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**AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS  
AND EASEMENTS  
FOR  
STELLAR AIR PARK ESTATES II**

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**DECLARATION OF COVENANTS, CONDITIONS  
RESTRICTIONS AND EASEMENTS  
FOR  
STELLAR AIR PARK ESTATES II**

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS (hereinafter "Declaration") is dated August 3, 2018, and is made by Stellar Estates II, LLC, an Arizona limited liability company (hereinafter "Declarant").

**WITNESSETH**

A. Declarant is the Owner of fee title to the real property location in the City of Chandler, Arizona, platted as "Stellar Air Park Estates II" or the "Property." A prior Declaration of Covenants, Conditions, Restrictions, and Easements for the Property, recorded as Instrument No. 2009-0296612, Official Records of Maricopa County, Arizona (the "Official Records"), has been terminated by that certain Notice of Termination recorded in the Official Records on August 2, 2018, as Instrument No. 2018-0587286.

B. Declarant now desires to subject the Property to this Declaration.

C. All of Stellar Air Park Estates II is legally described on Exhibit "A", attached hereto and incorporated herein by this reference (hereinafter referred to as the "Property" or "Air Park Estates II").

D. Declarant, as the owner of the Property, is developing Stellar Air Park Estates II into a residential airpark community.

E. By executing and recording this Declaration, the Declarant intends to impose upon the Property mutually beneficial restrictions under a general plan of improvement for the benefit of the Owners of each portion of the Property and establish a flexible and reasonable procedure for the overall development, administration, maintenance and preservation of the Property. Declarant intends for this Declaration to create equitable servitudes and covenants appurtenant to and running with the Property which will be binding upon all future Owners of all or any portion of the Property and any other Person acquiring any right, title or interest in or to all or any portion of the Property.

F. Declarant has formed a nonprofit corporation under the laws of the State of Arizona named Stellar Air Park Estates II Homeowners Association (the "Association") to administer and maintain, repair and replace the Areas of Association Responsibility (as defined in Section 1.4 below) and to provide for the levying and collecting of Assessments and other charges by the Association for the purpose, among other things, of paying all costs and expenses incurred or to be incurred by the Association in connection with the maintenance, repair and replacement and administration of the Common Area and the enforcement of the covenants, conditions, restrictions and easements contained in this Declaration.

**ARTICLE I. DEFINITIONS**

General Definitions. Capitalized terms not otherwise defined in this Declaration shall have the meanings specified for such terms in the Arizona Planned Communities Act, A.R.S. § 33-1801, *et seq.*

1.1 "Annual Assessment" shall mean the charge levied and assessed each year against each Lot and Owner pursuant to Section 8.2 hereof.

1.2 "Architectural Committee" or "AC" shall mean the Board of Directors when serving in its role as the committee established to review plans and specifications for the construction or modification of improvements and to administer and enforce the Architectural Guidelines pursuant to Article V.

1.3 "Architectural Guidelines" shall be established by the Architectural Review Committee and shall include design standards for the appearance, development and, in some cases, use of property in Stellar Air Park Estates II, as well as the review and approval procedures for the Architectural Review Committee.

1.4 "Areas of Association Responsibility" means: (i) all Common Area; (ii) all land and the Improvements situated thereon, located within the boundaries of a Lot which the Association is obligated to maintain, repair and replace pursuant to the terms of this Declaration or the terms of another recorded document executed by the Association; (iii) all land, and the Improvements situated thereon, adjacent to the Property which the Association is obligated to maintain, repair and replace pursuant to the terms of a recorded instrument; and (iv) all responsibilities and obligations, of the Tract H Owners and the Association, set forth in that certain Restated and Amended Easement and Maintenance Agreement, recorded in the Official Records on August 2, 2018, as Instrument No. 2018-0587285, pertaining to the Shared Taxiway Easement located on Tract H.

1.5 "Articles" shall mean the Articles of Incorporation of the Association as amended from time to time.

1.6 "Assessment" or "Assessments" shall mean an Annual Assessment, Special Assessment, Maintenance Charge, Special Use Fee, or any other fees, fines or charges assessed hereunder.

1.7 "Assessment Lien" shall mean the lien created and imposed by Article VIII.

1.8 "Assessment Period" shall mean the term set forth in Section 8.7.

1.9 "Association" shall mean the Arizona nonprofit corporation to be organized by Declarant to administer and enforce the Covenants and to exercise the rights, powers and duties set forth in this Declaration, and its successors and assigns. The name of the Association is "STELLAR AIR PARK ESTATES II HOMEOWNERS ASSOCIATION", registered to do business as STELLAR AIR PARK ESTATES II HOMEOWNERS ASSOCIATION.

1.10 "Association Documents" means, collectively, this Declaration, the Articles, the Bylaws, the Association Rules and Design Guidelines, all as amended from time to time.

1.11 "Association Rules" mean the rules for Stellar Air Park Estates II adopted by the Board pursuant to Section 4.3.

1.12 "Board" or "Board of Directors" means the body responsible for the Association's general governance and administration, selected as provided in the Bylaws.

1.13 "Bylaws" mean the Bylaws of the Association as amended from time to time.

1.14 "Capital Assets" means those items owned, repaired, or maintained by the Association which individually have a life expectancy of three (3) years or greater and exceed \$1,000 or greater in value. Items of a like structure which are less than \$1,000 in value on an individual basis but exceed \$1,000 when all such like items are multiplied by the single value of one like item, shall be considered a Capital Asset. (For illustration purposes only: Ten pool chairs value at \$175 each with an expected life of 5 years would be a Capital Asset;  $\$175 \times 10 = \$1,750$  in value and exceeds a 3-year life.)

1.15 "Capital Expenses" shall mean those expenses that are necessary to purchase or replace a Capital Asset with a useful life of more than one year or to extend the useful life of an asset more than one year.

1.16 "Capital Reserves," "Capital Reserve Fund" or "Reserves" shall mean those funds that are set aside by the Association to pay for the repair or replacement of community assets, whether they are Capital Assets, for which the Association is responsible.

1.17 "Capital Reserve Contribution" shall mean that portion of the Annual Assessment that is assessed against Lots to fund Capital Expenses.

1.18 "Common Area and Common Areas" shall mean (i) Tracts AA through DD, inclusive, according to the Final Plat of Stellar Air Park Estates II Amended, and such additional Tracts as are brought within the Property pursuant to a declaration of annexation; (ii) all land or right-of-way easements within Stellar Air Park Estates II which are dedicated to the public or to the City of Chandler, but which the City of Chandler or other governmental agency requires the Association to maintain; (iii) areas on a Lot within easements granted to the Association or its Members for the location, construction, maintenance, repair and replacement of private wastewater treatment facilities that serve one or more Lots within the Property, a wall, sidewalk, landscape, irrigation facilities or appurtenant structures which easement may be granted or created on a recorded subdivision plat or by a deed or other conveyance accepted by the Association; and (iv) any other areas with respect to which the Association has assumed in a recorded document or instrument administrative or maintenance responsibilities, whether or not such areas are located on a Lot. Notwithstanding any reference on the recorded final plat concerning the name of the Association to which the Common Areas are dedicated, the Association as identified herein shall have all ownership rights and management and responsibilities for the Common Area tracts as herein described.

1.19 "Construction" means devegetation, excavation or grading work or the construction, erection or installation of an Improvements on a Lot.

1.20 "Declarant" means Stellar Estates II, LLC, an Arizona limited liability company, and the successors and assigns of the Declarant's rights and powers hereunder. Any assignment of all or any portion of the Declarant's rights and powers shall be made by a recorded instrument executed by the assignor Declarant.

1.21 "Declaration" means this Declaration of Covenants, Conditions, Restrictions and Easements for Stellar Air Park Estates II (including Lots and Common Area or portions of Common Area within Stellar Air Park Estates II), as amended or supplemented from time to time.

1.22 "Design Guidelines" means the procedures, standards and guidelines adopted by the Architectural Committee pursuant to Section 4.3 of this Declaration, as amended or supplemented from time to time.

1.23 "First Mortgage" means any mortgage or deed of trust on a Lot which has priority over all other mortgages and deeds of trust on the same Lot.

1.24 "First Mortgagee" means the holder or beneficiary of any First Mortgage.

1.25 "Hanger" means a structure primarily used to house an aircraft.

1.26 "Improvement" means: (i) any Residential Unit, building, flag pole, light pole, wind vanes, windsocks, fence or wall; (ii) any swimming pool, tennis court, basketball goal, backboard or apparatus or playground equipment; (iii) any road, driveway or parking area; (iv) any trees, plants, shrubs, grass or other landscaping improvements of any type or kind, and (vi) any other structure of any type or kind.

1.27 "Lessee" means the lessee or tenant under a lease, oral or written, of any Lot including an assignee of the lessee's or tenant's interest under a lease.

1.28 "Lot" means any area of real property within Stellar Air Park Estates II designated as a Lot on any subdivision plat recorded and approved by Declarant and any Residential Unit, building, structure or other Improvements situated thereon.

1.29 "Maintenance" means care, inspection, maintenance, operation, repair, repainting, remodeling, restoration, improvement, renovation, alteration, replacement and reconstruction.

1.30 "Maintenance Standard" means the standard of Maintenance of Improvements situated on Lots established from time to time by the Board, or in the absence of any standard established by the Board, the standard of Maintenance of Improvements situated on Lots generally prevailing throughout the Property.



1.31 "Member" means any person holding a Membership in the Association pursuant to this Declaration.

1.32 "Membership" means a Membership in the Association and the rights granted to the Owners and Declarant pursuant to Article VII to participate in the Association.

