

CONDOMINIUM DECLARATION  
FOR  
THE HOMEOWNERS OF NAVAJO LOFTS

10 Navajo Drive  
Sedona, AZ 86336  
Plat

DRAFT

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Effective xx-xx-xxxx

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# DECLARATION OF CONDOMINIUM

## TABLE OF CONTENTS

ARTICLE I	DEFINITIONS
ARTICLE II	SUBMISSION OF PROPERTY; UNIT BOUNDARIES; ALLOCATION OF PERCENTAGE INTERESTS, VOTES AND COMMON EXPENSE LIABILITIES
ARTICLE III	USE RESTRICTIONS
ARTICLE IV	ASSESSMENTS
ARTICLE V	MAINTENANCE AND REPAIR OF COMMON ELEMENTS AND UNITS
ARTICLE VI	THE ASSOCIATION; RIGHTS AND DUTIES; MEMBERSHIP
ARTICLE VII	INSURANCE
ARTICLE VIII	RIGHTS OF FIRST MORTGAGEES
ARTICLE IX	DAMAGE AND DESTRUCTION
ARTICLE X	GENERAL PROVISIONS

DECLARATION OF CONDOMINIUM  
AND OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
NAVAJO LOFTS  
A CONDOMINIUM PROJECT

This Declaration of Condominium and of Covenants, Conditions, and Restrictions for Navajo Lofts is made effective this \_\_\_\_ day of \_\_\_\_\_ 2025, MKC Holdings, LLC, an Arizona limited liability company (collectively referred to as the “Declarant”).

RECITALS

This Declaration incorporates the Condominium Plat and the Bylaws.

Declarant makes this declaration on the basis of the following facts and intentions:

- A. Declarant is the owner of a certain tract of land located in the county of Yavapai, state of Arizona, more particularly described as:

See Exhibit "A" attached hereto.

- B. Declarant intends to establish a condominium under the provisions of A.R.S. §§ 33-1211 et seq., providing for separate title to each unit within the project and an undivided interest in and to all of the remaining property.
- C. Declarant intends to impose on such property beneficial restrictions under a general plan of improvement for the benefit of all of the condominiums and the owners of such condominiums.
- D. By this Declaration, the Declarant establishes a plan for the individual ownership of the real property estate. This estate consists of the area of space contained in each Unit and all of the remaining portions of the condominium project subsequently defined and referred to as the Common Elements. The Declarant also establishes a plan for the co-ownership by the individuals and separate owners of such Units as tenants-in-common of such Common Elements.

The Declarant declares that the property described in this document must be held, conveyed, encumbered, used, occupied, and improved subject to the following declarations, limitations, restrictions, covenants, conditions, and easements, all of which are in furtherance of a plan for subdivision, improvement, and sale of the real property and are established for the purpose of enhancing the value, desirability, and attractiveness of the real property and every part of such real property. All of the limitations, covenants, conditions, restrictions, and easements will run with the real property and will be binding on all parties having or acquiring any rights, title, or interest in such real property or to such real property and must be for the benefit of each owner of

such interest and inure to the benefit of and be binding on each successor in interest of such owners.

## ARTICLE I DEFINITIONS

1. “Allocated interests” means the undivided interests in the Common Elements, the common expense liability and votes in the Association allocated to each Unit.
2. “Association” or “Unit Owners’ Association” means the unit owners’ association organized under A.R.S. §§33-1241.
3. “Board of Directors” means the body, regardless of its name, designated in the Declaration and given general management powers to act on behalf of the Association.
4. “Bylaws” means the bylaws required by A.R.S. §§ 33-1246.
5. “Common Elements” means all portions of a condominium other than the units.
6. “Common expense liability” means the liability for common expenses allocated to each Unit pursuant to A.R.S. §§ 33-1217.
7. “Common expenses” means expenditures made by or financial liabilities of the Association, together with any allocations to reserves.
8. “Condominium” means real estate, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of the separate portions. Real estate is not a condominium unless the undivided interests in the Common Elements are vested in the Unit Owners.
9. “Condominium documents” means the declaration, bylaws, condominium plat, and rules, if any.
10. “Declarant” means MKC Holdings, LLC and any person or entity to whom they may transfer any Special Declarant Right.
11. “Declaration” means any instruments, however denominated, that create a condominium and any amendments to those instruments.
12. “Development rights” means any right or combination of rights reserved by or granted to a declarant in the declaration to do any of the following:
  - (a) Add real estate to a condominium.
  - (b) Create easements, units, common elements or limited common elements within a condominium.
  - (c) Subdivide units, convert units into common elements or convert common elements into units.
  - (d) Withdraw real estate from a condominium.
  - (e) Make the condominium part of a larger condominium or planned community.
  - (f) Amend the Declaration during any period of declarant control, pursuant to A.R.S. §§ 33-1243, subsection D, to comply with applicable law or to correct any error or inconsistency in the Declaration, if the amendment does not adversely affect the rights of any unit owners.
  - (g) Amend the Declaration during any period of declarant control, pursuant to A.R.S. §§ 33-1234, subsection D, 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.

