easements and rights in, over and upon said premises and certain mutually beneficial restrictions and obligations with respect to the proper use, conduct and maintenance thereof.

D. Declarant desires and intends that the owners, mortgagees, beneficiaries and trustees under trust deeds, occupants and all other persons hereinafter acquiring any interest in the Property shall at all times enjoy the benefits of, and shall hold their interests subject to the rights, easements, privileges and restrictions hereinafter set forth, all of which are declared to be in furtherance of a plan to promote and protect the Property and are established for the purpose of enhancing and perfecting the value, desirability and attractiveness of the Property.

DECLARATION

NOW, THEREFORE, Declarant hereby makes, declares and establishes this Declaration as and for a plan of condominium apartment ownership for Arpeggio Condominiums, consisting of the real property and improvements thereon as hereinafter described.

1. Definitions. As used herein, unless the context otherwise requires:

1.1 "Act" means Section 33-1201 through Section 33-1270, Arizona Revised Statutes. The provisions of the Act are incorporated herein by this reference and shall govern this Condominium project and the rights, duties, and responsibilities of Owners thereof, except where permissive variances therefrom appear in this Declaration and the Bylaws and Articles of Incorporation of Arpeggio Condominium Association.

1.2 "Association" means the Arpeggio Condominium Association, an Arizona nonprofit corporation, or any successor or assign, whether by way of consolidation, merger, transfer or otherwise, organized under Section 33-1241, Arizona Revised Statutes.

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

1.4 "Building" means a building located on the Property and forming part of the Property as shown on the Plat.

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1.5 "Bylaws" means the Bylaws of the Association and all other documents governing the operation of the Association as amended from time to time.

1.6 "Common Elements" shall have the same meaning as set forth in Section 33-1202, Arizona Revised Statutes.

1.7 "Condominium" shall have the meaning set forth in Section 33-1202, Arizona Revised Statutes.

1.8 "Condominium Documents" means this Declaration, the Articles of Incorporation and Bylaws of the Association, the Plat, Association Rules and Regulations and all other documents governing the Property, the Association and its members.

1.9 "Declarant" means the above-recited Declarant or any person to whom Declarant's rights hereunder are specifically assigned by recorded instrument. Unless so specifically assigned, no other person shall be entitled to exercise the rights reserved to the Declarant hereunder; provided, however, that the Declarant may assign, convey, pledge, encumber, or hypothecate its rights hereunder to an institutional lender as security for the

performance of any legal obligation and if such lender thereafter succeeds to the Declarant's rights by foreclosure, or any other legal remedy, or conveyance in lieu thereof, such lender shall be entitled to all of the rights of the Declarant hereunder, provided that any such successor shall be bound by all of the terms of this Declaration as it relates to the rights of all parties now or hereafter affected hereby.

1.10 "Holder" means any bank, savings and loan association, insurance company, mortgage company or other entity or person holding a recorded first mortgage on any Unit.

1.11 "Insurer" or "Guarantor" means any person or entity which insures a recorded first mortgage on any Unit or any governmental entity which guarantees a recorded first mortgage on any Unit and provides the Association with its name and address and the address of such Unit.

1.12 "Limited Common Element" means a portion of the Common Elements designated for the exclusive use of one or more but fewer than all of the Units.

1.13 "Mortgage" <sup>Unofficial Document</sup> ~~includes~~ a deed of trust; "Mortgagee" includes a beneficiary under a deed of trust; and "Mortgagor" includes a trustor under a deed of trust.

1.14 "Occupant" means a person or persons, including an Owner, legally in possession of a Unit.

1.15 "Owner" or "Owners" means the person or persons whose estates or interests individually or collectively aggregate fee simple ownership of a Unit and the person or persons who are purchasers under a valid and outstanding recorded Agreement of Sale with respect to a Unit.

1.16 "Parcel" means the parcel or tract of real estate described above in this Declaration which comprises the Condominium Project.

1.17 "Person" shall have the same meaning as set forth in Section 33-1202, Arizona Revised Statutes.

1.18 "Plat" means the plats of survey of the Property and of all Units which may be included in the Condominium Project, as recorded in the Official Records of Maricopa County, Arizona at

Book \_\_\_\_\_ of Maps, page \_\_\_\_ a reduced copy of the plats being attached hereto as Exhibit "B."

1.19 "Project" shall have the meaning as set forth in Section 15.1, and shall be synonymous with "Condominium Project."

1.20 "Property" shall mean and refer to the real estate described on Exhibit "A."

1.21 "Unit" means a part of the Property, including one or more rooms situated in a building comprising a part of the Property, designed or intended for separate ownership or occupancy as permitted hereunder and as set forth on the Plat. Each Unit shall have the identifying number and consist of the space enclosed and bounded by the horizontal and vertical planes as shown on Exhibit "B" attached hereto.

