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LAWYERS TITLE OF ARIZONA, INC.

***CONDOMINIUM DECLARATION***  
  
***FOR***  
  
***DESERT SPRINGS AT ALTA MESA,***  
***A CONDOMINIUM***

**CONDOMINIUM DECLARATION  
FOR  
DESERT SPRINGS AT ALTA MESA,  
A CONDOMINIUM**

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**CONDOMINIUM DECLARATION  
FOR  
DESERT SPRINGS AT ALTA MESA, A CONDOMINIUM**

This Condominium Declaration for Desert Springs at Alta Mesa, a condominium, is made this 29<sup>th</sup> day of March, 2000, by Granite Capital Homes at Alta Mesa, L.L.C., an Arizona limited liability company.

**ARTICLE 1**

**DEFINITIONS**

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

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

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**1.2.1 "Additional Property"** means the real property located in Maricopa County, Arizona, which is described on Exhibit B attached to this Declaration together with all buildings and other Improvements located thereon and all easements, rights and appurtenances belonging thereto.

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

**1.2.3 "Assessments"** means the Common Expense Assessments and Special Assessments levied and assessed against each Unit pursuant to Article 7 of this Declaration.

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

**1.2.5 "Association"** means Desert Springs at Alta Mesa Unit Owners Association, an Arizona nonprofit corporation, its successors and assigns.

**1.2.6 "Board of Directors"** means the Board of Directors of the Association.

1.2.7 "**Building**" means the structures designated as buildings on the Plat.

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

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

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

1.2.11 "**Common Expense Assessment**" means the assessment levied against the Units pursuant to Section 7.2 of this Declaration.

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

1.2.13 "**Condominium**" means the Parcel and any part of the Additional Property which is annexed by the Declarant pursuant to Section 2.10 of the Declaration, together with all buildings and other Improvements located thereon.

1.2.14 "**Condominium Act**" <sup>Unofficial Document</sup> means the Arizona Condominium Act, A.R.S. §33-1201, et seq., as amended from time to time.

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

1.2.16 "**Declarant**" means Granite Capital Homes at Alta Mesa, L.L.C., an Arizona limited liability company, and its successors and any Person to whom it may transfer any Special Declarant Right.

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

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

- (i) Add real estate to the Condominium;
- (ii) Create easements, Units, Common Elements or Limited Common Elements within the Condominium;



(iii) Subdivide Units, convert Units into Common Elements or convert Common Elements into Units;

(iv) Withdraw real estate from the Condominium;

(v) Make the Condominium part of a larger condominium or planned community;

(vi) Amend the Declaration during the Period of Declarant Control to comply with the Condominium Act or any other applicable law or to correct any error or inconsistency in the Declaration if the amendment does not adversely affect the rights of any Unit Owner;

(vii) Amend the Declaration during the Period of Declarant Control to comply with the rules or guidelines, in effect from time to time, of any governmental or quasi-governmental entity or federal corporation guaranteeing or insuring mortgage loans or governing transactions involving mortgage instruments, including, without limitation, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration or the Veterans Administration.

**1.2.19 "Dwelling"** means a portion of a Building constructed within the boundaries of a Unit and designed and intended for use <sup>an</sup>~~an~~ <sup>Unofficial Document</sup> as a residence.

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

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

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

**1.2.23 "First Mortgagee"** means the holder of any First Mortgage.

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

**1.2.25 "Lessee"** means any Person who is the tenant or lessee under a written lease of a Unit.

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

**1.2.27 "Master Association"** means The Alta Mesa Community Association, Inc., an Arizona nonprofit corporation, its successors and assigns, organized pursuant to the provisions of the Master Declaration.

**1.2.28 "Master Declaration"** means the Alta Mesa First Amended and Restated Declaration of Covenants, Conditions and Restrictions recorded at Recording No. 84-312771, as amended by the Certificate of Amendment recorded at Recording No. 95-0446271, records of Maricopa County, Arizona, as amended from time to time.