13. "Identifying Number" means a symbol or address that identifies one unit in a condominium.
14. "Limited Common Element" means a portion of the common elements specifically designated as a limited common element in the declaration and allocated by the declaration or by operation of A.R.S. §§ 33-1212, paragraph 2 or 4 for the exclusive use of one or more but fewer than all of the Units.
15. "Maintenance and repair" include, but is not limited to operation, administration, (including legal and accounting expenses), maintenance, repair, replacement, improvement, demolition, reconstruction, redesign, alteration, repaving, resurfacing, cleaning painting, and generally maintaining the property in a good condition, neat and clean in appearance, free of debris.
16. "Person" means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity. In the case of a subdivision trust, as defined in A.R.S. §§ 6-801, person means the beneficiary of the trust who holds the right to subdivide, develop or sell the real estate rather than the trust or trustee.
17. "Real estate" means any legal, equitable, leasehold or other estate or interest in, over or under land, including structures, fixtures and other improvements and interests which by custom, usage or law pass with a conveyance of land though not described in the contract of sale or instrument of conveyance. Real estate includes parcels with or without upper or lower boundaries and spaces that may be filled with air or water.
18. "Rules" means the provisions, if any adopted pursuant to the Declaration or bylaws governing maintenance and use of the units and common elements.
19. "Special declarant rights" means any right or combination of rights reserved by or granted to a declarant in the declaration to do any of the following:
  - (a) Construct improvements provided for in the declaration.
  - (b) Exercise any development right.
  - (c) Maintain sales offices, management offices, signs advertising the condominium, and models.
  - (d) Use easements through the Common Elements for purpose of making improvements within the Condominium or with real estate which may be added to the Condominium.
  - (e) Appoint or remove an office of the Association or any Board of Directors member during any period of declarant control.
20. "Unit" means a portion of the Condominium designated for separate ownership or occupancy.
21. "Unit Owner" means a declarant or other person who owns a unit. In the case of a contract for conveyance, as defined in A.R.S. §§ 33-741, or real property, Unit Owner means the purchaser of the unit.

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

2.0 Submission of Property. The real property described on Exhibit A attached to this Declaration and on the Plat, together with all Improvements, easements, rights and appurtenances thereto, is hereby submitted to a Condominium in accordance with the provisions of the Condominium Act. The Identifying Numbers of the Units submitted to the Condominium are those Units consecutively numbered 1 and 2, inclusive, as shown on the Plat.

2.1 Unit Boundaries.

A. The physical boundaries of each Unit are the interior unfinished surfaces of the perimeter walls, floors, ceilings, doors, and windows of the Unit with:

- (i) the underside of the finished but undecorated ceiling as the top horizontal boundary;
- (ii) the top of the finished but undecorated flooring shall be the bottom horizontal boundary; and
- (iii) the interior of the finished but undecorated walls shall be the vertical boundaries. All paneling, tiles, wallpaper, paint, finished flooring and any other material constituting any part of the finished surfaces are a part of the Unit, and all other portions of the walls, floors or ceilings are a part of the Common Elements. The structural elements of exterior windows and doors shall be Limited Common Elements allocated to that Unit as provided in Section 2.1 (D) below.

B. If any chute, flue, duct, wire, conduit, bearing wall, bearing column, heating or air conditioning unit or apparatus or other fixture lies partially within and partially outside the boundaries of a Unit, any portion serving only that Unit is a Limited Common Element allocated solely to that Unit and any portion serving more than one Unit or any portion of the Common Elements is a part of the Common Elements.

C. Subject to the provisions of subsection B of this section all spaces, interior partitions and other fixtures and improvements within the boundaries of a Unit are part of the Unit.

D. Any shutters, awnings, window boxes, doorsteps, stoops, porches, balcony

areas, entryways, or patio areas, and all exterior doors and glass windows or other fixtures designed to serve a single Unit, but located outside of the Unit's physical boundaries, are Limited Common Elements allocated exclusively to that Unit. Stairways and entry walks designated for use by a Unit or Units in a Building, but less than all of the Units in the Condominium and located outside of the physical boundaries of a Unit shall be Limited Common Elements allocated to the Unit or Units in the Building served by such stairways and entry walks. The Limited Common Element shall include the front yard areas as designated on the Plat.

B. In the event of an inconsistency or conflict between the provisions of this section and the Plat, the Plat shall control.

C. The physical boundaries of a Unit shall be considered to be the proper boundaries regardless of the settling, rising or lateral movement of the Buildings and regardless of any variances between the boundaries shown on the Plat and the actual physical boundaries.

D. 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 ARS §33-222.

E. Each Unit includes a Garage as an integral part of the Unit.

2.2 Allocation of Common Element Interest. The undivided interest in the Common Elements of the Association shall be allocated equally among the Units. Accordingly, each Unit's percentage interest in the Common Elements shall be Fifty Percent (50%).

2.3 Allocation of Common Expense Liabilities. The undivided interest in the Common Expense Liability of the Association shall be allocated equally among the Units, with each Unit responsible for Fifty Percent (50%) of the Common Expense Liability.

2.4 Allocation of Votes in the Association. The votes in the Association shall be allocated equally between the two Units with each Unit having one (1) vote. An Owner's voting rights are subject to suspension as provided in the Bylaws if the Owner violates the Condominium Documents.