1.33 "Modification" means an addition, alteration, repair, change or other work which in any way alters the appearance of any part of a Lot or the exterior appearance of any Improvement located thereon.

1.34 "Owner" (when so capitalized) means the record holder of legal, beneficial or equitable title to the fee simple interest of any Lot, including, without limitation, one who is buying a Lot under a recorded contract, but excluding others who hold such title merely as security. Owner shall not include a lessee or tenant of a Lot. In the case of Lots, the fee simple title to which is vested of record in a trustee pursuant to Arizona Revised Statutes, Section 33-801, et seq., legal title shall be deemed to be in the Trustor. In the case of Lots, the fee simple title to which is vested in a trustee pursuant to a trust agreement in the beneficiary of any such trust entitled to possession shall be deemed to be the Owner. An Owner shall include any person who holds record title to a Lot in joint ownership with any other person or holds an undivided fee interest in any Lot.

1.35 "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.

1.36 "Plat" means the plat of Stellar Air Park Estates II recorded in recorded on April 1, 2009 at Book 1025 of Maps, Page 21 thereof; and at Instrument No. 20090286351, as amended by the Final Plat for Stellar Air Park Estate II Amended, recorded on January 31, 2017 at Book 1309 of Maps, Page 16 thereof; and at Instrument No. 20170075009 Official Records of Maricopa County, Arizona, and all amendments, supplements and corrections thereto.

1.37 "Property" means that real property described herein above, Exhibit A, and such other property as may be brought within pursuant to a declaration of annexation.

1.38 "Private Streets" means Tract DD as depicted on the Plat which are for the ingress and egress of all Owners, and their invitees and including but not limited to residents, visitors, guests, business invitees, contractors, suppliers, the City of Chandler and its agents, applicable utility companies and service providers and for emergency vehicle access, water and wastewater service, refuse collection and large trash removal, maintenance of private utilities including private wastewater facilities, public utilities including without limitation electric, natural gas, water, wastewater, storm water, telephone, fiber optic cable and related facilities.

1.39 "Purchaser" means any Person, other than the Declarant, who by means of a voluntary transfer becomes the Owner of a Lot, except for: (i) a Person who purchases a Lot and then leases it to the Declarant for use as a model in connection with the sale or lease of other Lots; or (ii) a Person who, in addition to purchasing a Lot, is assigned any or all Declarant's rights under this Declaration.

1.40 "Resident" means each individual who resides in any Residential Unit.

1.41 "Residential Unit" means any building, or portion of a building, situated upon a Lot and designed and intended for independent ownership and for use and occupancy as a residence.

1.42 "Special Assessment" means any assessment levied and assessed pursuant Section 8.5.

1.43 "Shared Taxiway Easement" or "Tract H" means all or any portions of Tract H of Stellar City Air Park as the same is shown on the plat recorded in Book 123 of Maps, Page 44, Official Records of Maricopa County, Arizona and such rights and responsibilities therefor as are included in the Restated and Amended Easement and Maintenance Agreement recorded at Instrument No. 2018-0587285, as the same may be amended.

1.44 "Stellar Air Park Estates II" shall mean the real property described in the Recitals of this Declaration and the development to be completed thereon, together with any real property hereafter annexed pursuant to a declaration of annexation.

1.45 "Taxiway" or "Private Taxiway" means each portion of the Property designated as a taxiway on the Plat.

1.46 "Visible From Neighboring Property" shall mean, with respect to any given object, that such object, or any portion thereof, is or would be visible to a person six (6) feet tall standing on any portion of the adjoining Lot or adjoining Common Area, on the same plane as the object being viewed.

## **ARTICLE II. PROPERTY SUBJECT TO STELLAR AIR PARK ESTATES II DECLARATION**

**2.1 General Declaration Creating Stellar Air Park Estates II.** Declarant hereby declares that all of Stellar Air Park Estates II (except any property which is hereafter excluded or abandoned pursuant to the provisions of this Declaration) is and shall be held, conveyed, hypothecated, encumbered, leased, occupied, built upon or otherwise used, improved or transferred, in whole or in part, subject to this Declaration, as amended or modified from time to time. This Declaration is declared and agreed to be in furtherance of a general plan for the subdivision, development, improvement and sale of Stellar Air Park Estates II and is established for the purpose of enhancing the value, desirability and attractiveness of Stellar Air Park Estates II and every part thereof. This Declaration shall run with the land for all purposes and shall be binding upon and inure to the benefit of Declarant, the Association, all Owners and Residents and their successors in interest. This Declaration shall not be construed to prevent the Declarant from dedicating or conveying portions of Stellar Air Park Estates II, including streets or roadways, for uses other than as a Lot or Common Area, subject to the provisions of Section 3.1.

**2.2 Association Bound.** Upon approval by the Arizona Corporation Commission of Articles of Incorporation of the Association, the Covenants shall be binding upon and shall benefit the Association.

**2.3 Disclaimer of Implied Covenants.** Nothing contained in this Declaration and nothing which may be represented to a Purchaser of a Lot by real estate brokers or sales persons shall be deemed to create any implied covenants, servitudes or restrictions with respect to the use of any property subject to this Declaration.

**2.4 Effect of Declaration.** Declarant makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of this Declaration, or as to the compliance of any of the provisions with public laws, ordinances and regulations applicable thereto.

**2.5 Entry Gate.** The Declarant intends to construct a card activated or electronically activated entry gate at one or more entrances to Taxiways or to the Private Streets to limit access and provide privacy for the Owners and Residents. Each Owner and Resident acknowledges and agrees for themselves and their families and guests that: (i) the entry gates do not guarantee the safety or security of the Owners and Residents or their families and guests; (ii) the entry gates do not guarantee that any unauthorized Person will not gain access to the Property; (iii) the Declarant and the Association and their respective directors, officers, agents and employees do not represent or warrant that the entry gates may not be compromised or circumvented or that the entry gates will prevent loss by burglary, theft or other criminal act; and (iv) neither the Declarant nor the Association nor their respective directors, officers, agents and employees shall be liable for any loss or damage resulting from unauthorized persons gaining entry to the Property.

**2.6 Runway Utilizers Association.** The Property is adjacent to Stellar Airport which consists of certain runways and Taxiways owned by the Stellar Runway Utilizers Association, an Arizona nonprofit corporation (the "Runway Association"). Each Person who purchases or otherwise becomes the Owner of a Lot shall automatically, upon becoming the Owner of a Lot, become a mandatory member of the Runway Association and shall remain a member of the Runway Association until such Person's ownership of a Lot ceases at which time his membership in the Runway Association shall automatically cease. Membership in the Runway Association shall be mandatory, and no Owner may resign as a member

of the Runway Association. Each Owner shall be subject to the rules, regulations, covenants and restrictions of the Runway Association and shall be obligated to pay dues, fees and charges to the Runway Association in accordance with the Articles of Incorporation and Bylaws of the Runway Association. All fees, dues and other charges payable to the Runway Association shall be in addition to the Assessments and other fees, costs and charges payable to the Association pursuant to the Association Documents and failure by any Owner to pay any of the assessments, fees and charges of the Runway Association directly to the Runway Association shall be subject to the enforcement, lien and collection procedures of this Declaration exercised directly by the Runway Association and shall also be subject to any separate enforcement provisions of the Runway Association, as if fully set forth herein.

### **ARTICLE III. EASEMENTS AND RIGHTS OF ENJOYMENT IN COMMON AREA**

**3.1 Easements for Use of Common Area.** Every Owner and Resident and their guests shall have a nonexclusive easement for the use and enjoyment in and to the Common Areas, which nonexclusive easement shall be appurtenant to and shall pass with the title to every Lot. All Residents, other than Owners, shall have a nonexclusive, nontransferable temporary easement to use and enjoy the Common Areas so long as they remain Residents. The foregoing grant and rights are subject, among other things, to the following limitations:

(a) The right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Association. Unless otherwise required by zoning stipulations or agreements with the City of Chandler prior to the date hereof or unless specified hereafter on a recorded subdivision plat, no such dedication or transfer shall be effective unless an instrument signed by the Owners of two-thirds (2/3) of the Memberships in each class of Members agreeing to such dedication or transfer has been recorded, except that the Board shall have authority without Membership approval to transfer to such public agencies, authorities or utilities, easements and rights-of-way which are intended to benefit Stellar Air Park Estates II.

(b) The right of the Board to adopt rules, regulations or policies regulating the use of the Common Areas through the Association Rules, limiting the number of guests who may use the Common Area and restricting or prohibiting access to those Common Areas, such as landscaped areas, not intended for use by the Owners or Residents.

(c) The right of the Association to suspend the voting rights, right to use Common Area (other than the right of an Owner and such Owner's family, tenants and guests to use any streets which are part of the Common Area for ingress or egress to the Owner's Lot) and run for Board position by any Member (i) for any period during which any Assessment against his Lot remains more than fifteen (15) days delinquent; (ii) for a period not to exceed sixty (60) days for any infraction of this Declaration, a declaration of annexation, the Association Rules or applicable Design Guidelines; and (iii) for successive sixty (60) day periods if any such infraction is not corrected during any preceding sixty (60) day suspension period.

(d) The right of the Association to charge reasonable admission and other Special Use Fees for the use of any recreational or other facility situated upon the Common Areas.

(e) The right of the Association to change the use of Common Areas and to change the size, shape or location of the Common Areas as provided in Sections 12.4 and 12.5.

(f) The right of the Association to rent or lease any portion of the Common Area on a short-term basis to an Owner or Resident for the exclusive use of such Owner or Residents and their guests and invitees.

