

OFFICIAL RECORDS OF
 MARICOPA COUNTY RECORDER
 HELEN PURCELL
 2009-0506043 06/04/09 09:40 AM
 1 OF 1

MARESA

WHEN RECORDED, RETURN TO:

David W. Kreutzberg, Esq.
 Squire, Sanders & Dempsey, L.L.P.
 40 North Central Avenue, Suite 2700
 Phoenix, Arizona 85004

**FIRST AMENDMENT TO DECLARATION OF CONDOMINIUM AND OF
 COVENANTS, CONDITIONS AND RESTRICTIONS**

ADERRA CONDOMINIUMS

**THIS FIRST AMENDMENT TO DECLARATION OF CONDOMINIUM AND OF
 COVENANTS, CONDITIONS AND RESTRICTIONS** (the "First Amendment") is made this
 29th day of May, 2009 by **STARPOINTE ADERRA CONDOMINIUMS
 LIMITED PARTNERSHIP**, a Delaware limited partnership ("Declarant") and is as follows.

RECITALS:

A. Declarant executed and recorded that Declaration of Condominium and of Covenants, Conditions and Restrictions for Aderra Condominiums recorded on June 22, 2005 as Document No. 2005-848774 of the records of the Maricopa County, Arizona Recorder (the "Declaration") with respect to the real property described therein.

B. Section 10.5(D)(ii) of the Declaration grants the Declarant the right to amend the Declaration to comply with the rules or guidelines in effect from time to time of any governmental or quasi-governmental entity or federal corporation guaranteeing or insuring mortgage loans or governing transaction involving mortgage instruments.

C. Declarant desires to amend the Declaration to comply with the rules or guidelines of the Federal Housing Administration, the Department of Veterans Affairs, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

D. All capitalized terms used but not defined herein shall have the meanings given thereto in the Declaration, if any.

NOW, THEREFORE, Declarant hereby amends the Declaration as follows:

1. Section 1.2(S) of the Declaration is amended to read as follows:

“(S) ‘First Mortgage’ means any Mortgage on a Unit with first priority over any other Mortgage.”

2. Section 1.1(Z) of the Declaration is amended by adding the following to the end thereof: "; or (iii) December 31, 2012".

3. Section 1.1 of the Declaration is amended by adding the following to the end of that section:

"(II) 'Mortgage' means any mortgage or deed of trust on a Unit.

"(JJ) 'Mortgagee' means the Holder of a Mortgage.

"(KK) [2009 Dollars] means the amount as proportionately increased for each year as follows. The base for computing the adjustment is the Consumer Price Index-Urban Wage Earners and Clerical Workers, United States City Average for All Items (1982-1984 = 100), published by the United States Department of Labor, Bureau of Labor Statistics ("Index"). If the Index published for September of the year prior to the year in question ("Adjustment Index") has increased from the Index for September of the prior year (the "Beginning Index"), the amount in question shall be set by multiplying the amount specified herein (as previously increased under this provision, for prior years) by a fraction, the numerator of which is the Adjustment Index and the denominator of which is the Beginning Index. If the Index is discontinued or revised, the Association shall adopt a substitute index or procedure which reasonably reflects the changes in consumer prices. [2009 Dollars] will never decrease from the prior year."

4. Section 3.5(A) of the Declaration is amended to add the following to the end thereof: "The Declarant and its employees, agents, contractors and subcontractors shall not exercise the access easement over the Common Elements granted pursuant to this subsection for construction of Improvements if access is reasonably available across other property."

5. The second to last sentence of Section 6.1 is deleted and replaced by the following: "The Association has the specific duty to comply with its obligations to provide documents and information to prospective purchasers as required under §33-1260 of the Condominium Act, if any."

6. The Declaration is amended to include a new Section 6.4 which is set forth on Exhibit A attached hereto.

7. Section 7.1(A) is amended by inserting the word "adequate" before "general operating reserves" and before "reserves for contingencies and replacements" in Item (iv) of that section.

8. Section 7.2(G) of the Declaration is amended to read as follows:

"(G) All provisions of this Section 7.2 and the rest of Article 7 are subject to any greater restrictions or requirements set forth in the Condominium Act and/or the rules, requirements and guidelines of any agency described in Section 10.5(D) that is a Mortgagee or guarantor or insurer of a Mortgage."

9. Article 8 of the Declaration is deleted and replaced by a new Article 8 which is set forth on Exhibit B attached hereto.

10. Article 9 of the Declaration is deleted and replaced by a new Article 9 which is set forth on Exhibit C attached hereto.