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

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

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

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

**1.2.33 "Plat"** means the condominium plat for Desert Springs at Alta Mesa, a condominium, which plat has been recorded in Book 523 of Maps, page 48, records of Maricopa County, Arizona, and any amendments, supplements or corrections thereto, and any plat recorded against any part of the Additional Property annexed by the Declarant pursuant to Section 2.10 of this Declaration.

**1.2.34 "Purchaser"** means any Person, other than the Declarant, who by means of a voluntary transfer becomes a Unit Owner, except for a Person who purchases a Unit and then

leases it to the Declarant for use as a model in connection with the sale of other Units, or a Person who, in addition to purchasing a Unit, is assigned any Special Declarant Right.

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

**1.2.36 "Resident"** means any person residing in a Unit.

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

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

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

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

**1.2.40 "Unit Owner"** means the record owner, whether one or more Persons, of beneficial or equitable title (and legal title if the same has merged with the beneficial or equitable title) to the fee simple interest of a Unit. Unit Owner shall not include Persons having an interest in a Unit merely as security for the performance of an obligation, or a lessee or tenant of a Unit. Unit Owner shall include a purchaser under a contract for the conveyance of real property, a contract for deed, a contract to convey, an agreement for sale or any similar contract subject to A.R.S. § 33-741, et seq. Unit Owner shall not include a purchaser under a purchase contract and receipt, escrow instructions or similar executory contracts which are intended to control the rights and obligations

of the parties to executory contracts pending the closing of a sale or purchase transaction. In the case of Units the fee simple title to which is vested in a trustee pursuant to A.R.S. § 33-801, *et seq.*, the Trustor shall be deemed to be the Unit Owner. In the case of Units the fee simple title to which is vested in a trustee pursuant to a subdivision trust agreement or similar agreement, the beneficiary of any such trust who is entitled to possession of the Unit shall be deemed to be the Unit Owner.

## ARTICLE 2

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

**2.1 Submission of Property.** Declarant is the owner of fee title to the Parcel. Declarant hereby submits the Parcel to the provisions of the Condominium Act for the purpose of creating a condominium in accordance with the provisions of the Condominium Act and hereby declares that the Parcel shall be held and conveyed subject to the terms, covenants, conditions and restrictions set forth in this Declaration. By acceptance of a deed or by acquiring any ownership interest in any portion of the Condominium, each Person, for himself, his heirs, personal representatives, successors, transferees and assigns, binds himself, his heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, rules, and regulations now or hereafter imposed by the C<sup>Unofficial Document</sup> Documents and any amendments thereof. In addition, each such Person by so doing thereby acknowledges that the Condominium Documents set forth a general scheme for the improvement and development of the Condominium and hereby evidences his interest that all the restrictions, conditions, covenants, rules and regulations contained in the Condominium Documents shall run with the land and be binding on all subsequent and future Unit Owners, grantees, purchasers, assignees, and transferees thereof. Furthermore, each such Person fully understands and acknowledges that the Condominium Documents shall be mutually beneficial, prohibitive and enforceable by the Association and the various subsequent and future Unit Owners. Declarant and its respective successors, assigns and grantees, covenant and agree that the Units and the membership in the Association and the other rights created by the Condominium Documents which are appurtenant to a Unit shall not be separated or separately conveyed, and each shall be deemed to be conveyed or encumbered with its respective Unit even though the description in the instrument of conveyance or encumbrance may refer only to the Unit.

**2.2 Name of Condominium.** The name of the Condominium created by this Declaration is Desert Springs at Alta Mesa, a condominium.

**2.3 Name of Association.** The name of the Association is Desert Springs at Alta Mesa Unit Owners Association.

**2.4 Identifying Numbers of Units.** The identifying numbers of the Units are 11 through 14, inclusive, 59 through 62, inclusive, and 70 through 87, inclusive, as shown on the Plat.

**2.5 Unit Boundaries.**

2.5.1 The boundaries of each Unit are as follows:

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

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

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

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

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

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

**2.6 Dwelling Boundaries.**

2.6.1 The boundaries of each Dwelling are the interior unfinished surfaces of the perimeter walls, floor, ceiling, doors and windows of the Dwelling. 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, floor and ceiling are part of the Dwelling.