**3.2 Delegation of Use.** Any Owner may, in accordance with this Declaration, the Association Rules and the limitations therein contained, delegate his right of enjoyment in the Common Areas and

facilities to the members of his family, his tenants or lessees, his guests or invitees or to his tenant's family, guests or invitees, provided this is the primary residence of such individual(s).

**3.3 Rights of Ingress and Egress.** Every Owner, and the Declarant shall have an unrestricted right of ingress and egress to his Lot(s), which right shall be perpetual and shall be appurtenant to and shall pass with the title to said Lot(s) over the following areas:

(a) for pedestrian traffic over, through and across sidewalks, paths, walks and lanes that from time to time may exist upon the Common Areas;

(b) for pedestrian and vehicular traffic over, through and across (i) the Common Area streets and roadways, if any, which are designated and paved for such purpose and (ii) Taxiways and Private Taxiways; and

(c) for aircraft traffic over, through and across the Common Area Taxiways which are designated and paved for such purpose.

Any Owner may, in accordance with this Declaration and the Association Rules, delegate his right of ingress and egress to the members of his family, his guests, and his tenants (including his tenant's family and guests).

**3.4 Easements for Encroachments.** Each Lot, the Common Areas, and all other areas in Stellar Air Park Estates II shall be subject to an easement of not more than eight (8) inches for encroachments of walls, ledges, roofs and other structures created by construction, settling and overhangs as originally designed and constructed by the Declarant or other developer. If any such improvement on the Common Areas encroaches upon any Lot or other area, or if any such improvement on any Lot or other area encroaches upon any portion of the Common Areas, or if any such improvement on any Lot or other area encroaches upon another Lot or other area, a valid easement for said encroachments and for the Maintenance thereof shall exist. In the event any structure on any Lot, Common Area or other area is repaired, altered or reconstructed in accordance with the original plans and specifications, similar encroachments shall be permitted and a valid easement for said encroachments and for the Maintenance thereof shall exist.

**3.5 Utility Service and Utility Easements.** There is hereby created a blanket easement upon, across, over and under the Lots and Common Area within Stellar Air Park Estates II for ingress to, egress from, and the installation, replacing, repairing and maintaining of, all utility and service lines and systems, including, but not limited to, water, wastewater, storm sewer, natural gas, telephone, electricity, television cable or communication lines and other systems as such utilities are installed in connection with the initial development of Stellar Air Park Estates II. Pursuant to this easement, a utility or service provider may install or maintain facilities or equipment on the property and affix and maintain wires, circuits and conduits on, in and under the roofs and exterior walls of buildings on the property. No lines, wires or other devices for the communication or transmission of electric current or power, including telephone, television and radio signals, shall be erected, placed or maintained anywhere in Stellar Air Park Estates II unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures, except for boxes on the ground for electrical or communication connections, junctions, transformers and other apparatus customarily used in connection with such underground lines, wires and other devices. Notwithstanding the foregoing, no above-ground electrical apparatus shall be installed without the approval of the Declarant or the Architectural Committee. All lines for the transmission of water and sewage shall also be installed and maintained underground or concealed in, on or under structures approved by the Architectural Committee. The installation and location of all utility lines and equipment must be approved in advance by the Declarant or the Architectural Committee. Temporary above-ground power or telephone structures and water lines incident to construction activities, shall be permitted with the prior written approval of the Architectural Committee.

**3.6 Easement for Maintenance and Enforcement.** The Association and its directors, officers, agents, contractors and employees, the Architectural Committee and any other person authorized by the Board are hereby granted the right of access over and through any Lots (excluding the interior of any Residential Unit) for (i) the exercise and discharge of their respective powers and responsibilities under the Association Documents; (ii) making inspections in order to verify that all Improvements on the Lot have been constructed in accordance with the plans and specifications for such Improvement approved by the Architectural Committee and that all Improvements are being properly maintained as required by the Association Documents; (iii) correcting any condition originating in a Lot or in the Common Area threatening another Lot or the Common Area; (iv) correcting drainage; (v) performing installations or maintenance of utilities, landscaping or other Improvements located on the Lots for which the Association is responsible for Maintenance; or (vi) correcting any condition which violates the Association Documents.

**3.7 Easements for Underground Sewer Line and Water Line.** Lot 2, the Common Area private street and Taxiway are subject to an easement for underground sewer line and water line facilities as depicted on the Plat. The Association shall be responsible for maintaining the underground sewer line and water line to the extent they are not maintained by the City of Chandler.

**3.8 Declarant's Development Rights and Easements.**

**3.8.1 Declarant's Development Easements; Right to Make Rules.** The Declarant shall have a non-exclusive, perpetual blanket easement over and through the Common Area and any public utility easement for the purposes of: (i) adopting rules and regulations governing the parking of motor vehicles on a Lot and on the Common Area and implementation the provisions of this Declaration and the Association Rules; (ii) maintaining sales or leasing offices, management offices, storage areas, models and related facilities throughout the Property and (iii) maintaining one or more marketing, directional or advertising signs on the Common Areas so long as the Declarant is marketing Lots in the Property. Further, Declarant reserves the right to maintain models, management offices, storage areas and sales and leasing offices in any Lots owned or leased by Declarant and on any portion of the Common Areas in such number, of such size and in such locations as Declarant deems appropriate. Declarant may store materials and equipment in any garages owned by the Declarant. Declarant may from time to time, relocate models, storage areas, management offices and sales and leasing offices to different locations within the Property. Declarant shall have the right and an easement to install signs, flags and banners on the Common Areas in connection with its marketing of Lots for sale or lease.

**3.8.2 Declarant's Use of Lots.** So long as Declarant is marketing Lots in the Property for sale or lease, Declarant shall have the right to use any Lots owned or leased by the Declarant, any other Lot with written consent of the Owner thereof or any portion of the Common Area as models, managements offices, sales offices, a visitors' center, construction offices, customer services or sales office parking areas; and install and maintain on the Common Area, any Lot owned or leased by the Declarant or any other Lot with the consent of the Owner thereof, such marketing, promotional or other signs which the Declarant deems necessary for the development, sale lease of the Property.

**3.8.3 Equipment.** Declarant reserves the right to retain all personal property and equipment used in the sales, management, construction and Maintenance of the Property that has not been represented to the Owners as the property of the Association. Declarant reserves the right to remove from the Property any and all goods and improvements used in development, marketing and construction, whether they have become fixtures.

**3.8.4 Declarant's Construction Activity.** Declarant and its employees, agents, contractors and subcontractors shall have the right and an easement on, over, across and through the Common Areas and the Lots to construct the Common Areas and the Lots to construct and erect the Common Areas, the Lots and the Dwelling Units shown on the Plat and all other Improvements the Declarant may deem appropriate and to use the Common Areas and any Lots 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 on the Property. So long as the Declarant owns any Lot, the Declarant shall have the right to expand or modify any amenity which is part of the Common Area.

**3.8.5 Declarant's Warranty Activity.** Declarant and its employees, agents, contractors and subcontractors shall have an easement through the Common Areas and the Lots for purposes of completing any renovations, warranty work or modifications to the Common Areas or the Lots as the Declarant deems necessary or desirable. Declarant and its employees, agents, contractors and subcontractors shall have an easement through the Common Areas and the Lots for purposes of discharging Declarant's obligations under the Arizona Planned Communities Act and the Association Documents and for the purpose of exercising any special Declarant's rights whether arising under Arizona statute or the Declaration.

**3.8.6 Declarant's Use of Amenities; Priority.** So long as Declarant owns any Lot, the Declarant shall have the right to the exclusive use, without charge, of any portion of any of the facilities within the Common Area on a short term basis for employee meetings, administrative purposes, special events or any other purpose subject to the following: (a) the availability of the facilities at the time a request is submitted by Declarant to the Association; (b) the Declarant shall indemnify the Association against any loss or damage resulting from Declarant's use thereof; and (c) the Declarant shall return the facilities to the Association in the same condition as existed prior to Declarant's use thereof. Declarant's rights shall have priority over the rights of any Owner or Resident to use the Common Areas. In the event of any conflict or inconsistency between this Section 3.8 and any other provisions of the Association Documents, this Section 3.8 shall control and prevail over such other provisions. The rights of the Declarant set forth in this Section 3.8 shall be enforceable by injunction, by any other remedy available at law or in equity (including but not limited to the right to sue for damages) and by any means provided in this Declaration.

**3.9 Dedications and Easements Required by Governmental Authority.** The Declarant hereby reserves to itself and its successors and assigns, the right to make any dedications and to grant any easements, rights-of-way and licenses required by any government or governmental agency over and through all or any portion of the Common Area.

**3.10 Further Assurances.** Any and all conveyances made to the Association or any Owner shall be conclusively deemed to incorporate these reservations of rights and easements, whether set forth in such grants. The easements granted and reservations made to the Declarant in this Declaration shall not terminate or merge and shall continue to run with the land, notwithstanding the common law doctrine of merger and the common ownership of all the Property by the Declarant. Upon written request of the Declarant, the Association and each Owner shall from time to time sign, acknowledge and deliver to the Declarant such further assurances of these reservations of rights and easements as may be requested.

**3.11 Duration of Development Rights; Assignment.** The rights and easements reserved by or granted to the Declarant pursuant to this Section shall exist so long as the Declarant owns any Lot. The Declarant may make limited temporary assignments of its easement rights under this Declaration to any Person performing construction, installation or Maintenance on any portion of the Property.