2.5 Allocation of Limited Common Elements.

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

- i) Each Unit is allocated the covered patio areas adjoining or attached to the Unit as shown on the Plat, inclusive of any storage room or area included in the patio area or balcony area.
- ii) Each Unit is allocated the backyard area adjoining or attached to the Unit as shown on the Plat.
- iii) Any electric or water meter which serves only one Unit is allocated to the Unit it serves.
- iv) Each Unit is allocated those portions of the common elements designated as Limited Common Elements in Sections 2.1 (B) and (D) of this Declaration that serve the Unit.

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

C. 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 Limited Common Element. Any such allocation by the Board of Directors shall be made by an amendment to this Declaration and to amendment to the Plat if required by the Condominium Act.

ARTICLE III  
USE RESTRICTIONS

In addition to all other covenants contained in this Declaration, the use of the property and each Condominium in it is subject to the following:

3.0 No lot, Common Element or Limited Common Element shall be used or maintained as a dumping ground for rubbish. All trash, garbage or other wastes must be kept in sanitary containers out of sight of the street and all such containers must be maintained in good, clean condition. All rubbish, trash, and garbage must be regularly removed from the property.

3.1 The Common Elements and Limited Common Elements shall not be used for storage purposes, although patio furniture may be located in Limited Common Elements in the back of each Unit for use of the Unit Owner. However, no other furniture (including patio furniture not in current use), fixture, appliance, automobiles, boats, motorcycles, RVs, trucks, trailers or other vehicles, (or parts of such vehicles) and no other goods and chattel, including any storage unit, temporary or otherwise, shall be located or stored in any Common Element or Limited Common Element. No such good or chattel shall be situated in such a manner as to be visible from the street.

3.2 Subject to the rights of reasonable contest, each Owner must promptly comply with

the provisions of all applicable statutes, ordinances, and administrative rulings or regulation pertaining to his or her parcel.

- 3.3 There will be no exterior fires except barbecue fires and fire pits contained within receptacles approved and designated for such purposes and limited to the Limited Common Elements. No Owner shall permit any condition which creates a fire hazard or is in violation of fire prevention regulations.
- 3.4 The Owner of each Unit will be liable to the Association for all damages to the Common Element, Limited Common Element, or improvements on such areas caused by such Owner or any occupant of his or her Unit or any guest.
- 3.5 The driveway into each Unit is a Limited Common Element of the Unit served.
- 3.6 No clotheslines or other facilities for drying or airing clothes shall be erected, placed or maintained on the exterior of any Unit, including, without limitation, on any porches, patios or balconies.
- 3.7 No immoral, improper, offensive, or unlawful use shall be made of any part of the Condominium. All valid laws, zoning ordinances, and regulations of all governmental bodies having jurisdiction over the Condominium shall be observed. Any violation of such laws, zoning ordinances or regulations shall be a violation of this Declaration.
- 3.8 No nuisance shall be permitted to exist or operate upon the Condominium, and no activity shall be conducted upon the Condominium which is offensive or detrimental to any portion of the Condominium or any Unit Owner or other occupant of the Condominium. No exterior speakers, horns, whistles, bells or other sound devices, except security or other emergency devices used exclusively for security or emergency purposes, shall be located, used or placed on the Condominium.
- 3.9 Routine overnight parking of transportation vehicles used daily by the occupants of the Units is permitted. However, no boats, RVs, trailers, or other vehicles not in daily use, or anything else may be stored in the driveway in excess of seventy-two (72) hours during a thirty (30) day period.
- 3.10 Lease Term/Short Term Rentals. The Condominium or any Unit in the Condominium shall not be used as a short-term rental, as defined in Sedona City Code 5.25.020. Any Unit Owner, or agent thereof, shall not lease any Unit for an initial lease term of less than 90 days. Any tenant shall not be allowed to assign a lease or sublease of a Unit without the express written consent of the Board of Directors. If an assignment or sublease is approved such assignment or sublease shall not be for a term less than the existing lease term. A copy of any lease or sublease agreement shall be provided

to the Board of Directors no less than 5 business days prior to the commencement of the lease term.

ARTICLE IV  
PROPERTY  
ASSESSMENTS

- 4.0 Creation of Assessment Right. In order to provide funds to enable the Association to meet its financial and other obligations and to create and maintain appropriate reserves, there is hereby created a right of assessment exercisable on behalf of the Association by its Board of Directors. Annual assessments and special assessments shall be for common expenses and appropriate reserves and shall be allocated among the Units as provided below.
- 4.1 Covenants with Respect to Assessments. Each Unit Owner, by acceptance of his, her or its deed (or other conveyance instrument) with respect to a Unit, is deemed to covenant and agree to pay the assessments levied pursuant to this Declaration with respect to such Owner's Unit, together with interest from the date due at a rate often percent (10%) per annum, together with such reasonable late fees as may be established by the Board of Directors in advance for general application and such costs and reasonable attorneys' fees as may be incurred by the Association in seeking to collect such assessments. Each of the assessments with respect to a Unit, together with interest, late fees, costs and reasonable attorneys' fees shall also be the personal obligation of the person who or which was the Owner of such Unit at the time such assessment arose with respect to such Unit, provided, however, that the personal obligation for delinquent assessments shall not pass to a successor in title of such Owner unless expressly assumed by such successor. No Owner shall be relieved of his, her or its obligation to pay any of the assessments by abandoning or not using his, her or its Unit, or the Common Element, or Limited Common Element or by leasing or otherwise transferring occupancy rights with respect to his, her or its Unit. However, upon transfer by an Owner of fee title to such Owner's Unit, as evidenced by a recorded instrument, such transferring Owner shall not be liable for any assessments thereafter levied against such Unit. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed by reason of the alleged failure of the Association or Board of Directors to take some action or perform some function required to be taken or performed by the Association or Board of Directors under this Declaration, Bylaws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law or ordinance or with any order or directive of any municipal or other governmental authority.