2. Property Subject to Declaration. The Property is, by this Declaration, made a Condominium pursuant to Sections 33-1201 through 33-1270, Arizona Revised Statutes, and Declarant does hereby declare that all of the Units shall be owned, leased, sold, conveyed and encumbered subject to the terms, conditions and other provisions of <sup>Unofficial Document</sup> this Declaration.

3. Description of the Units, the Common Elements, and the Limited Common Elements.

3.1 The Condominium; Description. The Condominium shall initially consist of the 156 Units described in the Plat as Units 1001 through 1078, and Units 2001 through 2078, inclusive, together with the percentage interest in the Common Elements which is appurtenant to each Unit as set forth in Section 3.2 below.

3.2 The Units. Each Unit's horizontal boundaries shall be the underside of the finished but undecorated ceiling and the top of the finished but undecorated floor. Each Unit's vertical boundaries shall be the interior of the Unit's outside, finished, but undecorated walls and the inside plane of the undecorated walls or edges of such Unit's appurtenant patio or balcony.

3.3 The Common Elements. The Common Elements comprise all of the Property except that which is described in subsection 3.1 above and such additional property interests as are set forth in the definition of the Common Elements in Section 1.6 above. The Association may make improvements which will be included in the



Common Elements. The Association may also charge fees for the use of the Common Elements and may, in its discretion, reallocate Common Elements as Limited Common Elements by amendment to the Declaration. The percentage interest appurtenant to each Unit in the Common Elements is a fraction, the numerator of which is 1 and the denominator of which is the total number of Units subject to this Declaration.

3.4 The Limited Common Elements. Any porches, patios, balconies, entryways, shutters, awnings, window boxes, doorsteps, stoops and all exterior doors and windows or other fixtures located outside the Unit boundaries but designed to serve a single Unit are Limited Common Elements allocated exclusively to that Unit. The location and dimensions of the Limited Common Elements are shown on the Plat.

4. Parking. Each Unit shall have the right to the exclusive use of one parking space, the location of which is shown on the attached Exhibit "B". The storage of automobiles, golf carts, motorcycles and other motorized vehicles on the Property may be done only in strict accordance with the applicable provisions of the Rules and Regulations.

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5. Association.

5.1 Organization; Operation. The Association will be organized as a nonprofit corporation formed pursuant to the Act to serve as the governing body for all of the Owners, their guests and invitees, the maintenance, repair, replacement, administration and operation of the Property, the assessment of expenses, payment of losses, disposition of hazard insurance proceeds, and other matters as provided in the Act and in the Condominium Documents. The Association reserves the right to contract for the general upkeep, maintenance and repair of the Property and other services it is required to provide. All funds received by the Association shall be held in a separate trust account and applied by it for the Owners in accordance with the provisions of the Declaration and the Bylaws. Each Owner of a Unit shall be a member of the Association and such membership shall automatically terminate when he ceases to be an Owner. The Declarant will control the Association for a limited period of time as specified in Section 7.

5.2 Powers of the Association. The Association may exercise any powers necessary or proper for the governance and operation of the Association. Specifically, the Association may,

among other things: (a) Adopt and amend bylaws, rules and regulations; (b) adopt and amend budgets for revenues, expenditures and reserves and collect assessments for Common Expenses from Owners; (c) hire and discharge managing agents and other employees, agents and independent contractors; (d) institute, defend or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more Owners on matters affecting the Condominium; (e) make contracts and incur liabilities; (f) regulate the use, maintenance, repair, replacement and modification of Common Elements; (g) cause additional improvements to be made as a part of the Common Elements; (h) acquire, hold, encumber and convey in its own name any right, title or interest to real or personal property; (i) impose and receive any payments, fees or charges for the use, rental or operation of the Common Elements, other than Limited Common Elements that are fixtures designed to serve a single Unit, and for services provided to Owners; (j) impose charges for late payment of assessments and, after notice and an opportunity to be heard, impose reasonable monetary penalties upon Owners for violations of the Declaration, Bylaws and rules of the Association; (k) impose reasonable charges for the preparation and recordation of amendments to the Declaration or statements of unpaid assessments; and (l) assign the Association's right to future <sup>Unofficial Document</sup> income, including the right to receive Common Expense assessments, but only to the extent the Declaration expressly provides.

5.3 Indemnification. All Directors and Officers of the Association shall be indemnified by the Association against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed upon them in connection with any proceeding to which they may be a party, or in which they may become involved, by reason of their being or having been a Director or Officer of the Association, or any settlement thereof, whether or not they are Directors or Officers at the time such expenses are incurred, provided that the Board shall determine, in good faith, that such Officer or Director did not act, fail to act, or refuse to act wilfully or with gross negligence, or fraudulent or criminal intent in the performance of his or her duties, except to the extent such indemnification is prohibited by law. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which such Directors or Officers may be entitled, but shall not apply to the extent such liability, damage or injury is covered by insurance of any type.