**3.12 Association Powers and Rights.** The Association's exercise of the rights, powers and easements granted in Section 3.1 are not subject to the time limitations on duration applicable to the Declarant. If the Declarant or any Owner requests the Association to exercise its powers under this Section, the Association's cooperation shall not be unreasonably withheld.

#### **ARTICLE IV. ORGANIZATION OF ASSOCIATION**

**4.1 Formation of Association.** The Association shall be a non-profit Arizona corporation. Upon incorporation, the Association shall be charged with the duties and invested with the powers prescribed by law and set forth in the Articles, Bylaws and this Declaration. Neither the Articles nor

Bylaws shall, for any reason, be amended or otherwise changed or interpreted to be inconsistent with this Declaration. At no time shall the Association be allowed to dissolve unless all rights and responsibilities of the Association regarding ownership and maintenance of Common Areas, collection of Assessments and enforcement of this Declaration have been delegated to and accepted by another association formed for that purpose.

**4.2 Board of Directors and Officers.** The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws as the same may be amended from time to time. The Board may also appoint various committees and appoint a manager who shall, subject to the direction of the Board, be responsible for the day-to-day operation of the Association ("Manager"). The Board shall determine the compensation to be paid to the Manager and any employees of the Association. The Board's responsibilities shall include, but not be limited to, the following:

- (a) administration, including administrative support as required for the Architectural Committee;
- (b) preparation and administration of an operational budget;
- (c) establishment and administration of an adequate reserve fund;
- (d) arrangement and conduct of the annual meeting and other meetings of the Members;
- (e) collection and enforcement of the assessments, reserves and other provisions of the Declaration, Bylaws and other Association documents and policies;
- (f) performance of accounting functions and maintenance of records;
- (g) promulgation and enforcement of the Association Rules (but not the Design Guidelines);
- (h) Maintenance of the Common Area and Areas of Association Responsibility; and
- (i) all the other duties imposed upon the Board pursuant to this Declaration, the Bylaws, the Articles and the Association Rules.

**4.3 The Association Rules and Design Guidelines.** By a majority vote of the Board, the Association may, from time to time and subject to the provisions of this Declaration, adopt, amend and repeal rules and regulations to be known as the Association Rules. The Association Rules may restrict and govern the use of the Common Area by any Member or Resident, by the family of such Member, or by any invitee, licensee or tenant of such Member; provided, however, that the Association Rules shall not discriminate among Members and shall not be inconsistent with this Declaration, the Articles and the Bylaws. In addition, from time to time and subject to the provisions of this Declaration, the Board, acting as the Architectural Committee, shall have the right to adopt, amend and repeal Design Guidelines; provided, however, that such rules and guidelines shall be fair and reasonable and shall be consistent with the provisions of this Declaration, the Articles and Bylaws. Upon adoption, the Association Rules and/or Design Guidelines shall be enforceable in the same manner as this Declaration and shall have the same force and effect as if set forth in and a part of this Declaration. The Board, in its capacity as the Architectural Committee is specifically responsible for (i) administration and enforcement of the provisions of Article V of this Declaration; (ii) administration and enforcement of the guidelines promulgated by such Committee; and (iii) all other duties and obligations designated to the Board by the Declaration, Articles, Bylaws and Association Rules. Administrative support as required by the Architectural Committee shall be provided by the Board. In the event of any inconsistency between the rules and regulations adopted by the Board and the guidelines adopted by the Architectural Committee, the rules and regulations of the Board shall control. Copies of all Design Guidelines as adopted or amended shall be available for inspection at the office of the Association during reasonable business hours.

**4.4 Personal Liability.** No Board member, committee member (including, but not limited to the Architectural Committee), officer or employee of the Association shall be personally liable to any Member or to any other person or entity, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence; provided, however, the limitations set forth in this Section 4.4 shall not apply to any person who has failed to act in good faith or has engaged in willful or intentional misconduct. The Association shall indemnify its committee members, employees, directors and officers when acting on behalf of the Association, to the full extent permitted by law, except for willful misconduct and bad faith acts or omissions.

#### **ARTICLE V. ARCHITECTURAL COMMITTEE**

**5.1 Establishment.** A separate Architectural Committee may, but need not be established to perform the functions set forth in this Declaration as directed by Board. If no Architectural Committee is appointed, then the Board shall serve as the Architectural Committee and shall perform all functions herein described. The Committee may adopt rules, regulations and guidelines for the performance of its duties, including procedures for the preparation, submission and determination of the application for any approvals required by this Declaration or any Declaration of Annexation. The Architectural Committee shall have sole and exclusive authority with respect to all approvals and use decisions regarding Lots within Stellar Air Park Estates II. The Architectural Committee shall consist of not less than one (1) nor more than three (3) regular members. During the first seven (7) years following the recordation of this document or until the Declarant has relinquished its appointment rights, all members and alternates of the committee shall be appointed by the Declarant. For so long as Declarant owns any Property within Stellar Air Park Estates II, Declarant may be the sole member of the Architectural Committee and may appoint and remove other Committee members. The Committee may be composed of one (1) member who is not an Owner. Thereafter, the members of the Architectural Committee shall be elected by a vote of a majority of the Board. Committee members shall be elected to one (1) year terms (or until replaced). In the event of a temporary or permanent vacancy on a Committee, an alternate member selected by the Committee shall serve as a replacement until the next election or until the regular Member is again available. Members of the Architectural Committee need not be architects, need not possess any special qualifications of any type. Committee members appointed by Declarant need not be Owners or Residents. The Declarant may voluntarily relinquish (either temporarily or permanently) its right to appoint all or some of the members of the Architectural Committee by recording an amendment to the Declaration executed by the Declarant alone.

**5.2 Approval Required.** No Construction or Modification shall be made or done without the prior written approval of the Architectural Committee. Any Owner desiring approval of the Architectural Committee for any Construction or Modification shall submit to the Architectural Committee a written request for approval specifying in detail the nature and extent of the Construction or Modification which the Owner desires to perform. The request for approval must be accompanied by plans or specifications showing the nature, kind, color, shape, height, dimensions, materials and location of the Improvement or Modification and such other information as may be required by the Design Guidelines. Any Owner requesting the approval of the Architectural Committee for any Construction or Modification shall also submit to the Architectural Committee any additional information, plans and specifications which the Architectural Committee may request.

**5.3 Meetings; Guidelines.** The Architectural Committee shall keep a record of the minutes of all meetings. A quorum for any meeting shall consist of a majority of the regular members of the Committee and the concurrence of a majority of the regular Committee members shall be necessary for any decision of the Architectural Committee. Alternate member(s) may participate at any meeting in lieu of any absent regular member(s), may constitute a quorum by his (their) presence and shall have all the authority of a regular member while so participating. As provided in Section 4.3, the Architectural Committee shall promulgate Design Guidelines to be used in rendering decisions, including procedures for the preparation, submission and determination of applications for approval. Such guidelines, standards



and procedures may include but not be limited to provisions regarding: (i) the size and height of Residential Units; (ii) architectural design, with particular regard for the harmony of the design with the surrounding structures and topography; (iii) placement of Residential Units and other buildings; (iv) landscaping design, content and conformance with the character of the Property and permitted and prohibited plants; (v) requirements concerning exterior color schemes, exterior finishes and materials; (vi) signs and exterior lighting and (vii) perimeter screen wall design and appearance. The decision of the Board shall be final on all matters submitted to it pursuant to this Declaration. Members of the Committee shall not be entitled to compensation for their services, unless otherwise approved by the Board.

The Design Guidelines shall interpret and implement procedures for the Architectural Committee's review of, and the standards for development within Stellar Air Park Estates II, including, but not limited to, architectural design, placement of buildings, landscaping, plant selection, color schemes, exterior finishes and materials, signs, wall design and similar matters and shall have the same force and effect as the Association Rules. The Guidelines may also include provisions requiring the establishment of landscaping on Lots pursuant to specific timetables.

**5.4 Discretion of Committee.** The Board shall be under no duty or obligation to pass upon, approve or disapprove any structural stability matters or matters pertaining to the stability of footings or foundations or matters pertaining to geological conditions involved in any foundation or footings and may indicate on any plans or specifications or drawings or other materials or in any certificate that the Committee has not passed upon, approved or disapproved any such referred to matters. All actions of said Committee authorized under this Declaration, including without limitation, the approval or disapproval of plans, specifications, drawings, plot plans, grading plans and height, as well as other matters in which the Committee is authorized hereunder to act, shall be in the sole and complete discretion of said Committee. Neither the Architectural Committee nor any member thereof shall be liable to any Owner, or to any other party, for any damage, loss or prejudice suffered or claimed on account of:

- (a) the approval or disapproval of any plans, drawings or specifications, whether defective;
- (b) the construction or performance of any work, whether pursuant to approved plans, drawings and specifications;
- (c) the development of any property within Stellar Air Park Estates II;
- (d) the execution of any estoppel certificate, whether the facts therein are correct; or
- (e) the enforcement of this Declaration and the Committee's Design Guidelines;

provided, however, that with respect to the liability of a Committee member, such member has acted in good faith based on such information as may be possessed by him. The approval by the Architectural Committee of any plans, specifications or other matter shall not be deemed to constitute a waiver of any right to withhold approval of any similar plans, specifications or other matter subsequently submitted for approval. Subject to Section 5.1, the vote or written consent of a majority of its regular members, at a meeting or otherwise, shall constitute the act of the Architectural Committee.