4.2 Lien for Assessments: Foreclosure. There is hereby created and established a lien against each Unit which shall secure payment of all present and future assessments assessed or levied against such Unit or the Owner thereof (together with any present or future charges, fines, penalties or other amounts levied for such Unit or the Owner or occupant thereof pursuant to this Declaration or the Articles, the Bylaws, the Association Rules or the Guidelines as may be adopted by the Association). Such lien is and shall be prior and superior to all other levies which, by law, would be superior thereto; but the lien created under the Declaration on any Unit will be subject and subordinate to the indebtedness secured by any recorded first mortgage on such interest made in good faith and for value. Such lien may be foreclosed in the manner provided by law for the foreclosure of mortgages. The sale and transfer of any Unit pursuant to a mortgage foreclosure or any proceeding in lieu thereof with respect to a first mortgage shall extinguish the lien of the assessments as to payments which became due prior to such sale or transfer, but no such sale or transfer shall relieve such Unit from liability for any assessments becoming due after such sale or transfer, or from the lien thereof. The Association shall have the power to bid for any Unit at any sale to foreclose the Association's lien on the Unit, and to acquire and hold, lease, mortgage and convey the same. During the period any Unit is owned by the Association, no right to vote shall be exercised with respect to said Unit and no assessment shall be assessed or levied on or with respect to said Unit, provided, however, that the Association's acquisition and ownership of a Unit under such circumstances shall not be deemed to convert the same into Common Element or Limited Common Element. The Association may maintain a suit to recover a money judgment for unpaid assessments, rent, interest and attorneys' fees without foreclosing or waiving the lien security same. Recording of this Declaration constitutes record notice and perfection of the liens established hereby, and further Recordation of any claim of a lien for assessments or other amounts hereunder shall not be required, whether to establish or perfect such lien or to fix the priority thereof, or otherwise (although the Board of Directors shall have the option to record written notices of claims of lien in such circumstances as the Board of Directors may deem appropriate).

4.3 Computation of Assessments: Annual Budget. No less than thirty (30) days prior to each annual meeting, the Board of Directors shall prepare and adopt an annual budget for each fiscal year of the Association, which shall serve as the basis for determining the annual assessments for the applicable fiscal year. Such budget shall consider the estimated common expenses and cash requirements of the Association for the year. The annual budget shall also provide for a reserve for contingencies and a reserve for replacements, all in such reasonably adequate amounts as shall be determined by the Board of Directors, considering the number and nature of replaceable assets, the expected life of each asset, and each asset's expected repair or replacement cost. Not later than sixty (60) days following the meeting of the Board

of Directors at which the Board of Directors adopts the annual budget for the year in question, the Board of Directors shall cause to be delivered or mailed to each Owner a copy of the budget and a statement of the amount of the annual assessments to be levied against such Owner's Unit for the fiscal year in question. In the event the Board of Directors fails to adopt a budget for any fiscal year prior to commencement of such fiscal year, then until and unless such budget is adopted, the budget (and the amount of the annual assessments provided for therein) for the year immediately preceding shall remain in effect. Neither the annual budget, nor any amended budget adopted pursuant thereto, shall be required to be ratified or approved by the Owners or any other persons. If, at any time during a fiscal year of the Association, the Board of Directors deems it necessary to amend the budget for such year, the Board of Directors may do so and may levy an additional annual assessment for such year or may call a meeting of the members to request that the members approve a special assessment. Within sixty (60) days after adoption of an amended budget (if the Board of Directors elects to levy an additional annual assessment), the Board of Directors shall cause to be delivered or mailed to each Owner a copy of the amended budget and a statement of the additional annual assessment to be levied against such Owner's Unit; if, instead, the Board of Directors elects to call a meeting of members to seek approval of a special assessment, the Board of Directors shall cause a copy of the amended budget proposed by the Board of Directors to be delivered or mailed to each Owner with the notice of such meeting, and if a special assessment is duly approved by the members at such meeting, shall cause to be promptly mailed or delivered to Owner a statement of the special assessment to be levied against such Owner's Unit.

- 4.4 Due Dates. Annual assessments for each fiscal year shall be due and payable in equal periodic installments, payable not more frequently than monthly nor less frequently than semiannually, as determined for such fiscal year by the Board of Directors, with each such installment to be due and payable on or before the first day of each applicable period during that fiscal year. Special assessments, if any, shall be paid in such manner and on such dates as may be fixed by the Board of Directors. In addition to any other powers of collection or enforcement granted hereunder, in the event any assessments with respect to a Unit are delinquent, the Board of Directors shall have the right, in its sole discretion, to accelerate the date(s) on which all subsequent installments of assessments with respect to such Unit are due and payable. Assessments shall be deemed "paid" when actually received by the Association or by its manager or agent designated by the Association to collect the same (provided, however, that if any assessments are paid by check and the bank or other institution upon which such check is drawn thereafter dishonors or refuses to pay such check, those assessments shall not be deemed "paid" and shall remain due and payable with interest accruing from the date such assessments were originally due).