2.6.2 The physical boundaries of a Dwelling shall be considered to be the proper boundaries regardless of the settling, rising or lateral movement of the Buildings.

**2.7 Allocation of Common Element Interest and Common Expense Liabilities.** The undivided interests in the Common Elements and in the Common Expenses of the Association shall be allocated equally among the Units. Accordingly, each Unit's fraction of undivided interests in the Common Elements and in the Common Expenses of the Association shall be 1/25th. If any part of the Additional Property is annexed by the Declarant pursuant to Section 2.10 of this Declaration, the undivided interests in the Common Elements and in the Common Expenses of the Association shall be reallocated so that each Unit's fraction of undivided interests shall be the fraction the numerator of which is 1 and the denominator is the total number of Units then subject to this Declaration.

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

**2.9 Allocation of Limited Common Elements.**

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

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

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

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

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

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

## **2.10 Expansion of the Condominium.**

2.10.1 Declarant hereby expressly reserves the right, but not the obligation, to expand the Condominium created by this Declaration, without the consent of the Association or any other Unit Owner, by annexing and submitting to this Declaration all or any portion of the Additional Property. The Declarant shall exercise its right to expand the Condominium by executing and Recording an amendment to this Declaration containing the following: (i) a legal description of the portion of the Additional Property being annexed; (ii) the number of Units being added by the annexation and the Identifying Number assigned to each new Unit; (iii) a description of the Common Elements and Limited Common Elements created and, in the case of Limited Common Elements, a designation of the Unit to which each Limited Common Element is allocated; (iv) a reallocation to each Unit of a fraction of undivided interests in the Common Elements and in the Common Expenses of the Association and in the votes in the Association; (v) a description of any Special Declarant Rights or Development Rights reserved by the Declarant with respect to the Additional Property being annexed. This option to expand the Condominium shall expire seven (7) years from the date of the Recording of this Declaration.

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2.10.2 Unless otherwise provided in the amendment adding Additional Property, the effective date of the annexation and the date for reallocating to each Unit a fraction of undivided interests in the Common Elements and in the Common Expenses of the Association and in the votes in the Association shall be the date on which the amendment annexing additional Units is Recorded. An amendment annexing all or any portion of the Additional Property may divide the Additional Property being annexed into separate phases and may provide for different effective dates for each phase.

2.10.3 The Additional Property may be added as a whole at one time or in one or more portions at different times, or it may never be added, and there are no limitations upon the order of addition or the boundaries thereof. The property submitted to the Condominium need not be contiguous, and the exercise of the option as to any portion of the Additional Property shall not bar the further exercise of the option as to any other portions of the Additional Property. There are no limitations on the locations or dimensions of Improvements to be located on the Additional Property. No assurances are made as to what, if any, further Improvements will be made by Declarant on any portion of the Additional Property.

2.10.4 The Additional Property, when and if added to the Condominium, shall be subject to the use restrictions contained in this Declaration and shall be subject in all respect to the Condominium Documents.

2.10.5 Declarant makes no assurances as to the exact number of Units which shall be added to the Condominium by annexation of all or any portion of the Additional Property, but the number of Units added by any such annexation shall not exceed 88.

2.10.6 All taxes and other assessments relating to all or any portion of the Additional Property annexed into the Condominium covering any period prior to the time when such portion of the Additional Property is annexed in accordance with this Section shall be the responsibility of and shall be paid for by the Declarant.

**2.11 Master Association.** The Condominium is part of a master planned community known as Alta Mesa. The Condominium shall be subject to the terms and conditions of the Master Declaration and the Articles of Incorporation, Bylaws and Rules and Regulations of the Master Association, as such documents may be amended from time to time (collectively, the "Master Association Documents"). Each Unit Owner will be obligated to pay assessments and other charges to the Master Association in accordance with the Master Association Documents. All Common Expense Assessments and other charges due to the Association under the Condominium Documents shall be in addition to the assessments and other charges payable to the Master Association. All consents or approvals of the Board of Directors <sup>Unofficial Document</sup> and by this Declaration shall be in addition to any consents or approvals required under the terms of the Master Association Documents. In the event of any conflict or inconsistency between the restrictions with respect to the use or occupancy of the Units set forth in the Master Declaration and the restrictions set forth in Article 4 of this Declaration, the more restrictive provision shall control.