5.4 Association Grant of Easements. In addition to the blanket easements granted in Section 9 below the Association is authorized and empowered to grant licenses, easements, leases and concessions for sewer lines, water lines, underground conduits, storm drains and other public utility purposes as may be necessary and appropriate for the orderly maintenance, preservation and enjoyment of the Common Elements or for the preservation of the health, safety, convenience and welfare of the Owners, provided that any damage to a Unit or Common Elements resulting from such grant shall be repaired by the Association at its expense.

6. Association Board of Directors. The Board shall be elected as specified below in Section 7, and the Board shall elect the officers. The Board members and officers shall take office upon election. The Board will consist of the number of members specified in the Bylaws, at least a majority of whom must be Owners. Except for members designated by Declarant, each director shall be an Owner and shall reside within the Property. If an Owner is a corporation, partnership or trust, a director may be an officer, partner 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. No director or officer of the Association shall personally profit from any contract for goods or services entered into by the Association; provided, however, that the restrictions set forth in this Section 6 shall not preclude the Association from contracting with affiliates of Declarant. Notwithstanding the foregoing, the Declarant shall constitute the Board during the period of Declarant control referenced in Section 7. The Board is hereby expressly authorized to adopt and amend budgets from time to time without the ratification of the Owners.

7. Voting. There shall be a period of Declarant control of the Association until the earlier to occur of the following: (a) 90 days after conveyance of 75% of the Units which may be created to Owners other than Declarant; or (b) four (4) years after Declarant has ceased to offer Units for sale in the ordinary course of business. During the period of Declarant control, only the Declarant shall hold a voting membership in the Association and be empowered to appoint or remove members of the Board. Nothing shall prohibit Declarant from transferring control at an earlier date. All other memberships in the Association shall be non-voting until

Declarant's voting control terminates in accordance with the provisions hereof. Upon termination of such control by Declarant, in all meetings of the membership each member shall be entitled to cast one equal vote for each Unit owned by such member. Only a single vote may be cast for each Unit, regardless of how title is held. Votes allocated to a Unit owned by the Association shall be cast in accordance with the majority vote of the Board.

8. Assessments. Annual assessments shall be made annually as provided in the Act. In addition, special assessments may be made by the Board to meet other special needs of the Association and the Property. All special assessments must be approved by the Owners of more than fifty percent (50%) of the Units. Each Owner's share of such special assessments shall be a fraction represented by one (1) divided by the number of Units. Special assessments shall be secured by the liens on the Units pursuant to Section 33-1256 of the Act.

9. Blanket Easements and Use of Common Elements.

9.1 Blanket Easement. There is hereby created a blanket easement upon, across, <sup>Unofficial Document</sup> over and under the Property for ingress, egress, installation, replacing, repairing and maintaining all utilities, including but not limited to water, sewers, gas, telephones, cable television and electricity. By virtue of the easement, it shall be expressly permissible for the providing utility company to erect and maintain the necessary facilities and equipment on the Property and to affix and maintain wires, circuits, conduits and related facilities and equipment on, above, across and under the roofs and exterior walls of the Buildings and Units. Notwithstanding anything to the contrary contained in this Section, no easements shall be created nor shall any sewers, electrical lines, water lines, or other facilities for utilities be installed or relocated on the Property except as initially created, programmed and approved by Declarant or thereafter created or approved by the Board. This provision shall in no way affect any other recorded easements on the Property. Except as may be constructed by Declarant or its nominee or as specifically allowed by this Declaration and the Plat, no building or other structures shall be placed or erected on any easements nor interference made with the free use thereof for the purposes intended.

9.2 Use of Common Elements. Each Owner shall have the right appurtenant to his Unit to use the Common Elements in common

with all other Owners as may be required for the purposes of ingress and egress to and from, and use and occupancy and enjoyment of, the respective Unit owned by such Owner. Such right to use the Common Elements shall extend to each Owner and the agents, servants, tenants, and invitees of each Owner. Such right to use and possess the Common Elements shall be subject to and governed by the provisions of this Declaration and the Bylaws, rules and regulations of the Association.

10. Common Expenses and Surplus Monies.

10.1 Assessments for Common Expenses. Each Owner shall pay in regular installments, as determined by the Board, his proportionate share of the expenses of the administration and operation of the Common Elements and of any other expenses incurred in conformance and the Condominium Documents (which expenses are herein sometimes referred to as "Common Expenses"), including specifically, but not by way of limitation, the maintenance and repair thereof and an adequate reserve fund for maintenance, repair and replacement of Common Elements that must be replaced on a periodic basis, as reasonably anticipated by prudent persons. "Common Expenses" also includes all assessments legally imposed against all Units by the Association. <sup>Unofficial Document</sup> The Board shall pay the collective sum of such assessments when due. Payment of Common Expenses shall commence with respect to all Units upon conveyance of the first Unit by Declarant; provided, however, that for a period of sixty (60) days following conveyance of the first Unit, the share of Common Expenses attributable to unsold and unoccupied Units may be reasonably reduced as determined by the Board. For a period of one (1) year from and after conveyance of the first Unit to an Owner by Declarant, the Board shall maintain a working capital fund of at least two (2) months estimated Common Expenses. At the time of closing of a sale of a Unit, such Unit's share of such working capital fund shall be collected and transferred to the Association and maintained by the Association in a segregated account; each unsold Unit's share shall be paid to the Association within sixty (60) days after conveyance of the first Unit. Such contributions to the working capital fund shall not be considered as advance payments of regular installments of Common Expenses required to be paid hereunder.