- 4.5 Special Assessments. In addition to the annual assessments, the Association may levy special assessments from time to time, provided, however, that any special assessment shall be effective only with the approval of one hundred percent (100%) of the votes of Units represented in person or by valid proxy at a meeting of members duly called and convened to consider such special assessment. Special assessments shall be allocated equally among all Units.
- 4.6 Surplus Monies. Unless otherwise expressly determined by the Board of Directors, any surplus monies of the Association shall be held by the Association and placed in one or more reserve accounts as determined by the Board of Directors and shall not be paid to the Owners or credited against the Owners' respective liabilities for assessments.
- 4.7 Billing and Collection Procedures. The Board of Directors shall have the right to adopt procedures for the purpose of making, billing and collecting the assessments. The failure of the Association to send a bill to an Owner shall not relieve such Owner of the Owner's liability for any assessment. The Association shall be under no duty to refund any payments received by the Association even if the ownership of a Unit changes during a fiscal year of the Association. Any successor Owner shall be given credit for any un-refunded prepayments made by a prior Owner.
- 4.8 Common Expenses Resulting from Misconduct. Notwithstanding any other provision hereof, if any common expense is caused by the misconduct of any Owner (or of any occupant, tenant, employee, servant, agent, guest or invitee for whose actions such Owner is responsible under applicable law), the Association may assess that common expense exclusively against such Owner and such Owner's Unit, which amount (together with any and all costs and expenses, including but not limited to attorneys' fees, incurred by the Association in recovering the same) shall be secured by the lien created herein.

ARTICLE V  
MAINTENANCE AND REPAIR OF  
COMMON ELEMENTS AND UNITS

- 5.0 Duties of the Association. The Association shall maintain, repair and make necessary improvements to all Common Elements (including the structural elements of Limited Common Elements), whether located inside or outside the Buildings, except for the specific portions of the Limited Common Elements which the Unit Owners are obligated to maintain pursuant to this Declaration. Without limitation, the Association shall be responsible for maintaining residential Building

exteriors, parking areas, parking canopies, private streets and drives, sidewalks, landscaping, irrigation systems, lighting and light fixtures in the Common Elements. The costs of all such repairs, maintenance and improvements shall be a Common Expense and shall be paid for by the Association. The Board of Directors shall be sole and absolute judge as to the appropriate maintenance of the Common Elements and the Condominium. For purposes of maintaining the Garages, the Unit Owners to whose Unit a Garage is assigned hereby grant an easement to the Association to enter the Garage upon reasonable notice (except in the case of an emergency) for maintenance and for access to any attic access panel in a particular Garage, if any, for purpose of access to other portions of the Garage Building.

#### 5.1 Duties of Unit Owners.

- A. Each Unit Owner shall maintain, repair, replace and restore, at his own expense, all portions of the Unit, subject to the Condominium Documents.
- B. Each Unit Owner shall be responsible for maintenance and repair of the Limited Common Elements allocated to the Unit pursuant to this Declaration as Limited Common Elements, including, without limitation:
- (i) periodic painting of, and maintenance of the concrete slabs or finished flooring of, the patio areas and/or balcony areas (except for repair to the structural portions thereof);
  - (ii) maintenance of Garage lights, all Garage opening systems or devices, and the Garage door. The Unit Owner shall promptly maintain, repair, replace and, to the extent required for a first-class appearance, paint the Garage door using materials and paints designated by the Association to maintain a uniform appearance. The Association will repaint Garage doors, periodically when painting the Garages, but that does not diminish the Owner's obligations set forth above;
  - (iii) maintenance, repair and replacement of all doors and windows of the Unit, including the entrance area doors;
  - (iv) maintenance and repair of all backyard areas and pool areas designated as Limited Common Elements; and
  - (v) the air conditioning unit (including compressors and condensers), heater and hot water heater serving the Unit and, to the extent not included within the categories described in this Section 5.1 (B), the Limited Common Elements of the type described in Sections 2.l(B) and (D) above. No Unit Owner may paint or change the exterior color scheme or surfacing materials of the patio or balcony areas or any portion of the Limited Common Elements allocated to the Unit visible from the Common Elements or any other Unit without the prior written consent of the Board of Directors.

- C. Each Unit Owner shall take all necessary action to keep the Unit and the Limited Common Elements which the Unit Owner is obligated to maintain under this Section clean and free from unsightly accumulations of trash, furniture in weathered or poor condition, and litter.
- D. Despite the provisions of paragraph 5.0, each Unit Owner shall maintain, repair, replace and restore, at his own expense, all portions of the roof above their respective unit.
- 5.2 Repair or Restoration Necessitated by Unit Owner. Each Unit Owner shall be liable to the Association, to the extent permitted by Arizona law, for any damage to the Common Elements or the Improvements, or equipment thereon, which results from the negligence or willful misconduct or omission of the Unit Owner or that Owner's family members, tenants, guests, invitees and pets. The cost to the Association of any such repair, maintenance or replacement required by such act or omission of a Unit Owner shall be paid by the Unit Owner, upon demand, to the Association. The Association may enforce collection of any such amounts in the same manner and to the same extent as provided for in this Declaration from the collection of Assessments.
- 5.3 Unit Owner's Failure to Maintain. If a Unit Owner fails to maintain in good condition and repair the Unit or any Limited Common Element which they are obligated to maintain under this Declaration or to keep the Garage in the manner set forth in this Declaration and the required maintenance, repair or replacement is not performed within thirty (30) days after written notice has been given to the Unit Owner by the Association, the Association shall have the right, but not the obligation, to perform the required maintenance, repair or replacement. The cost of any such maintenance, repair or replacement shall be assessed against the nonperforming Unit Owner pursuant to this Declaration.