11. Section 10.5(D) is amended by adding the following after the words “without limitation,” in the fifth line:

“the Department of Veterans Affairs, the Federal Housing Administration,”.

12. Declarant’s address in Section 10.7 is amended to be 8135 East Indian Bend Road, Suite 101, Scottsdale, Arizona 85250.

13. The Declaration is amended to include a new Section 10.23 which is set forth on Exhibit D attached hereto.

IN WITNESS WHEREOF, Declarant has executed this First Amendment to be effective on the date set forth above.

DECLARANT:

**STARPOINTE ADERRA CONDOMINIUMS
LIMITED PARTNERSHIP**, a Delaware limited partnership

By SP Aderra General Partner, LLC, an Arizona limited liability company, Its General Partner

By Starpointe Communities II, LLC, an Arizona limited liability company, Its Manager

By R.A. Lyles, Inc., an Arizona corporation, Its Member

By _____
Robert A. Lyles
Its President

STATE OF ARIZONA)

) ss.

COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this 29 day of May, 2009, by Robert A. Lyles, the President of R.A. Lyles, Inc., an Arizona corporation, as Member of Starpointe Communities II, LLC, an Arizona limited liability company, as Manager of SP Aderra General Partner, LLC, an Arizona limited liability company, as General Partner of Starpointe Aderra Condominiums Limited Partnership, a Delaware limited partnership.

Carrie Schmidt

Notary Public

My Commission Expires:

7.16.2012

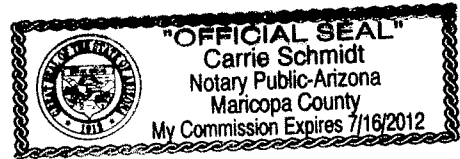


EXHIBIT A

6.4 Contract Limitations.

(A) All agreements for professional management of the Condominium entered into by or on behalf of the Association may not exceed a term of three (3) years and must provide for termination by either party without cause and without payment of a termination fee upon thirty (30) days' or less written notice.

(B) During the Period of Declarant Control, any: (i) employment contract; (ii) lease; or (iii) agreement of any nature with Declarant, or any member, agent, representative or other affiliate of Declarant, or providing for services of Declarant and/or its affiliates, entered into by or on behalf of the Board or the Association must also provide for termination of such contract, lease or agreement without penalty by any Board elected by the Unit Owners at any time after the Period of Declarant Control has expired or is terminated, subject to the further provisions of A.R.S. §33-1245 of the Condominium Act. The foregoing limitations expressly shall not apply to bulk service provider contracts such as, without limitation, telephone, communications, satellite or cable TV or other utility providers and utility monitoring, or other similar service contracts, as long as Declarant and its affiliates, are not the parties providing such services.

EXHIBIT B

ARTICLE 8

INSURANCE

8.1 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; on other real and personal property owned or controlled by the Association; and on the Units, exclusive of Improvements and betterments which were not part of the original construction. The policy is to be issued on a blanket coverage, standard "all-risk" "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 one hundred percent (100%) of the current replacement cost of the insured property except land, foundations, excavation and other items normally excluded, without deduction for depreciation. Such insurance for the Units and Common Elements shall cover the interests of the Association, all Unit Owners and their Mortgagees, as their interests may appear, subject, however, to the loss payment adjustment provisions in favor of the Association or an insurance trustee.

(ii) Broad form commercial general liability insurance, for a limit to be determined by the Board, but not less than \$2,000,000.00 for any single occurrence and \$4,000,000 general aggregate [both in 2009 Dollars, reasonably rounded by the Board to the nearest commonly available increment of such insurance reasonably available]. 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 and any real property owned or controlled by the Association. Such policy may include, at the discretion of the Board, medical payments insurance and contingent liability coverage arising out of the use of hired and nonowned automobiles and coverage for any legal liability that results from lawsuits related to employment contracts in which the Association is a party.

(iii) Workmen's compensation insurance to the extent necessary to meet the requirements of the laws of Arizona and a policy of employer's liability insurance with coverage limits as the Board may determine from time to time, if the Association employs any Persons.

(iv) Directors' and officers' liability insurance covering all the past, present and future directors and officers of the Association in such limits as the Board of Directors may determine from time to time. The directors' and officers' policy shall have a limit of no less than \$2,000,000.00 per claim and \$4,000,000.00 aggregate per year [in 2009 Dollars,

reasonably rounded by the Board to the nearest commonly available increment of such insurance reasonably available].