**5.5 Response Within Forty-five (45) Days.** Any approval required under this Declaration by the Architectural Committee shall not be withheld unreasonably. Failure by such Committee to approve or disapprove a request within forty-five (45) days after the Architectural Committee has acknowledged receipt of the application, together with any fee payable pursuant to Section 5.7 of this Declaration and all supporting information (or within any shorter period of time set forth in the applicable Design Guidelines) shall be deemed a waiver of the approval requirement. However, the Architectural Committee may extend the period of time to approve or disapprove an application by giving written notice of such extension to the Owner requesting approval within the forty-five (45) day period. Notice of approval or disapproval shall be written and it shall set forth the reason or reasons for the disapproval or the conditions, if any to the approval. Notwithstanding Section 15.10, no request shall be deemed filed with the Committee until it is

actually received by the Committee and the Committee has provided the Owner with a notice that all required documents, plans and fees have been received. All submissions to the Committee shall be made by certified mail or personal delivery. In any event, after the expiration of one (1) year from the completion of construction of any structure, work, improvement or alteration, the said structure, work, improvement or alteration shall, in favor of purchasers or encumbrances in good faith and for value, be deemed to be in compliance with this Declaration and the applicable Design Guidelines, unless actual notice of non-compliance executed by the Architectural Committee shall appear of record in the office of the Maricopa County Recorder, or a complaint has been filed to enforce compliance. The approval by the Architectural Committee of any Construction or Modification shall not be deemed a waiver of the Architectural Committee's right to withhold approval of any similar Construction or Modification subsequently submitted for approval.

**5.6 Committee's Certificate; No Changes Without Approval.** Any approval of any plans and specifications or other matter by the Architectural Committee given or made pursuant to the provisions of this Declaration which is evidenced by a certificate signed by at least a majority of the members of said Committee shall be irrevocable and not subject to change by such Committee. Any such certificate may be conclusively relied upon by all parties, including, but not limited to, any Owner, tenant or purchaser of any Lot or of any interest therein; by any lender taking a Lot as security; and by any title insurance company. Any such certificate may be recorded by said Committee in the office of the Maricopa County Recorder. Any Construction or Modification approved by the Architectural Committee must be done or performed in accordance with the plans and specifications approved by the Architectural Committee. The Architectural Committee may specify or condition its approval on initiation and completion of the Construction or Modification within a limited period of time. No change, deletion or addition to the plans and specifications approved by the Architectural Committee may be made without the prior written approval of the Architectural Committee.

**5.7 Review Fee.** The Board may establish a reasonable processing fee to defer the costs of the Association and the Architectural Committee in considering any requests for approvals submitted to it, which fee shall be paid at the time the request for approval is submitted. The fee charged may include the actual or estimated fees or costs incurred or anticipated to be incurred by the Architectural Committee in consulting with an architect or engineer with respect to the plans submitted.

**5.8 Compliance Deposit.** The Architectural Committee shall have the right, on a case-by-case basis and in its sole discretion, to condition the approval by the Architectural Committee of plans submitted by an Owner, upon the receipt by Architectural Committee of a deposit (the "Compliance Deposit") to secure the performance of the Owner's obligations under this Article to clean up and/or remove equipment, building materials, dirt, debris and similar materials, and to protect from damage and to repair any damage to Improvements sustained, in connection with construction activities by or for the benefit of Owner and to ensure that the construction or modification will be made in accordance with the plans and specifications approved by the Architectural Committee. The Compliance Deposit shall be in an amount as may reasonably be determined by the Architectural Committee. The Architectural Committee may apply the Compliance Deposit toward payment of (a) any costs incurred by the Architectural Committee or the Association with respect to any construction cleanup or removal required and/or the repair or replacement of any damaged or destroyed Common Area Improvements, the cost for which the Owner is responsible under Section 8.11; (b) any costs incurred by the Association or the Architectural Committee in connection with the inspection of the construction or modification to ascertain whether the construction or modification is being made in accordance with the approved plans; and (c) any attorney fees, court costs and other costs (including, but not limited to, costs incurred to correct the violation) incurred by the Association in connection with any violation of the Declaration related directly or indirectly with the construction or modification. Following receipt by the Architectural Committee of a written request from an Owner delivered subsequent to the completion of the construction or modification, and following confirmation by the Architectural Committee that any necessary cleanup work or damages attributable to the Owner or the Owner's employees, agents, contractors, subcontractors or suppliers has been properly

performed, repaired or replaced, as applicable, that all costs attributable to the Owner in connection therewith have been paid in full and that the construction or modification was made in accordance with the plans and specifications approved by the Architectural Committee, the Architectural Committee shall return to such Owner the unapplied portion of the Owner's Compliance Deposit. The liability of an Owner to promptly cleanup such Owner's Lot and any Common Area and to repair or replace any improvements damaged or destroyed by an Owner or the Owner's employees, agents, contractors, subcontractors or suppliers shall not be limited to the amount of such Owner's Compliance Deposit, and in no event shall the posting of a Compliance Deposit limit or prejudice the right of the Architectural Committee or the Association to pursue any available legal remedies against the Owner or any of Owner's employees, agents, contractors, subcontractors or suppliers causing the need for cleanup or causing the damage or destruction.

**5.9 Construction of Improvements; New Construction.** Upon receipt of approval from the Architectural Committee for any Construction or Modification, the Owner who had requested such approval shall proceed to perform the Construction or Modification approved by the Architectural Committee as soon as practicable and shall diligently pursue such work so that the approved Construction or Modification is completed as soon as reasonably practicable and within such time as may be prescribed by the Architectural Committee. All Improvements constructed on Lots shall be site-built and shall be of new construction, and no buildings or other structures shall be removed from other locations onto any Lot.

**5.10 Improvements to Areas of Association Responsibility.** If the plans and specifications pertain to an Improvement which is within an Area of Association Responsibility so that the Association is responsible for Maintenance, repair and replacement of such Improvement, the Architectural Committee may condition its approval of the plans and specifications for the proposed Construction or Modification on the agreement of the Owner to reimburse the Association for the future cost of the repair, Maintenance or replacement of such Improvement.

## ARTICLE VI. USE RESTRICTIONS

**6.1 Residential Use.** All Residential Units shall be used, improved and devoted exclusively to residential use. No trade or business may be conducted on any Lot or in or from any Residential Unit, except that an Owner or other resident of a Residential Unit may conduct business activities within a Residential Unit so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight or sound or smell from outside the Residential Unit; (ii) the business activity conforms to all applicable zoning ordinances or requirements for the Property; (iii) the business activity does not involve persons coming to the Lot or the door-to-door solicitation of Owners or other Residents in the Property; (iv) the use of the Residential Unit for trade or business in no way destroys or is incompatible with the residential character of the Residential Unit or the surrounding neighborhood; (v) the trade or business is conducted only inside the Residential Unit or inside an accessory building, Hanger or garage and does not involve the viewing, purchasing, taking delivery of goods or merchandise at, to, from or in any Residential Unit; (vi) the trade or business is conducted by a Resident or Residents of the Residential Unit with no employee working in or from such Residential Unit who is not a Resident thereof except for any employees who generally work off-site at a location other than at the Residential Unit, and only occasionally are required to meet at the Residential Unit; (vii) the volume of vehicular or pedestrian traffic or parking generated by such trade or business does not result in congestion or be in excess of what is customary in a residential neighborhood; (viii) the trade or business does not utilize flammable liquids or hazardous materials in quantities not customary to a residential use; and (ix) the use of the Residential Unit for a trade or business does not violate the provisions of the Association Documents. The terms "business" and "trade" as used in this Section shall be construed to have ordinary, generally accepted meanings, and shall include, without limitation any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether: (a) such activity is engaged in full or part time; (b) such activity is intended or does generate a profit; or (c) a license

is required for such activity. The leasing of a Residential Unit by the Owner thereof shall not be considered a trade or business within the meaning of this Section.

**6.2 Animals.** No animal, fowl, poultry, reptile or livestock, other than a reasonable number of generally recognized house or yard pets, as may be determined by the Board, shall be maintained on any Lot or other area in Stellar Air Park Estates II and then only if they are kept, bred or raised thereon solely as domestic pets and not for commercial purposes. All pets must be kept in a fenced yard or on a leash not to exceed six (6) feet in length, at all times. No animal or bird shall be allowed to enter another Owner's Lot. No animal shall make an unreasonable amount of noise or to become a nuisance or an annoyance to other Owners. It shall be the responsibility of each Owner to remove immediately from any Common Area or Area of Association Responsibility any droppings from pets. No structure for the care, housing or confinement of any animal or bird shall be maintained so as to be Visible From Neighboring Property, unless otherwise approved in writing by the Architectural Committee. Upon the written request of any Member or Resident, the Board shall conclusively determine, in its sole and absolute discretion, whether, for the purposes of this Subsection: (i) a particular animal or bird is a generally recognized house or yard pet; (ii) whether such pet is a problem or nuisance or (iii) whether the number of animals or birds on any such property is reasonable. Any decision rendered by the Architectural Committee or Board shall be enforceable in the same manner as other restrictions contained herein.

**6.3 Temporary Occupancy and Temporary Buildings.** No trailer, incomplete building, tent, shack, garage or barn, and no temporary buildings or structures of any kind, shall be used at any time for a residence, either temporary or permanent. Temporary buildings or structures may be used on any property for construction, repair or sales purposes, with the prior written approval of the Architectural Committee and for the time period approved by the Architectural Committee.

**6.4 Trash Containers and Collection.** No garbage or trash shall be placed or kept on any Lot or other area in Stellar Air Park Estates II unless it is in covered containers of a type, size and style which are approved by the Architectural Committee. Unless otherwise approved by the Architectural Committee, such containers shall be maintained and stored so as not to be Visible From Neighboring Property except to make the containers available for collection. All rubbish, trash and garbage shall be removed from the Lots and other areas in Stellar Air Park Estates II and shall not be allowed to accumulate thereon. No outdoor incinerators shall be kept or maintained in Stellar Air Park Estates II.