ARTICLE VI  
THE ASSOCIATION; RIGHTS AND DUTIES; MEMBERSHIP

- 6.0 Rights, Powers and Duties of the Association. The Association shall be organized as an unincorporated association. The Association shall be the entity through which the Unit Owners shall act. The Association shall have such rights, powers and duties as are prescribed by law and as are set forth in the Condominium Documents together with such rights, powers and duties as may be reasonably necessary to effectuate the objectives and purpose of the Association as set forth in this Declaration and the Condominium Act. The Association shall have the right to finance capital Improvements in the Condominium by encumbering future Assessments if such action is approved by written consent or affirmative vote of Unit Owners representing one hundred percent (100%) of the votes in the

Association and by Declarant during the Period of Declarant Control. Unless the Condominium Documents or the Condominium Act specifically requires a vote of the Members, approvals or actions to be given or taken by the Association shall be valid if given or taken by the Board of Directors. The Association has the specific duty to make available to the Declarant, Eligible Mortgage Holders, Unit Owners, and Eligible Insurers or Guarantors during normal business hours, current copies of the Condominium documents and other books, records and financial statements of the Association as may be required from time to time by such parties. Such requests shall be in writing, and the Association shall have the right to charge for copying expenses and the reasonable cost of postage, shipping or transmission of the information requested.

6.1 Directors and Officers.

- A. During the Period of Declarant Control, the Declarant shall have the right to appoint and remove the members of the Board of Directors and the officers of the Association who do not have to be Unit Owners.
- B. Upon the termination of the Period of Declarant Control, the Unit Owners shall elect the Board of Directors, which must consist of at least two (2) members, all of whom must be Unit Owners. The Board of Directors elected by the Unit Owners shall then elect the officers of the Association.
- C. The Declarant may voluntarily surrender his right to appoint and remove the members of the Board of Directors and the officers of the Association before termination of the Period of Declarant Control, and in that event, the Declarant may require, for the duration of the Period of Declarant Control, that specified actions of the Association or the Board of Directors, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

- 6.2 Rules. The Board of Directors, from time to time and subject to the provisions of this Declaration and the Condominium Act, may adopt, amend, and repeal rules and regulations. The Rules may, among other things, restrict and govern the use by any Unit Owner, by the family of such Unit Owner, or by any invitee, licensee or lessee of such Unit Owner, of any area within the Condominium subject to the Association's jurisdiction and control; provided, however, that the Rules may not unreasonably discriminate among Unit Owners and shall not be inconsistent with the Condominium Act, the applicable federal and state Fair Housing Acts, this Declaration, the Articles or Bylaws. A copy of the Rules, as they may from time to time be adopted, amended or repealed, shall be mailed or otherwise delivered to each Unit Owner and may be recorded.

6.3 Composition of Members. Each Unit Owner shall be a Member of the Association. The membership of the Association at all times shall consist exclusively of all the Unit Owners. Membership in the Association is mandatory and such Membership, and the Allocated Interests thereof are appurtenant thereto, and may not be separated from, ownership of the Unit; provided, however, the Allocated Interests of Units from time to time may be modified or changed as expressly permitted in the Declaration and authorized under the Condominium Act. No Owner during his ownership of a Unit shall have the right to relinquish or terminate membership in the Association.

## ARTICLE VII INSURANCE

### 7.0 Scope of Coverage.

A. Commencing not later than the date of the first conveyance of a Unit to a Purchaser, the Association shall maintain, to the extent reasonably available, the following insurance coverage:

- (i) Property insurance on the Common Elements. The policy is to be issued on a "Special Form" policy or its equivalent in an amount determined by the Board of Directors; provided, however, that the total amount of insurance shall not be less than eighty percent (80%) of the current replacement cost of the insured property, exclusive of land, excavations, foundations and other items normally excluded from a master or blanket hazard and multi-peril property insurance policy.
- (ii) Liability insurance, for a limit to be determined by the Board of Directors. Such insurance shall cover all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Common Elements.
- (iii) Such other insurance as the Association shall determine from time to time to be appropriate to protect the Association, the members of the Board of Directors, or the Unit Owners.
- (iv) The Unit Owners may amend or revoke this Article by unanimous consent.
- (v) The insurance policies purchased by the Association shall, to the extent reasonably available, contain the following provisions:
- (vi) Each Unit Owner shall be an insured under the policy with respect to liability

arising out of ownership of an undivided interest in the Common Elements or membership in the Association.

- (vii) There shall be no subrogation with respect to the Association, its agents, servants, ITS Board of Directors or officers thereof, and employees against Unit Owners and members of their household.
- (viii) No act or omission by any Unit Owner, unless acting within the scope of his authority on behalf of the Association, shall void the policy or be a condition to recovery on the policy.
- (ix) The coverage afforded by such policy shall be primary and shall not be brought into contribution or proration with any insurance which may be purchased by Unit Owners or their mortgagees or beneficiaries under deeds of trust.