10.2 Allocation of Common Expenses. The Board shall prepare and adopt an annual budget from which Common Expenses shall be determined and assessed in accordance with generally recognized accounting principles. Unless otherwise provided herein, such

proportionate share of the Common Expenses for each Owner shall be a fraction, the numerator of which shall be one (1) and the denominator of which shall be the number of Units. If the Units have separate meters for certain utilities, the cost of the same shall be the personal responsibility of such Unit Owner. Payment of Common Expenses, including any prepayment thereof required by contract for sale of a Condominium, shall be in such amounts and at such times as determined by the Board.

10.3 Delinquent Payments. If any Owner shall fail or refuse to make any such payment of Common Expenses when due, each such payment shall be subject to a late payment charge of twenty percent (20%) of the amount of such delinquent payment, and the amount of such delinquent payments shall bear interest until paid at an annual rate equal to the greater of eighteen percent (18%) per annum and the rate which is equal to the sum of five percent (5%) and that rate announced from time to time by Bank One Arizona, N.A. as its prime rate. Such delinquent sums, late charges, accrued interest, costs and reasonable attorneys' fees shall be the personal obligation of the Owner at the time the assessment was made but such personal obligation shall not pass to such Owner's successor in title unless specifically assumed by such successor. Such delinquent sums, late <sup>Unofficial Document</sup> charges, accrued interest, costs and reasonable attorneys' fees shall also constitute a lien on such Owner's Unit; such lien shall not be affected by any sale or transfer of such Unit, provided, however, that such lien shall be subordinate to the lien of a prior recorded first mortgage on the applicable Unit, except for the amount of the proportionate share of Common Expenses which becomes due and payable from and after the date on which the holder of the mortgage (or any other purchaser at sheriff's sale or trustee's sale) comes into possession of or acquires legal title to such Unit, whichever occurs first. Nothing contained herein shall prohibit such Unit's proportionate share of Common Expenses which became due prior to the foreclosure of a prior recorded first mortgage and were extinguished as a result of such foreclosure from being reallocated among and assessed against all Owners as a Common Expense. The Board shall within ten (10) days of any written request from any interested person or mortgage holder certify in writing to such requesting party whether any delinquent assessments are due from any designated Owner. The recipient of any such certification shall have a right to rely upon its contents in connection with any purchase of or loan secured by the Unit for which such certification was given.

11. Mortgages. Each Owner shall have the right, subject to the provisions hereof, to impose separate mortgages upon his Unit. No Owner shall have the right or authority to make or create or cause to be made or created any mortgage, or other lien or security interest, on or affecting the Property or any part thereof, except only his Unit.

12. Insurance. The Board shall have the authority to and shall obtain any and all insurance required by the Act and that the Board deems necessary or appropriate in its sole discretion.

12.1 Premium Payment and Insurance of Personal Property. Premiums for all insurance obtained by the Association shall be Common Expenses. Each Owner shall procure, maintain and be responsible for his own replacement value insurance on the personal property contents of his Unit, any additions, decorating or other improvements placed therein following purchase, and all furnishings and personal property therein or stored elsewhere on the Property. Each Owner shall further procure, maintain and be responsible to provide his own personal liability coverage to the extent not covered by the liability insurance to be provided by the Board as set forth above with coverage determined from time to time by the Board. No Association-acquired <sup>Unofficial Document</sup> insurance coverage shall be brought into contribution with insurance purchased by individual Owners, or their Mortgagees.

12.2 Insurance Required by FNMA or FHLMC. Notwithstanding any provision of this Section 12, if at any time any of the Units are covered by mortgages which are held by the Federal National Mortgage Association ("FNMA") or the Federal Home Loan Mortgage Corporation ("FHLMC") (or any successor to such entities which performs their present functions), the Board shall at all times carry all casualty, flood and liability insurance and a fidelity bond in such amounts and containing all provisions as are required from time to time by such entities or such successors, unless such coverage is unavailable or waived by them in writing. If such entities require less coverage or other protection than is specifically required by this Section 12, the Board shall be free to provide such lesser coverage and such substitute protection. All insurance policies provided pursuant to this Section 12 must contain a provision requiring not less than ten (10) days' prior written notice of cancellation or material modification, such notice to be sent to the Association, each Mortgage Holder and all insureds, including all loan servicers on behalf of FNMA and FHLMC. Further, all Insurers and Guarantors that have filed with the

Association a written request for notice shall be entitled to receive written notice from the Association of any lapse, cancellation or material modification of any insurance policy or bond provided pursuant to this Section 12.