(v) Blanket fidelity bond coverage for all officers, directors, trustees and employees of the Association and all other Persons handling or responsible for funds of or administered by the Association including, without limitation, any managing agent, whether or not the managing agent receives compensation for its services. The total amount of the fidelity bonds maintained by the Association shall be determined by the Board, but shall not be less than the estimated funds, including reserves, in the custody of the Association or managing agent, as the case may be, at any given time during the term of the bond or the sum equal to three (3) months' aggregate Common Expense Assessments on all Units plus reserves. Fidelity bonds obtained by the Association shall name the Association as an obligee, shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of Persons serving without compensation from the definition of "employees" or similar terms or expressions, and shall provide that they may not be canceled or substantially modified without at least ten (10) days' prior notice to the Association. Any contract with a managing agent shall require the managing agent to maintain the fidelity bond required of the Association pursuant to this Section 8.1(A)(v).

(vii) 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.

(B) The insurance policies purchased by the Association shall, to the extent reasonably available, contain the following provisions:

(i) Each Unit Owner shall be an insured under the policy with respect to liability arising out of his ownership of an undivided interest in the Common Elements or his membership in the Association.

(ii) There shall be no subrogation with respect to the Association, its agents, servants, its Board of Directors or officers thereof, and employees against Unit Owners and members of their household.

(iii) For the property hazard insurance, no act or omission by any Unit Owner, unless acting within the scope of his authority on behalf of the Association, shall void the policy or be a condition to recovery on the policy.

(iv) The coverage afforded by such policy shall be primary and shall not be brought into contribution or proration with any insurance which may be purchased by Unit Owners or their Mortgagees.

(v) A "severability of interest" endorsement which shall preclude the insurer from denying the claim of a Unit Owner because of the negligent acts of the Association or other Unit Owners.

(vi) The Association (or insurance trustee) shall be the insured for use and benefit of the individual Unit Owners (designated by name if required by the insurer).

(vii) For policies of hazard insurance, a standard mortgagee clause.

(viii) Any Insurance Trust Agreement will be recognized by the insurer.

(ix) Such coverage shall not (a) be contingent upon action by the insurance carrier's board of directors, policyholders or members or (b) permit claims for contribution or assessments to be made against Unit Owners or their Mortgagees, including Eligible Mortgage Holders, or Eligible Insurers or Guarantors or (c) for property hazard insurance, include any limiting clauses (other than insurance conditions) which could prevent the insureds from collecting insurance proceeds.

(x) If the Condominium is located in an area identified by the Secretary of Housing and Urban Development as an area having special flood hazards, a "blanket policy" of flood insurance on the Condominium in the lesser of one hundred percent (100%) of the current replacement cost of the Buildings and any other property covered on the required form of policy or the maximum limit of coverage available under the National Insurance Act of 1968, as amended.

(xi) "Agreed Amount," and "Building Ordinance or Law" endorsements for the property hazard insurance, except where expressly not applicable or not available.

8.2 Payment of Premiums; Deductible; Periodic Review. Premiums for and deductible amounts under all insurance policies obtained by the Association pursuant to this Article shall be Common Expenses and shall be paid for by the Association; provided, however, the Association may assess to a Unit Owner any deductible amount expended to either: (A) repair his Unit regardless of how the damage was incurred; or (B) to repair other portions of the Condominium, including other Units, if the damage was caused as a result of the negligence, neglect, or misconduct of the Unit Owner, to the fullest extent for which such Unit Owner may be legally liable therefor under Arizona law. The Board of Directors may select deductibles in reasonable amounts applicable to the insurance coverage maintained by the Association pursuant to Section 8.1(A) above to reduce the payments payable for such insurance. The Board shall determine periodically whether the amounts and types of insurance the Association has obtained provide adequate coverage in light of increased construction costs, inflation, the custom in the area in which the Condominium is located, and other relevant factors.

8.3 Insurance Required of Unit Owners/Non-Liability of Association. Each Unit Owner agrees and acknowledges that the Association's insurance does not cover or apply to (A) any personal property of any Unit Owners or occupants, or (B) any liability of the Unit Owner or other Persons for events or other liabilities inside the Unit or related to the Unit, or its use or occupancy, in any manner. Each Unit Owner shall obtain, at the Unit Owner's sole cost, (i) property insurance for personal property in the Unit with limits of at least \$50,000 [in 2009 Dollars] and (ii) general liability insurance covering the Owner and all occupants, and the Unit and all Limited Common Elements allocated or available thereto, and insuring the Owner and all occupants, and the respective agents and employees of the foregoing, against any and all liability

incident to the ownership or use of the Unit or the Common Elements, with limits of not less than \$250,000 [in 2009 Dollars] combined single limits coverage per incident. The form of the policy shall comply with the reasonable requirements of the Association as set forth in Rules. Each Unit Owner shall provide a Certificate of Insurance evidencing compliance with this section and naming the Association as an additional insured, including providing a replacement Certificate at least ten (10) days prior to expiration, termination or non-renewal of any required policy. If a Unit Owner fails to comply with this section, the Association may obtain the required insurance and Certificate at the sole cost and expense of the Unit Owner.