**6.5 Clothes Drying Facilities.** No outside clotheslines or other outside facilities for drying or airing clothes shall be placed or maintained in Stellar Air Park Estates II so that they are Visible From Neighboring Property.

**6.6 Overhead Encroachments.** No tree, shrub or planting of any kind on any Lot or other area shall be allowed to overhang or otherwise to encroach upon any sidewalk, street, bike path, pedestrian way, taxiway or other area from ground level to a height of ten (10) feet without the prior written approval of the Architectural Committee.

**6.7 Machinery and Equipment.** No machinery or equipment of any kind shall be placed, operated or maintained in Stellar Air Park Estates II except: (i) machinery or equipment as is usual and customary in connection with the use, maintenance or construction (during the period of construction) of an approved building, appurtenant structures, or other Improvements; or (ii) machinery or equipment that Declarant or the Association may require for the operation and Maintenance of Stellar Air Park Estates II. Solar energy devices may not be Visible From Neighboring Property and must be approved by the Architectural Committee prior to installation.

**6.8 Signs.** Except for signs constructed or erected by the Declarant for promotional and marketing purposes, or such signs as are permitted pursuant to Arizona Revised Statutes Section 33-1808, as amended, no signs whatsoever may be erected, posted or displayed on any Lot or the Common Area in a location that is Visible from Neighboring Property without the prior written approval of the Architectural Committee.

**6.9 Restriction on Further Subdivision and Timeshares, Property Restrictions.**

**Rezoning.** No Lot shall be further subdivided or separated into smaller Lots by any Owner, and no portion less than all of any such Lot, nor any easement or other interest therein, shall be conveyed or transferred by any Owner, without the prior written approval of the Declarant or the Board. All leases shall be in writing with a copy of the lease provided to the Association. No leases of a Lot shall be for a period of less than thirty (30) days. This provision shall not in any way limit Declarant from subdividing or separating into Lots any property at any time owned by Declarant. No subdivision plat or further covenants, conditions, restrictions or easements shall be recorded by any Owner or other person against any property in Stellar Air Park Estates II unless the provisions thereof have first been approved in writing by the Declarant or the Board and any plan, declaration of annexation or other covenants, conditions, restrictions or easements recorded without such approval being evidenced thereon shall be null and void. No Lot shall be subjected to or used for any timesharing, cooperative, weekly, monthly or any other type or revolving or periodic occupancy by multiple owners, cooperators, licensees or timesharing participants. No application for rezoning of any Lot, and no applications for variances or use permits shall be filed with any governmental authority unless the proposed use of the property has been approved by the Declarant or the Board and the proposed use otherwise complies with this Declaration and the general plan of development for Stellar Air Park Estates II.

**6.10 Nuisances, Construction Activities.** No weeds, dead trees or plants, rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot or other area in Stellar Air Park Estates II, and no odors or loud noises shall be permitted to arise or emit therefrom, so as to render any such property or activity thereon, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to the occupants of such other property. No other nuisance shall be permitted to exist or operate upon any Lot or other area in Stellar Air Park Estates II. The Architectural Committee shall have the exclusive right to determine the existence of any nuisance. Without limiting the generality of any of the foregoing provisions and except as otherwise permitted herein or in any recorded declaration of annexation, no exterior speakers, horns, whistles, firecrackers, bells, video screens or other sound or visual devices, except security devices used exclusively for security purposes, shall be located, used or placed on any such property. Notwithstanding any provisions to the contrary in the foregoing sentence, television screens, computer screens and music speakers placed on a private, fenced patio are not considered a nuisance so long as the volume is turned to a reasonable level, and the specific use of such screens or speakers is not determined to be a nuisance by the Architectural Committee. Normal construction activities and parking in connection with the building of improvements in Stellar Air Park Estates II shall not be considered a nuisance or otherwise prohibited by this Declaration, but Lots shall be kept in a neat and tidy condition during construction periods, trash and debris shall not be permitted to accumulate, and supplies of brick, block, lumber and other building materials will be piled only in such areas as may be approved by the Architectural Committee. An Owner shall be responsible for and shall promptly perform all on-site and construction clean-up occasioned by his contractors or subcontractors. In addition, any construction equipment and building materials stored or kept on any Lot during construction of improvements may be kept only in areas approved by the Architectural Committee, which may also require screening of the storage areas. It is acknowledged that normal construction activities may be noisy and may require the use of exterior speakers.

**6.11 Diseases and Insects.** No Owner shall permit any thing or condition to exist upon any Lot or other area which induce, breed or harbor diseases or insects.

**6.12 Repair of Building.** No building or structure on any area in Stellar Air Park Estates II shall be permitted to fall into disrepair and each such building and structure shall at all times be kept in good condition and repair and adequately painted or otherwise finished. In the event any building or structure is damaged or destroyed, then, subject to the approvals required by Article V above, such building or structure shall be promptly repaired, rebuilt or demolished. In the event an Owner fails to comply with this provision, the Board may give notice to the offending Owner, and may then proceed to repair the building or improvement and charge the Owner therefore as permitted in Sections 11.3 and 11.4.

**6.13 Exterior Accessories.** No antenna, satellite receiving station or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation shall be erected, used or maintained outdoors on any Common Area. The location of an antenna or other device for the transmission or reception of television or radio signals or any form of electromagnetic radiation, including without limitation, satellite or microwave dishes within a Residential Unit, shall be governed by Section 207 of the Telecommunications Act of 1996, as the same may be amended from time to time, provided however, that in all instances, the placement of such devices shall be made in the least visible and conspicuous manner possible without interfering with the viewer's ability to receive signals, and as approved by the Architectural Committee. The Architectural Committee may permit one or more aerial satellite dishes or satellite communication systems, and/or other apparatus and equipment for an antenna or cable system for the benefit of all or portions of Stellar Air Park Estates II. Notwithstanding the foregoing, certain flags, including but not limited to the American flag may be displayed in a manner consistent with the federal flag code (P.L. 94-344; 90 Stat. 810; 4 United States Code, Sections 4 through 10), and A.R.S. §33-1808, subject to the Association's rules regulating the location and size of flagpoles.

**6.14 Basketball Goals; Playground Equipment.** No basketball goal or backboard shall be attached to a Residential Unit or other building. Basketball goals and backboards attached to a free-standing pole may be installed on a Lot, provided the location, design and appearance of the basketball goal and backboard are approved in writing by the Architectural Committee. No jungle gyms, swing sets or similar playground equipment which would be Visible From Neighboring Property shall be erected or installed on any Lot without the prior written approval of the Architectural Committee.

**6.15 Rooftop HVAC and Solar Equipment.** No solar panel, air-conditioning unit, evaporative cooler or other apparatus, structure or object related thereto shall be placed on the roof of a Residential Unit without prior written approval of the Architectural Committee. The Architectural Committee may adopt guidelines for the placement of solar equipment so as to minimize the visibility of the solar equipment while maximizing its ability to collect and store energy.

**6.16 Mineral Exploration.** No area in Stellar Air Park Estates II shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth or any earth substance of any kind, except for grading and excavation work and the removal of fill material including but without limitation, gravel rock and sand, in connection with the construction of Residential Units, buildings, structures or other Improvements which have been approved in writing by the Architectural Committee.

**6.17 Lighting.** Except as initially installed by Declarant, no spotlights, floodlights or other high intensity lighting shall be placed or utilized upon any Lot, or structure erected thereon which in any manner will allow light to be directed or reflected on any other Lot or Common Area, except as approved by the Board.

**6.18 Vehicles and Parking.**

**6.18.1 Board Adopts Parking Rules.** Following the Period of Declarant Control, the Board shall have the right and power to adopt rules and regulations governing parking of motor vehicles on Lots and on Common Areas and implementing all provisions relating to parking of motor vehicles. For purposes of this Section 6.18, the term "Motor Vehicle" means a car, van, truck, recreational vehicle, mobile home, motor home, motorcycle, all-terrain vehicle, utility vehicle, pickup truck, golf cart or other gas or electric-powered vehicle.

**6.18.2 Private Streets; Parking.** The streets within the Property are those areas shown on the Plat which are part of the Common Area to be owned and maintained by the Association as Private Streets. Private Streets are fire lanes. No mobile home, travel trailer, tent trailer, trailer camper shell, boat trailer or other similar equipment or vehicle may be parked or stored on the Common Area including the Private Streets, except as otherwise designated by the Board.

**6.18.3 Parking.** Motor Vehicles, trailer, camper shell, detached camper, boat, boat trailer or other similar equipment or vehicle must be parked or stored within a garage or Hanger, unless there is insufficient space within the garage for parking of all such Motor Vehicles and other vehicles. In such case Motor Vehicles only may be parked in the driveway situated on the Lot provided such Motor Vehicles do not exceed seven (7) feet in height and do not exceed eighteen (18) feet in length, are not used for commercial purposes and do not display any commercial name, phone number or message of any kind. No Motor Vehicle of any kind may be stored on the Common Area without the prior written approval of the Architectural Committee. For purposes of this Subsection, a Motor Vehicle is deemed stored if it is covered by a car cover, tarp or other material. Recreational vehicles, including but not limited to motor homes, boats, trailers or campers which are owned or leased by a Resident which exceed 7 feet in height and/or exceed 18 feet in length may be parked in the driveway on a Lot for the purpose of loading or unloading, but in no event shall such recreational vehicle, motor home or similar vehicle be parked in the driveway for more than twenty-four (24) consecutive hours or for more than seventy-two (72) hours within any seven (7) day period.