13. Access. An authorized representative of the Board, or of the manager or managing agent of the Building, and all contractors and repairmen employed or engaged by the Board or such manager or managing agent, shall be entitled to reasonable access to each of the Units as may be required in connection with maintenance, repairs or replacements of or to the Common Elements or any equipment, facilities or fixtures affecting or serving other Units and the Common Elements or in case of emergency necessitating access to such Units in order to preserve or protect the Property. In the event that any Owner shall fail to maintain and repair his Unit and such improvements as required hereunder, the Association, in addition to all other remedies available to it hereunder or by law, and without waiving any of said alternative remedies, shall have the right, through its agents and employees, to enter upon said Unit and to repair, maintain, and restore the Unit and the exterior of the Building and any other improvements erected thereon, <sup>Unofficial Document</sup> and each Owner (by acceptance of a deed for his Condominium) hereby covenants and agrees to repay to the Association the cost thereof immediately upon demand, and the failure of any such Owner to pay the same shall carry with it the same consequences as the failure to pay any assessment hereunder when due.

14. Declarant Rights.

14.1 Development Rights. The Declarant hereby reserves the right to add real estate to the Condominium; create easements, Units, Common Elements or Limited Common Elements within the Condominium; subdivide Units, convert Units into Common Elements or convert Common Elements into Units; withdraw real estate from the Condominium; make the Condominium part of a larger condominium or planned community; and amend the Declaration during any period of Declarant control as specified in Section 19 to comply with applicable law or to correct any error or inconsistency in the Declaration.

14.2 Compliance With FNMA And FHLMC Regulations. Declarant expressly reserves the right and shall be entitled by unilateral amendment during the period of Declarant control of the



Association to incorporate any provisions that are, in the opinion of Federal National Mortgage Association ("FNMA") or Federal Home Loan Mortgage Corporation ("FHLMC"), required to conform this Declaration, the Articles, the Bylaws or the Property to the requirements of FNMA or FHLMC or the rules or guidelines of any governmental or quasi-governmental entity or federal corporation guaranteeing or insuring mortgage loans or governing transactions involving mortgage instruments. Each Owner and each Mortgagee by acceptance of a deed or encumbrance consents to the incorporation in the Condominium Documents of any such provisions and agrees to be bound by any such provisions as if they were originally contained in the Condominium Documents. The Board, each Owner and each Mortgagee shall take any action or shall adopt or consent to any resolutions required by FNMA or FHLMC to conform this Declaration, the other Condominium Documents or the Project to the requirements of FNMA or FHLMC.

14.3 Special Declarant Rights. The Declarant hereby reserves the right to: (a) construct improvements provided for in the Declaration; (b) exercise any development rights; (c) maintain sales offices, management offices, models and signs advertising the Condominium and models; (d) use easements through the Common Elements for the purpose <sup>Unofficial Document</sup> of making improvements within the Condominium or within real estate which may be added to the Condominium; and (e) appoint or remove any officer of the Association or any Board member during any period of Declarant control.

15. Annexation of Additional Property.

15.1 Development of the Project. Declarant reserves the right to sequentially develop the project identified on the Plat (the "Project" or the "Condominium Project") on a phased basis. Declarant shall have the right to subject to this Declaration any additional property including, without limitation, that portion of the Project not yet subject to this Declaration. Although Declarant shall have the ability to annex additional property into this Declaration, Declarant shall have no such obligation and no property shall become subject to this Declaration unless and until a Supplemental Declaration is recorded as provided below.

15.2 Supplemental Declarations. A Supplemental Declaration shall be in writing, in recordable form and provide for the annexation of the property described therein into the

Condominium Project subject to this Declaration. Supplemental Declarations may contain such complementary additions and modifications of this Declaration as may be deemed necessary by Declarant in its sole discretion.

15.3 Annexation Without Association Approval. Property may be annexed into the Condominium Project and thereby made subject to this Declaration without the approval, assent or vote of the Association or the Owners.

16. Architectural Control Committee.

16.1 Establishment. Declarant shall establish an Architectural Control Committee and shall establish and adopt Architectural Control Guidelines and procedural rules and regulations to direct the Architectural Control Committee in the performance of its duties. The Architectural Control Committee shall consist of three (3) regular members and an alternate member, each appointed by Declarant. The appointees must be Owners except during the period of Declarant control specified in Section 7 and must possess such qualifications as Declarant may, in its discretion, require. Declarant may replace any member of the Architectural Control Committee at <sup>Unofficial Document</sup> any time with or without cause. Declarant's right to appoint Architectural Control Committee members shall cease and the Board shall be vested with that right and all rights of the Declarant pertaining to the Architectural Control Committee at such time as Declarant no longer owns any of the Units or any Parcel subject to annexation. A member of the Board may serve on the Architectural Control Committee.