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, in addition to that required by the preceding paragraph of this section.

8.4 Payment of Insurance Proceeds. Any loss covered by property insurance obtained by the Association in accordance with this Article 8 shall be adjusted with the Association (or insurance trustee, if any) and the insurance proceeds shall be payable to the Association (or insurance trustee, if any) and not to any Mortgagee. The Association (or insurance trustee, if any) shall hold any insurance proceeds in trust for Unit Owners and Mortgagees or other lienholders as their interests may appear, and the proceeds shall be disbursed and applied as provided for in §33-1253 of the Condominium Act.

8.5 Certificate of Insurance; Notice of Substantial Modification, Cancellation or Nonrenewal. An insurer that has issued an insurance policy pursuant to this Article 8 of the Declaration shall issue certificates or memoranda of insurance to the Association and, on written request, to any Unit Owner or Mortgagee. The insurer issuing the policy shall not substantially modify, cancel or refuse to renew it until ten (10) days after notice of the proposed modification, cancellation or nonrenewal has been mailed to the Association, each Unit Owner, and each Mortgagee to whom a certificate or memorandum of insurance has been issued at their respective last known address.

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

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

8.8 Additional Insurance Requirements. In addition to the requirements of this Article 8, the Association shall at all times carry, maintain in good standing and pay for all insurance required by any rules, requirements or guidelines of any of the agencies described in Section 10.5(D) which is a Mortgagee or insurer or guarantor of a Mortgage, as such requirements change from time to time, as a Common Expense.

EXHIBIT C

ARTICLE 9

RIGHTS OF FIRST MORTGAGEES

9.1 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 proposed termination of the Condominium;
- (B) 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;
- (C) 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, which delinquency or default remains uncured for a period of sixty (60) days;
- (D) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; or
- (E) Any proposed action which requires the consent of a specified percentage of Eligible Mortgage Holders as set forth in Section 9.2 of this Declaration.

9.2 Approval Required for Amendment to Condominium Documents and for Certain Actions.

(A) The approval of Eligible Mortgage Holders holding First Mortgages on Units the Unit Owners of which have at least fifty-one percent (51%) of the votes in the Association allocated to Unit Owners of all Units subject to First Mortgages shall be required to materially amend any provisions of, or add any material provisions to the Condominium Documents which establish, provide for, govern or regulate any of the following:

- (i) Voting;
- (ii) Assessments, Assessment Liens, or subordination of
Assessment Liens;
- (iii) Reserves for maintenance, repair and replacement of
Common Elements;
- (iv) Insurance or fidelity bonds;

(v) Rights to use of the Common Elements or the purposes to which any Unit or the Common Elements are restricted;

(vi) Responsibility for maintenance and repairs;

(vii) Expansion or contraction of the Condominium, or the addition, annexation or withdrawal of property to or from the Condominium;

(viii) Boundaries of any Unit;

(ix) The interests in the Limited Common Elements or other Common Elements;

(x) Convertibility of Units into Common Elements or of Common Elements into Units;

(xi) Leasing of Units;

(xii) Imposition of any restriction on a Unit Owner's right to sell or transfer his Unit;

(xiii) Establishment of self-management by the Association when professional management had been required previously by any agency described in Section 10.5(D);

(xiv) Restoration or repair of the Condominium (after hazard damage or partial condemnation) in a manner other than specified in the Condominium Documents;

(xv) Any action to terminate the legal status of the Condominium after substantial destruction or condemnation occurs; or

(xvi) Any provisions which expressly benefit First Mortgagees, Eligible Mortgage Holders or any agency described in Section 10.5(D).

(B) Any action to terminate the legal status of the Condominium for reasons other than substantial destruction or condemnation of the Condominium must be approved by Unit Owners representing at least sixty-seven percent (67%) of the total allocated votes in the Association (or such higher percentage as is required by the Condominium Act) and by Eligible Mortgage Holders holding First Mortgages on Units the Unit Owners of which have at least sixty-seven percent (67%) of the votes in the Association allocated to Unit Owners of all Units subject to First Mortgages held by Eligible Mortgage Holders.