**6.18.4 Vehicle Repair.** No Motor Vehicle of any kind shall be constructed, reconstructed or repaired upon any Lot, street or other area in Stellar Air Park Estates II, and no inoperable vehicle may be stored or parked so as to be Visible From Neighboring Property or to be visible from Common Areas or streets. Notwithstanding herein to the contrary, motor vehicles owned by the Owners, Lessees or residents may be parked so as to be Visible From Neighboring Property following limited circumstances to include: (i) emergency vehicle repairs; or (ii) the parking of motor vehicles in garages or other parking areas in Stellar Air Park Estates II designated or approved by the Declarant or the Architectural Committee so long as such vehicles are in good operating condition and appearance and the vehicle parked on any private street, driveway of any Lot or on a private street does not remain there for any period longer than seventy-two (72) hours within any seven (7) day period.

**6.18.5 Towing of Vehicles.** The Board of Directors shall have the right to have any Motor Vehicle or other vehicle parked, kept, maintained, constructed, reconstructed or repaired in violation of the Declaration towed away at the sole cost and expense of the owner or lessee of the vehicle. Any expense incurred by the Association in connection with the towing of any vehicle shall be paid to the Association upon demand by the owner or lessee of the vehicle. If the Motor Vehicle or other vehicle is owned or leased by an Owner, any amounts payable to the Association shall be secured by the Assessment Lien, and the Association may enforce collection of suit amounts in the same manner provided for in this Declaration for the collection of Assessments.

Notwithstanding the foregoing, the Association shall not prohibit a Resident from parking a Motor Vehicle with a gross vehicle weight of two thousand pounds or less on a driveway within Stellar Air Park Estates II, if it complies with the requirements of A.R.S. Section 33-1809, as the same may be amended from time to time.

**6.19 Garages.** Garage doors shall remain closed at all times except to the limited extent reasonably necessary to permit the entry and exit of vehicles or persons. The interior of all garages shall be maintained in a neat, clean and sightly condition. Garages shall be used only for parking vehicles and limited storage, and shall not be used or converted for living or recreational activities.

**6.20 Drainage.** No Residential Unit, structure, building, landscaping fence, wall or other Improvement shall be constructed, installed, placed or maintained in any manner that would obstruct, interfere with or change the direction of flow of water in accordance with the drainage plans for the Property, or any part thereof, of for any Lot as shown on any drainage plan on file with the state or local governmental entity charged with regulation of drainage issues. No Owner or Resident shall interfere with or obstruct the drainage pattern over his Lot from or to any other Lot as that pattern may be established or altered by the Declarant.

**6.21 Storage of Goods.** Storage (except in approved structures or containers) of furniture, fixtures, appliances, machinery, equipment or other goods and chattels on the Common Area (except by the Association), or if not in active use, any portion of a Lot which is visible from outside the Lot is prohibited. No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot, except: (a) such machinery or equipment as is usual and customary in connection with the use, maintenance or construction (during the period of construction or modification) of a building, appurtenant structures of other Improvements; and (b) that which Declarant or Association may permit or require for the development, operation and Maintenance of Stellar Air Park Estates II.

**6.22 Right of Entry.** During reasonable hours and upon reasonable written notice to the Owner or Resident, any member of the Architectural Committee, any member of the Board or any authorized representative of either of them, shall have the right to enter upon and inspect any Lot or other area, and improvements constructed or being constructed thereon (except for the interior portions of any completed and occupied Dwelling Unit), to determine compliance with this Declaration, the Design Guidelines, or any approval stipulations issued by the Architectural Committee or to perform repairs and Maintenance as provided in Sections 11.3 and 11.4, and such persons shall not be deemed guilty of trespass by reason of such entry. In addition, the Association shall have an easement and right of entry upon any Lot or other area at any time or times without notice in order to perform emergency repairs.

**6.23 Declarant's Exemption.** Nothing contained in this Declaration shall be construed to prevent the erection or maintenance by Declarant or by other developers or their duly authorized agents of structures, improvements or signs necessary or convenient to the development or sale of property within Stellar Air Park Estates II if those structures, improvements or signs have been approved by the Declarant or the Architectural Committee.

**6.24 Health, Safety and Welfare.** In the event additional uses, activities and facilities are deemed by the Architectural Committee to be a nuisance or to adversely affect the health, safety or welfare of Owners or Residents, the Board may make rules restricting or regulating their presence in Stellar Air Park Estates II as part of the Association Rules or Design Guidelines.

Each Owner and occupant of a Lot, and their respective guests and invitees, is responsible for their own personal safety and the security of their property in Stellar Air Park Estates II. The Association may, but shall not be obligated to maintain or support certain activities within the community designed to enhance the level of safety or security which each person provides for himself for his property. Neither the Association nor Declarant shall in any way be considered insurers or guarantors of safety or security within the community, nor shall either be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

No representation or warranty is made that any systems or measures, including any mechanism or system for limiting access to the Property, cannot be compromised or circumvented, nor that any such systems or security measures undertaken will, in all cases, prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands and shall be responsible for informing its tenants and all Residents of its Lots that the Association, the Board and committees, and Declarant are not insurers or guarantors of security or safety and that each Person within Stellar Air Park Estates II assumes all risks of personal injury and loss or damage to property, including Lots and the contents of Lots, resulting from acts of third parties.

**6.25 Rental of Lots.** No Owner may lease less than his entire Lot and the Residential Unit situated thereon. Any agreement for lease must be in writing and must provide that the terms of the lease are expressly subject to this Declaration, the Association Rules, the Design Guidelines, the Articles and the Bylaws and the Owner shall provide the Lessee with copies of the Association Documents. Any violation of the Association Documents shall be a default under the lease. An Owner shall notify the Association regarding the existence of all leases. Any lease shall be for an initial term of at least one (1) month. The Owner shall remain liable for compliance with the Declaration, Articles, Bylaws, Association Rules and



Design Guidelines and shall be responsible for any violations thereof by Lessee or Lessee's family and guests. All notices shall be sent to the Owner. There shall be no subleasing of Lots or assignments of leases. At least ten (10) days before the commencement of the lease term, the Owner shall provide the Association with the following information: (i) commencement date and expiration date of the lease term; (ii) names of each of the Lessees and each other person who will reside in the Residential Unit during the lease term; (iii) address and telephone number at which the Owner can be contacted by the Association during the lease term; and (iv) the name, address and telephone number of a person other than the Owner whom the Association can contact in the event of an emergency involving the Lot.

**6.26 Lawful Use.** No immoral, improper, offensive, or unlawful use shall be made of any part of the Property. All valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction over the Property shall be observed. Any violation of such laws, zoning ordinances or regulations shall be a violation of this Declaration. Further, no activity shall be transacted or conducted on any Lot which will in any way: (i) increase the required parking for the Property; (ii) increase the Assessments; (iii) increase the rate of insurance for the Property or cause any insurance policy to be cancelled or to cause a refusal to renew the same, or (iv) which will impair the structural integrity of any structure on the Property.

**6.27 Use of Taxiways; Other Aircraft Regulations.** The Property is adjacent to Stellar Airpark which consists of a runway and Taxiways. The Taxiways, including those Taxiways that are part of the Common Area may be used by aircraft, motor vehicles and pedestrians for the purpose of ingress and egress to Hangers and the Taxiways and runways of Stellar Airpark. The use of the Taxiways within the Property for such purposes, however, shall be subject to the covenants, conditions and restrictions established by the Association, while the Taxiways and Runway owned and maintained by Stellar Airpark shall be subject to the covenants, conditions and restrictions of the Runway Utilizers Association, including but not limited to the following restrictions:

- (a) No aircraft in excess of 18,000 pounds gross weight shall use the Taxiways without the written approval of the Board.
- (b) No aircraft may be parked or stored on a Taxiway.
- (c) No aircraft may be repaired, maintained, painted, cleaned or washed on a Taxiway.
- (d) No fuel, oil, hydraulic fluid, solvent shall be drained or deposited on a Taxiway or any landscape easement adjacent to a Taxiway and any fuel, oil, hydraulic fluid or solvent spilled, drained or deposited on a Taxiway or any landscape easement adjacent to a Taxiway shall be immediately removed.

**6.27.1 Repair of Aircraft; Storage of Fuel.** No Owner, Resident or other Person shall disassemble, overhaul or repair any aircraft or its power plant on any Lot except in a Hanger. No aircraft fuel or oil may be stored in any unenclosed area of any Lot. Any fuel must be stored in proper safety containers. The storage of any fuel, oil or hazardous substance on a Lot must comply with all applicable federal, state and local environmental laws and regulations. If any hazardous substance is deposited on the Common Area, the Owner responsible therefor shall promptly take all action necessary to remove the hazardous substance.

**6.27.2 Parking Aircraft.** All aircraft parked on a Lot must be securely tied down or parked within a Hanger. No aircraft which is not airworthy as demonstrated by written proof of a current annual inspection of airworthiness may be parked on any Lot except within a Hanger.

**6.28 Variances.** The Board may, at its option and in extenuating circumstances, grant variances from the restrictions set forth in Article VI of this Declaration if the Board determines in its discretion (a) either (i) that a restriction would create an unreasonable hardship or burden on an Owner or

(ii) that a change of circumstances since the recordation of this Declaration has rendered such restriction obsolete, and (b) that the activity permitted under the variance will not have any substantial adverse effect on the Owners and Residents of Stellar Air Park Estates II and is consistent with the high quality of life intended for Residents of Stellar Air Park Estates II. The request for a variance must be made in writing and must be accompanied by adequate supporting documentation. No variance may be issued without Declarant's written consent for so long as Declarant owns any portion of the Property.