16.2 Purpose. The purpose of the Architectural Control Committee is to maintain uniformity of architectural design and landscaping standards throughout the Condominium Project and thereby enhance the aesthetic and economic value of the Condominium. The Architectural Control Committee is hereby empowered to supplement and amend the Architectural Control Guidelines and its procedural rules and regulations to the extent and with the frequency it deems necessary; provided, however, that such modifications are in general conformity with the standards set forth in this Declaration and the applicable Condominium Documents. No exterior change in any Unit or its landscaping, including changes in color, shall be made without approval of the Architectural Control Committee.

16.3 Operation/Authority. It shall be the duty of the Architectural Control Committee to consider and act upon all proposals and plans submitted to it pursuant to this Declaration. The Architectural Control Committee shall hold regular meetings in accordance with its procedural rules and regulations. A quorum for such meetings shall consist of two (2) members and an affirmative vote of two (2) of the members of the Architectural Control Committee shall be necessary for any decision. A duly appointed alternate member may participate in any meeting in which there is not a quorum of regular members present, may constitute a quorum by his/her presence and shall have all the authority of a regular member while so participating. The Architectural Control Committee shall review all applications submitted to it and shall furnish a written decision to the applicant setting forth the reasons for its decision and the nature of any objections. If the Architectural Control Committee fails to furnish a written decision within thirty (30) calendar days after an application has been submitted or resubmitted to it, then the application shall be deemed approved. The Architectural Control Committee shall have broad discretionary powers in determining whether an application is in conformance with the Architectural Control Guidelines. In addition, the Architectural Control Committee may disapprove any application if it, in its discretion, believes <sup>Unofficial Document</sup> the applicant has not supplied sufficient or accurate information for the Architectural Control Committee to exercise the judgment required by this Declaration. The Architectural Control Committee has the authority to grant variances to the Architectural Control Guidelines by an affirmative vote of the majority of the members of the Architectural Control Committee. The Architectural Control Committee shall keep complete written records of all applications for approval submitted to it (including one (1) set of all preliminary sketches and all architectural plans) in connection with all actions taken by it under the provisions of the Architectural Control Guidelines. All such records shall be maintained for a minimum of three (3) years after approval or disapproval.

16.4 Fee. The Board shall have the right, in its sole discretion, to assess against applicants a processing fee to defer the costs incurred by the Architectural Control Committee in considering any requests for approval submitted to it. If imposed, the fee shall be in such amount and payable in accordance with such schedule as reasonably determined by the Architectural Control Committee.

16.5 Limited Liability of Architectural Control Committee Approval. All plans, drawings and specifications approved by the Architectural Control Committee are not approved for engineering, design or architectural competence. Through its approval of such plans, drawings and specifications, the Architectural Control Committee does not assume liability or responsibility therefor or for any defect in any structure constructed from such plans, drawings and specifications. Declarant, members of the Architectural Control Committee and members of the Board shall not be liable to the Association, any Owner or any other entity for any damage, loss or prejudice suffered or claimed because of:

(a) the approval or disapproval of any plans, drawings or specifications, whether or not defective; or

(b) the construction or performance of any work, whether or not pursuant to approved plans, drawings or specifications.

16.6 Waiver. The approval by the Architectural Control Committee of any plans, drawings or specifications for any work done or proposed, or for any other matter requiring the approval of the Architectural Control <sup>Unofficial Document</sup>, shall not be deemed to constitute a waiver of any right to withhold approval of a similar plan, drawing, specification or matter subsequently submitted for approval.

16.7 Nonapplicability to Declarant. The provisions of this Article are not to apply to any Parcels owned by Declarant or any person affiliated with Declarant.

17. Use and Occupancy Restrictions.

17.1 Rules and Regulations. Subject to the provisions of these restrictions, use of the Common Elements shall be in accordance with and subject to the rules and regulations of the Association, as amended from time to time, which are by this reference incorporated herein in their entirety and made a part of this Declaration.

17.2 Residential Use. No part of the Property shall be used for other than residential or other related purposes except that Declarant reserves the right to maintain sales offices, model units, and signs on the Property, together with rights of ingress and egress therefrom, until all Units have been sold and conveyed

by Declarant. The Property shall be used as permitted by this Declaration and for no other purpose.

17.3 Rate of Insurance. Nothing shall be done or kept in any Unit or in any of the Common Elements which will increase the rate of insurance thereon without the approval of the Association. No Owner shall permit anything to be done or kept in his Unit or in or upon any Common Elements which will result in the cancellation of insurance thereon or which would be in violation of any law.

17.4 Signs. No sign of any kind shall be displayed to the public view from any Unit or any Common Elements without the approval of the Association, except such signs as may be used by Declarant in connection with the development and sale of the Property.

17.5 Animals. No animals of any kind shall be raised, bred, or kept in any Unit or in or upon any Common Elements, except in accordance with the Rules and Regulations; provided that no animal shall be kept, bred or maintained for any commercial purpose.