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

7.2 Insurance Obtained by Unit Owners/Non-Liability of Association. The issuance of insurance policies to the Association pursuant to this Article shall not prevent a Unit Owner from obtaining insurance for their own benefit and at their own expense covering their Unit, their personal property and providing personal liability coverage. Notwithstanding the obligation of the Association to obtain insurance coverage as stated in this Declaration, neither the Declarant nor the Association, or their respective officers, directors, employees and agents, shall be liable to any Unit Owner or any other party if any risks or hazards are not covered by the insurance to be maintained by the Association or if the amount of the insurance is not adequate, and 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 any additional insurance coverage and protection that the Unit Owner may desire.

7.3 Payment of Insurance Proceeds. Any loss covered by property insurance obtained by the Association in accordance with this Article shall be adjusted with the Association and the insurance proceeds shall be payable to the Association and not to any mortgagee or beneficiary under a deed of trust. The Association shall hold any insurance proceeds in trust for Unit Owners and lienholders as their interests may appear, and the proceeds shall be disbursed and applied as provided for in §33- 1253 of the Condominium Act.

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

ARTICLE VII  
RIGHTS OF FIRST MORTGAGEES

- 8.0 Notification to First Mortgagees. Upon receipt by the Association of a written request from a First Mortgagee or insurer or governmental guarantor of a First Mortgage informing the Association of its correct name and mailing address and number or address of the Unit to which the request relates, the Association shall provide such Eligible Mortgage Holder or Eligible Insurer or Guarantor with timely written notice of the following:
- A. Any condemnation loss or any casualty loss which affects a material portion of the Condominium or any Unit on which there is a First Mortgage held, insured or guaranteed by such Eligible Mortgage Holder or Eligible Insurer or Guarantor;
  - B. Any delinquency in the payment of Assessments or charges owed by a Unit Owner subject to a First Mortgage held, insured or guaranteed by such Eligible Mortgage Holder or Eligible Insurer or Guarantor or any obligation under the Condominium Documents, which delinquency or default remains uncured for the period of sixty (60) days;
  - C. Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;
- 8.1 Right of Inspection of Records. Any Unit Owner, First Mortgagee or Eligible Insurer or Guarantor shall, upon written request, be entitled to: (i) inspect the current copies of the Condominium Documents and the books, records and financial statements of the Association during normal business hours; (ii) receive within ninety (90) days following the end of any fiscal year of the Association, an audited financial statement of the Association for the immediately preceding fiscal year of the Association, free of charge to the requesting party; and (iii) receive written notice of all meetings of the Members of the Association and be permitted to designate a representative to attend all such meetings. Notwithstanding the foregoing, the Board of Directors may withhold from disclosure such books, records and documents of the Association, or portions thereof, designated under A.R.S. §§33-

1258 of the Condominium Act.

- 8.2 Liens Prior to First Mortgage. All taxes, assessments, and charges which may become liens prior to the First Mortgage under local law shall relate only to the individual Unit and not to the Condominium as a whole.
- 8.3 Condemnation or Insurance Proceeds. No Unit Owner, or any other party, shall have priority over any rights of any First Mortgagee of the Unit pursuant to its mortgage in the case of a distribution to such Unit Owner of insurance proceeds or condemnation awards for losses to or a taking of Units and/or Common Elements. Subject to the foregoing, the allocation of awards for the exercise of eminent domain, or deeds in lieu thereof, shall be governed by the provisions of §§33-1206 of the Condominium Act.

ARTICLE IX  
DAMAGE AND DESTRUCTION

- 9.0 Common Elements. If any portion of the Common Element is destroyed or damaged by fire or other casualty and is covered by insurance written in the name of the Association, the Board of Directors shall, upon receipt of insurance proceeds contract to rebuild or repair such damaged or destroyed portions of the Common Element substantially in accordance with the original.

The Board of Directors shall contract with any licensed contractor, who shall be required to provide a full performance and payment bond for repair, reconstruction or rebuilding of such destroyed Common Element.

In the event insurance proceeds are not enough to pay all costs or the repair and/or rebuilding, the Board of Directors may levy a special assessment on all Unit Owners to make up any deficiency.

All insurance proceeds will be paid to an insurance trustee as designated by the Board of Directors, held for the benefit of the Unit Owners according to their respective interests.

- 9.1 Units. In the event of damage or destruction by fire or other casualty affecting a Unit, the Owner or Owners of such Unit must, (a) diligently commence to rebuild the same in accordance with the terms of this Declaration, or (b) clear and level the lot removing all wreckage, debris and remains of the building or buildings from such lot and leaving the same in a level, clean condition. Upon reconstruction, the Unit must be built substantially in accordance with the original plans and specifications for it. The exterior appearance of such Unit must substantially resemble the appearance and form and color prior to such damage or destruction.

Notwithstanding the foregoing, the Owner of the damaged Unit may reconstruct or repair the Unit in accordance with new or changed Plats and specifications with the prior written consent of the Board of Directors.