(C) Any amendment to the Condominium Documents of a material adverse nature to Mortgagees must be agreed to by Mortgagees that represent at least fifty-one percent (51%) of the votes of Units that are subject to Mortgages. Any action to terminate the Condominium after substantial destruction or condemnation occurs or for other reasons must be agreed to by (i) Mortgagees that represent fifty-one percent (51%) of the votes of Units that are

subject to Mortgages and (ii) Eligible Mortgage Holders holding First Mortgages on Units the Unit Owner of which have at least fifty-one percent (51%) of the votes in the Association allocated to Unit Owners of all Units subject to Mortgages held by Eligible Mortgage Holders.

(D) Any Mortgagee who receives a written request to approve additions or amendments to any of the Condominium Documents and who does not deliver or mail to the requesting party a negative response within sixty (60) days after receipt of the request shall be deemed to have approved such request, provided the sender sends the request by certified or registered mail, postage paid, with a "return receipt" requested.

(E) The approvals required by this section shall not apply to amendments that may be executed by the Declarant in the exercise of its Development Rights.

9.3 Prohibition Against Right of First Refusal. The right of a Unit Owner to sell, transfer or otherwise convey his Unit shall not be subject to any right of first refusal or similar restriction. This Section 9.3 may not be amended without the consent of all First Mortgagees then of record.

9.4 Right of Inspection of Records. Any Unit Owner, Mortgagee or insurer or guarantor of a Mortgage shall, upon written request, be entitled to (A) inspect the current copies of the Condominium Documents and the books, records and financial statements of the Association during normal business hours; and (B) 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. The Association, upon request, shall make available for inspection during normal business hours to prospective Purchasers of a Unit copies of the Condominium Documents and the most recent annual audited financial statement, if one has been prepared, in accordance with Section 6.1 above. Upon written request from any First Mortgagee or Eligible Insurer or Guarantor which has an interest or prospective interest in the Condominium, the Association shall prepare and furnish within a reasonable time an audited financial statement of the Association for the immediately preceding fiscal year.

9.5 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.

9.6 Condemnation or Insurance Proceeds. No Unit Owner, or any other Person, 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.

9.7 Limitation on Partition and Subdivision. No Unit shall be partitioned or subdivided without the prior written approval of any First Mortgagee of that Unit. This Section 9.7 may not be amended without the consent of all First Mortgagees then of record.

9.8 Restoration or Repair of Condominium. Any restoration or repair of the Condominium after a partial condemnation or damage due to an insurable hazard shall be substantially in accordance with this Declaration and the original plans and specifications unless the approval of Eligible Mortgage Holders holding mortgages on Units to which at least fifty-one percent (51%) of the votes in the Association allocated to Units subject to First Mortgages held by Eligible Mortgage Holders is obtained.

9.9 Conflicting Provisions. In the event of any conflict or inconsistency between the provisions of this Article 9 and any other provision of the Condominium Documents, the provisions of this Article 9 shall prevail; provided, however, that in the event of any conflict or inconsistency between the different sections of this Article 9 and any other provision of the Condominium Documents with respect to the number or percentage of Unit Owners, Mortgagees, Eligible Mortgage Holders or Eligible Insurers or Guarantors that must consent to (A) an amendment to any of the Condominium Documents; (B) a termination of the Condominium; or (C) actions of the Association as specified in this Article 9, the provision requiring the consent of the greatest number or percentage of Unit Owners, Mortgagees, Eligible Mortgage Holders or Eligible Insurers or Guarantors shall prevail.

EXHIBIT D

10.22 Eminent Domain. Subject to the further provisions of this Declaration regarding Mortgagee notice requirements and priority of First Mortgagees in any award as provided in Article 9 above, any partial or total taking of a Unit or any part of the Common Elements shall be governed by the provisions of A.R.S. §33-1206 of the Condominium Act. If all of the Units are acquired by eminent domain, the Condominium is terminated and the provisions of A.R.S. §33-1228 of the Condominium Act apply as further provided in Section 10.5 above. Each Unit Owner hereby appoints the Association as attorney-in-fact for the purpose of negotiations and settlement with condemning authority for the acquisition of the Common Elements or any part thereof. This power of attorney is coupled with an interest, shall be irrevocable, and shall be binding on any heirs, personal representatives, successors or assigns of an Owner.