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17.6 Nuisances, Immoral or Illegal Acts and Trash Disposal. The Owner shall not permit or suffer anything to be done or kept about or within his Unit which will obstruct or interfere with the rights of other occupants, or annoy them by unreasonable noises or otherwise, nor will he commit or permit any nuisance about or within his Unit or commit or suffer any immoral or illegal act to be committed therein. The Owner shall comply with all of the requirements of the health authorities and of all other governmental authorities with respect to the Property. All trash and garbage must be deposited in receptacles provided for such purpose and shall not be permitted to accumulate on or about a Unit.

17.7 Organized Operations. No organized religious, professional, commercial or industrial operations of any kind shall be conducted in or upon any Unit or the Common Elements except such temporary uses as shall be permitted by Declarant while Units are being sold by the Declarant.

17.8 Membership in the Association. All Owners shall be members of the Association and shall comply with and be subject to the terms and conditions as set forth in the Articles of

Incorporation and Bylaws and any rule or regulation of the Association. No Owner may transfer any membership or interest in the Association, except in connection with the sale of his entire Unit to which such membership is appurtenant. An Owner may assign to a tenant of his Condominium such Owner's right to use and enjoy the Common Elements which would otherwise be enjoyed by such Owner.

17.9 Leasing Units. No Owner shall lease less than the entire Unit owned by such Owner. All leases of a Unit must be in writing, must be effectuated through a leasing agent approved by the declarant under the Master Association, must be for a period of not less than thirty (30) days and shall be and must specifically provide that they are subject to the provisions of the Condominium Documents and that failure to comply with such Documents constitutes a default under the lease. If the Owner fails to enforce a default under such lease for violation of the provisions of the Condominium Documents or of this subsection, the Board, as agent for such Owner, shall have the right to enforce such default and any defaulting lessee and the Owner shall be subject to all remedies given to the Association under this Declaration.

18. Default or Violation by Owner.

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18.1 Remedies. In the event of any default by any Owner under the provisions of the Act, this Declaration, the Bylaws, or the rules and regulations of the Association, including but not limited to the failure to pay his share of Common Expenses, the Association, or its successors or assigns, or the Board, or its agents, or Declarant, or its assignee, shall have each and all of the rights and remedies which may be provided for in the Act, this Declaration, the Bylaws or said rules and regulations, or which may be available by law, including but not limited to the lien described in Section 33-1256, Arizona Revised Statutes, and may prosecute any action or other proceedings against such defaulting Owner and others for enforcement or foreclosure of the Association's lien and the appointment of a receiver for the defaulting Unit without notice, without regard to the value of such Unit or the solvency of such Owner, or for damages or injunction, or specific performance, or for judgment for payment of money and collection thereof, or the right to take possession of the Unit and to rent it and apply the rents received to payment of unpaid assessments and interest accrued thereon, and to sell the same as hereinafter in this Section provided, or for any combination of remedies or for any other relief.

18.2 Application of Proceeds. The proceeds of any such judicial sale shall first be paid to discharge court costs, other litigation costs, including but without limitation reasonable attorneys' fees, and all other expenses of the proceeding and sale, and all such items shall be taxed against the defaulting Owner in a final judgment. Any balance of proceeds after satisfaction of such charges and any unpaid assessments hereunder or any liens shall be paid to the Owner. Upon the confirmation of the sale, the purchasers thereupon shall be entitled to a deed to the Unit and to immediate possession of the Unit and may apply to the court for a writ of restitution for the purpose of acquiring such possession, and it shall be a condition of any such sale, and the judgment shall so provide, that the purchaser shall take the interest in the property sold subject to this Declaration. All expenses of the Association in connection with any such action or proceeding, including court costs and reasonable attorneys' fees and other fees and expenses, and all damages, liquidated or otherwise, together with interest thereon at the rate of ten percent (10%) per annum until paid, shall be charged to and assessed against such defaulting Owner and shall be added to and deemed part of his respective share of the Common Expenses, and the Association shall have a lien for all of the same, as well as for nonpayment of his respective share of the Co<sup>Unofficial Document</sup>uses, upon the Unit of such defaulting Owner and upon all of his additions and improvements thereto.

18.3 Authority to Correct Defaults. In the event of any such default by any Owner, the Association and the Board, and the manager or managing agent, if so authorized by the Board, shall have the authority to correct such default and to do whatever may be necessary for such purpose, and all expenses in connection therewith shall be charged to and assessed against such defaulting Owner, and such assessment shall constitute a lien against the defaulting Owner's Unit. Any and all such rights and remedies may be exercised at any time and from time to time, cumulatively or otherwise, by the Association or the Board.

18.4 Violation of Rules and Regulations. If any Owner (either by his conduct or by the conduct of any other Occupant of his Unit) shall violate any of the provisions of this Declaration, the Bylaws or the rules and regulations, as then in effect, and such violation shall continue for ten (10) days after notice in writing from the Board or shall occur repeatedly during any ten-day period after written notice or request to cure such violation, then the Board, Declarant, or its assignee, or any aggrieved Owner,

shall have the power to file an action against the defaulting Owner or Occupant requiring the defaulting Owner to comply with the provisions of this Declaration, the Bylaws or the rules and regulations, and granting other appropriate relief, including money damages.