ARTICLE X  
GENERAL PROVISION

- 10.1 Enforcement. The Association, or any Owner, will have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or subsequently imposed by the provisions of this Declaration, and in such action will be entitled to recover reasonable attorney fees as are ordered by court. Failure by the Association or by any Owner to enforce any covenant or restriction contained in this Declaration will in no event be deemed a waiver of the right to do so.
- 10.2 Severability. The provisions of this Declaration will be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion of such provision will not affect the validity or enforceability of any other provision of this Declaration.
- 10.3 Interpretation. The provisions of this Declaration will be liberally construed to effectuate their purpose of creating a uniform plat for the development and operation of the property. Failure to enforce any provision of this Declaration will not constitute a waiver of the right to enforce such provision or any other provision of this Declaration.
- 10.4 Term. The covenants and restrictions of this Declaration will run with and bind the property and will inure to the benefit of and will be enforceable by the Association or the Owner of any Unit subject to this Declaration, their respective legal representatives, heirs, successors, and assigns.
- 10.5 Amendment. The provisions of this Declaration may be amended by an instrument in writing signed and acknowledged by the unanimous vote of the Board of Directors certifying under penalty of perjury that the amendment set forth was adopted.
- 10.6 Easements. Each Condominium shall have an easement over the other for light, air, prospect and view commencing at six feet above the ground and continuing to eternity. Each Condominium within the properties is hereby declared to have an easement over all adjoining Condominiums and the Common Element for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, settlement or shifting of the building, or any other cause. There will be valid easements for the maintenance of such encroachments as long as they exist, and the rights and obligations of Owners will not be altered in any way by such encroachment, settlement, or shifting. However, in no event will a valid

easement or encroachment be created in favor of an Owner or Owners if the encroachment occurred due to the willful misconduct of such Owner or Owners. In the event a structure is partially or totally destroyed, and then repaired or rebuilt, the Owners of each Condominium agree that minor encroachments over adjoining Condominiums or Common Elements will be permitted and that there will be valid easements for the maintenance of such encroachments so long as they exist.

10.7 Termination of Responsibility of Declarant. In the event declarant conveys all of its right, title, and interest in and to the property to any partnership, individual or individuals, corporation or corporations, then and in such an event, declarant will be relieved of the performance of any further duty or obligation under the terms of this Declaration, and the acquiring partnership, individual or individuals, corporation or corporations, will be obligated to perform all such duties and obligations of declarant.

10.8 Notices. Any notice permitted or required by this Declaration or Association articles or bylaws may be delivered either personally or by mail. If delivery is by mail, it will be deemed to have been delivered when deposited in the United States Mail, postage prepaid, addressed to each person at the current address given by such person to the Board of Directors or addressed to the Unit of such person if no address has been given to the Board of Directors.

10.9 Dispute Resolution. Except as otherwise provided in this Agreement, any controversy or dispute arising out of this Agreement, the interpretation of any of the provisions hereof, AND IN LIEU OF LITIGATION AND A TRIAL BY JURY, shall be resolved through mediation in Yavapai County, Arizona. If the parties are unable to resolve the matter in mediation, then the parties shall participate in mandatory and binding arbitration in Yavapai County, Arizona under the Revised Uniform Arbitration Act, before a single arbitrator mutually agreed to by the parties. If an arbitrator has not been agreed to by the Parties within five (5) days after the demand for arbitration by either party, then each party to the dispute shall select an arbitrator and those two (2) arbitrators shall select a third arbitrator. All three arbitrators shall be appointed to preside over the arbitration. Immediately following appointment, the arbitrators shall provide written notice to the parties indicating the time and location of the scheduled hearing. The hearing must be scheduled within forty-five (45) days of the date of the appointment of the arbitrators. At least ten (10) days prior to the commencement of the arbitration hearing, each party shall provide to the other a statement of its position reflecting the dispute in question and a list of any witnesses which any party expects to testify at such hearing on its behalf. The arbitrators shall, with all possible speed, decide in writing and give notice to the parties of such determination within ten (10) days following the conclusion of the hearing. If the arbitrators do not reach a unanimous decision, then a majority decision will control. The decision made pursuant to such arbitration shall be

binding and conclusive on all parties involved and judgment on such decision may be entered in any court of competent jurisdiction.

The entry of judgment may be made upon award rendered by the arbitrator(s) in any court of competent jurisdiction. The parties acknowledge and agree that, in connection with any such arbitration and regardless of outcome, (a) each party shall pay all of its own costs and expenses, including without limitation its own legal fees and expenses, and (b) joint expenses shall be borne equally among the parties. Notwithstanding the foregoing, the arbitrator(s) may cause the losing party to pay to the winning party (each as determined by the arbitrator(s) consistent with its decision on the merits of the arbitration) an amount equal to any reasonable out-of-pocket costs and expenses incurred by the winning party with respect to such arbitration (as may be equitably determined by the arbitrator(s)).

IN WITNESS HEREOF, the undersigned has signed this Declaration on the date first shown above.

**DRAFT**

By: \_\_\_\_\_

Printed Name: MKC Holdings, LLC

STATE OF ARIZONA )

) ss.

County of \_\_\_\_\_)

On this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_, before me, the undersigned, a Notary Public for the State of Arizona, personally appeared \_\_\_\_\_, known to me to be the persons whose name is subscribed to the within instrument and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_.

\_\_\_\_\_  
Notary Public State of Arizona

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