**2.12 Access Gates.** The Declarant intends to construct an electronically activated access gate at one or more entrances to the Condominium in order to limit access and provide more privacy for the Unit Owners and the other Residents and Lessees of the Units. The access gates shall be part of the Common elements and shall be maintained, repaired and replaced by the Association. Each Owner, Lessee and Resident acknowledges and agrees that the access gates do not guarantee the safety or security of the Owners, Lessees or Residents or their guests or guarantee that no unauthorized person will gain access to the Condominium. Each Owner, Lessee and Resident, and their families, guests and invitees, acknowledge that the access gates may restrict or delay entry into, or access within, certain areas by police, fire department, ambulances and other emergency vehicles or personnel. Each Owner, Lessee and Resident and their families, guests and invitees agree to assume the risk that the access gates will restrict or delay entry into, or access within such areas by police, fire department, ambulances or other emergency vehicles or personnel. Neither the Declarant, the Association nor any director, officer, agent or employee of the Declarant or the Association shall be liable to any Owner, Lessee or Resident or their families, guests or invitees for



any claims or damages resulting, directly or indirectly, from the construction, existence or maintenance of the access gates.

**2.13 Falcon Field Airport Disclosure.** The Condominium is within one mile of Falcon Field. Information regarding aircraft operations and airport development is available through the Falcon Field airport administration office. All Owners, Lessees and Residents and their guests and invitees, assume all risks of bodily injury, death and property damage arising from aircraft operations. Neither Declarant nor the Association or their respective directors, officers, agents or employees shall be liable for any loss, damage, liability, claim or devaluation of property related to, arising out of or resulting from aircraft operations.

### ARTICLE 3

#### EASEMENTS AND DEVELOPMENT RIGHTS

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

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

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

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

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

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

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

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

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

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

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

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

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

3.4.1 Declarant shall have the right and an easement to maintain sales or leasing offices, management offices and models throughout the Condominium only while Declarant is marketing and selling Units, and to maintain one or more advertising, identification or directional signs on the Common Elements while the Declarant is selling Units in the Condominium. Further, said sales and leasing offices, management offices, model homes, and advertising, identification or directional signs shall be used only to sell Units in the Condominium, and shall not be used to sell Units other than those designated on the Plat.

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

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

3.4.4 The Declarant reserves the right to retain all personal property and equipment used in the sales, management, construction and maintenance of the Condominium that has not been represented to the Association as property of the Association. The Declarant reserves the right to remove from the Condominium any and all goods and improvements used in development, marketing and construction, whether or not they have become fixtures. If the Declarant removes any such items, Declarant shall repair any damage caused by the removal or by the fixture.

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

#### **3.5 Declarant's Development Rights and Easements.**

3.5.1 Declarant shall have the right and an easement on and over the Common Elements to construct the Common Elements and the Units shown on the Plat and all other Improvements the Declarant may deem necessary and to use the Common Elements and any Units owned by Declarant for construction or renovation related purposes including the storage of tools,

machinery, equipment, building materials, appliances, supplies and fixtures, and the performance of work in the Condominium or in any part of the Additional Property whether or not Additional Property has been subjected to this Declaration.

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

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

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

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

Unofficial Document

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

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

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

inconsistency between this Section 3.6 and any other provision of the Condominium Documents, the provisions of this Section 3.6 shall control and prevail over such other provisions.

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

**3.8 Easement in Favor of the Association.**

3.8.1 The Common Elements and the Units shall be subject to an easement in favor of the Association and its agents, employees and independent contractors for the purpose of the inspection, upkeep, maintenance, repair and replacement of the Common Elements and those components of the Units which the Association is obligated to maintain pursuant to this Declaration and for the purpose of exercising all rights of the Association and discharging all obligations of the Association.

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

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

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

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