18.5 Binding Effect of Covenants, Conditions and Restrictions. Each and all of these covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title to a Unit is acquired by foreclosure Trustee's Sale, sale, deed in lieu of foreclosure or otherwise.

19. Duration and Amendment. The provisions of this Declaration shall continue in perpetuity, but may be changed, modified or rescinded by an instrument in writing setting forth such change, modification or rescission, which shall bear the signatures of at least sixty-seven percent (67%) of the Owners of all Condominiums not owned by Declarant. However, before any such change, modification or rescission shall be effective, (a) at least sixty-seven percent (67%) of the Mortgage Holders (based upon one vote for each mortgage owned), and (b) The City of Tempe shall have previously consented in writing <sup>Unofficial Document</sup> such change, modification or rescission. The Declaration may not be amended during the period of Declarant Control described in Section 7 without the consent of the Declarant.

20. Limitation of Restrictions on Declarant. Declarant is undertaking the work of construction of the Units, the Common Elements and the Limited Common Elements and incidental improvements upon the Property. The completion of that work and the sale, rental and other disposal of the Units is essential to the establishment and welfare of the Property as a residential community. In order that such work may be completed and said property be established as a fully occupied residential community as rapidly as possible, nothing in this Declaration shall be understood or construed to:

(a) Prevent Declarant, its contractors, or subcontractors from doing on the Property whatever is reasonably necessary or advisable in connection with the completion of such work; or

(b) Prevent Declarant or its representatives from erecting, constructing and



maintaining on any part or parts of the Property such structures as may be reasonable and necessary for the conduct of its business of completing such work and establishing the Property as a residential community and disposing of the same in parcels by sale, lease or otherwise; or

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

(d) Prevent Declarant from maintaining such sign or signs on any of the Property as may be necessary for the sale, lease or disposition thereof.

20.1 The foregoing limitations of the application of the restrictions to Declarant shall terminate upon sale of Declarant's entire interest in the Property.

20.2 So long as Declarant, its successors or assigns own one or more of the Uni<sup>Unofficial Document</sup> Condominium established and described herein, Declarant, its successors and assigns shall be subject to the provisions of this Declaration. Declarant shall make every effort to avoid disturbing the use and enjoyment of the Units by their Owners, while completing any work necessary to the Units and Common Elements.

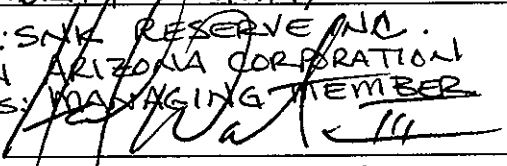
21. Waiver of Trial by Jury. Declarant, by executing this Declaration, all Owners, mortgagees, beneficiaries and trustees under trust deeds, occupants and all other persons possessing or claiming to possess any interest under this Declaration, by acquiring any interest in all or any portion of the Property, waive the right to a jury trial in a action or proceeding based upon or related to the subject matter of this Declaration.

22. Notices. Notices provided for in this Declaration or the other Condominium Documents and addressed to the Association or the Board shall be in writing and shall be addressed to the Association or the Board, at any address to be established by the Board from time to time. The Board may designate a different address for such notices by giving written notice of such change of address to all Owners. All notices to Owners

shall be to their respective Units. Any Owner may also designate a different address for notices to him by giving written notice of his change of address to the Board. Notices addressed as above shall be deemed delivered 72 hours after they have been mailed by United States mail postage prepaid, or when delivered in person.

23. Severability. If any provision of this Declaration or the Bylaws or the rules and regulations or any section, clause, sentence, phrase or word, or the application thereof in any circumstance, is held invalid, the validity of the remainder of this Declaration and Bylaws, or the rules and regulations, and of the application of any such provision, section, sentence, clause, phrase or word in any other circumstances, shall not be affected thereby, and the remainder of this Declaration or Bylaws, or the rules and regulations shall be construed as if such invalid part were never included therein.
24. Rights and Obligations. Each grantee of Declarant, by the acceptance of a deed of conveyance, or each purchaser under any contract for such deed of conveyance, or each purchaser under any agreement of sale, accepts the same subject to all restrictions, conditions, reservations, liens and charges, and the jurisdiction, rights and powers created or reserved by this Declaration, and all rights, benefits and privileges of every character hereby granted, created, reserved or declared, and all impositions and obligations hereby imposed shall be deemed and taken to be covenants running with the land and equitable servitudes, and shall bind any person having at any time any interest or estate in said land, and shall inure to the benefit of such grantee or purchaser in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance or purchase contract.

IN WITNESS WHEREOF, Declarant has caused this Declaration to be duly executed.

ARPEGGIO LLC, A DELAWARE LIMITED  
LIABILITY COMPANY  
BY: SNA RESERVE INC.  
AN ARIZONA CORPORATION  
ITS: MANAGING MEMBER  
By   
Its HAL WATSON III, PRESIDENT