**6.29 Community Privacy Measures.** Each Lot Owner understands and agrees that neither the Association (nor its officers, directors, employees or agents) nor the Declarant (nor its officers, directors, employees or agents) is responsible for the acts and omissions of any third parties (including acts or omissions of any Owners, Residents or invitees) to person or property. Any electronic entry-exit or privacy gate features or common privacy measure that may be used in the Property (as installed by Declarant or by the Board on behalf of the Association, if any) will be maintained by the Association as a common expense of the Owners. Each Lot Owner understands that any entry-exit privacy gate features that are in effect at the time he becomes a Lot Owner may be abandoned, terminated, and/or modified by a majority vote of the Board. The installation or commencement of any such devices or controls shall not be deemed to be an assumption of any duty on the part of the Association or Declarant with respect to the Property and neither Declarant, the Board (nor any committee thereof) make any representation or warranty concerning the efficacy of such devices relating to security or the ease of entry of fire, police or other emergency personnel.

## ARTICLE VII. MEMBERSHIPS AND VOTING

**7.1 Owners of Lots.** Every Owner of a Lot which is subject to assessment shall be a Member of the Association. Each Member shall have one (1) Membership for each Lot.

**7.2 Declarant.** The Declarant shall be a Member of the Association for so long as the Declarant owns any Lots in Stellar Air Park Estates II.

**7.3 Voting.** The Association shall have two classes of voting Memberships:

Class A. Class A Memberships shall be all Memberships attributable to the Owner of a Lot, excluding Declarant. An Owner of a Lot shall be entitled to one (1) vote for each Class A Membership held by the Owner, subject to the authority of the Board to suspend the Owner's voting rights for violations of this Declaration as provided herein. Upon termination of the Class B Memberships as provided herein below, Declarant shall have one (1) Class A Membership and vote for each Lot owned by Declarant.

Class B. All of the Class B Memberships shall be held by the Declarant. For its Class B Memberships, Declarant shall have fifteen (15) votes for every one (1) Lot owned by Declarant. The Class B Memberships shall cease on the happening of the first of the following events:

(a) One Hundred and Twenty (120) days after the date when the total votes outstanding in the Class A Memberships exceeds the total votes outstanding in the Class B Memberships; or

(b) When the Declarant notifies the Association in writing that it relinquishes its Class B Membership.

**7.4 Right to Vote.** No change in the ownership of a Membership shall be effective for voting purposes unless and until the Board is given actual written notice of such change and is provided satisfactory proof thereof. The vote of each such Membership must be cast as a unit; fractional votes shall not be allowed. If a Membership is owned by more than one person or entity and such Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Member casts a vote representing a certain Membership, it will thereafter be

conclusively presumed that he was acting with the authority and consent of all other Owners of the same Membership unless objection thereto is made to the Board, in writing at or prior to the time the vote is cast. In the event more than one vote is cast for a particular Membership, all said votes shall be deemed void.

**7.5 Membership Rights.** Each Member shall have the rights, duties and obligations set forth in this Declaration and such other rights, duties and obligations as are set forth in the Articles, Bylaws, Association Rules, and Design Guidelines as the same may be amended from time to time.

**7.6 Transfer of Membership; Transfer Fee; Capital Reserve Fee.** The rights and obligations of the Owner of a Class A Membership in the Association shall not be assigned, transferred, pledged, designated, conveyed or alienated in any way except upon transfer of ownership to an Owner's Lot and then only to the transferee thereof. There will be a resale disclosure package fee (the "Transfer Fee") to be determined by the Board. Upon the transfer of ownership of any Lot (excluding the initial sale by the Declarant), the Board, in its discretion, may assess a reasonable Transfer Fee to cover administrative costs associated with said transfer of ownership. Additionally, the management firm employed or contracted by the Association may also require the payment of administrative fees in connection with mortgage or loan refinancing or title transfers. Further each Owner, upon taking title to a Lot, shall pay an amount to the Association to provide for the initial capitalization of the reserves ("Capital Reserve Fee"). Initially, the Capital Reserve Fee shall be equal to three (3) months Assessments. Funds collected as Capital Reserve Fees shall be deposited in a capital reserve account to provide for the initial capitalization of the Association. A transfer of ownership of a Lot shall require the payment of the Capital Reserve Fee in an amount set by the Board. A transfer of ownership requiring the payment or deposit of funds as set forth herein may be affected by deed, intestate succession, testamentary disposition, foreclosure of a mortgage of record or such other legal process as permitted by Arizona law. Any attempt to make a transfer without payment of the Capital Reserve Fee shall be void. Any transfer of ownership of a Lot shall automatically transfer the Membership(s) appurtenant to said Lot to the new Owner.

#### **ARTICLE VIII. COVENANT FOR ASSESSMENTS AND CREATION OF LIEN**

**8.1 Creation of Lien and Personal Obligation for Assessments and Maintenance Charges.** The Declarant, for all Property which is subject to the Declaration, hereby covenants and agrees, and each Owner by acceptance of a deed therefor (whether or not it shall be so expressed in such deed) is deemed to covenant and agree, to accept and be subject to mandatory Membership in the Association, and to pay to the Association the following: (1) Annual Assessments, (2) Special Assessments, (3) Maintenance Charges, (4) Special Use Fees and (5) Remedial Assessments incurred by the Owner or any Resident occupying the Owner's Lot or any portion thereof. The Annual Assessments, Special Assessments, Maintenance Charge, Special Use Fees, Remedial Assessments and other fees, fines and charges which are the obligation of an Owner hereunder, together with interest, costs, collection agency fees, and reasonable attorneys' fees of the Association incurred in connection with the enforcement and collection thereof or in otherwise enforcing this Declaration, shall be a charge and continuing servitude and lien upon the Lot against which each such Annual or Special Assessment, Maintenance Charge, Special Use Fee or Remedial Assessment or other charge is made. In addition, each Annual or Special Assessment, Maintenance Charge, Special Use Fee, Remedial Assessment or other charge shall be the personal obligation of the Owner of such Lot at the time when such payment becomes due and payable. The Annual and Special Assessments against each Lot shall be based on the number of Memberships appurtenant to the Lot. The personal obligation for delinquent Assessments and other charges shall not pass to the successors in title of the Owner unless expressly assumed by them; however, the Lot shall remain subject to the lien of the delinquent Assessment except as provided in Section 9.3 below. No Assessments may be charged against any Lot which is not covered by this Declaration. No Owner may waive or otherwise exempt himself from liability for the Assessments by nonuse of Common Areas or abandonment of his Lot. The obligation to pay Assessments is a separate and independent covenant on the part of each Owner. No diminution, abatement or set-off shall be allowed by reason of any action or failure to act of the Board or Association.

**8.2 Annual Assessments; Commencement Date.** In order to provide for the uses and purposes specified in Article XI hereof, including the establishment of replacement and maintenance reserves, in each year, commencing with the first Assessment Period, the Board shall prepare and adopt a budget and shall assess against all Property, an Annual Assessment. Subject to the provisions of Section 8.4 hereof, the amount of the Annual Assessment shall be in the sole discretion of the Board, but shall be determined with the objective of fulfilling the Association's obligations under this Declaration, to promote the recreation, health, safety and welfare of the Owners, to enhance the quality of life within the Property, to preserve the value of the Property, to pay the costs of administration of the Association and the Maintenance of the Common Areas and Areas of Association Responsibility which are for the general benefit of all Lots and to otherwise further the interest of the Association as the Board deems appropriate as well as providing for the uses and purposes specified in Article XI. Notwithstanding anything herein contained to the contrary and subject to the provisions of Section 8.4 herein below, Assessments for any Lot shall not commence until the date title to that Lot is transferred by Declarant to an Owner other than Declarant.

**8.3 Obligation of Declarant for Deficiencies.** So long as Declarant owns any Lot within the Property, Declarant shall not be required to pay Assessments, provided that Declarant shall pay and contribute to the Association, no later than thirty (30) days after the end of each fiscal year of the Association, or at such other times as may be requested by the Board, such funds as may be necessary, when added to the Annual Assessment levied by the Association, to pay all expenses of the Association as they become due. The Declarant's obligations under this Section may be satisfied by the payment of money or by contribution of services or materials, or a combination thereof. In no event shall the Declarant be obligated to pay or contribute money or services or materials to the Association in excess of the amount of /assessments that would have been payable by the Declarant if the Lots owned by the Declarant had been subject to Assessment.

**8.4 Uniform Rate of Assessment; Increases.** The amount of the Annual Assessments shall be fixed by the Board, in its sole discretion. Except as set forth herein below, both Annual and Special Assessments must be fixed at a uniform rate for all Lots within the Property and may be collected on a monthly, quarterly, semi-annual or annual basis. The Annual Assessment may be increased effective January 1 of each year without a vote of the Membership by a maximum of twenty percent (20%) of the Annual Assessment for the previous year or the maximum amount allowed by Arizona law, whichever is greater. The Annual Assessment may be increased more than twenty percent (20%) of the Annual Assessment for the previous year or the maximum amount allowed by Arizona law by a vote of two-thirds (2/3) of each class of Members' who are voting in person or by proxy at a meeting duly called for that purpose. Notwithstanding the foregoing limitations, in the Board's discretion, the Annual Assessment may be increased as necessary to cover increased cable, solid waste collection, water or other utility charges.

**8.5 Special Assessments for Capital Improvements and Extraordinary Expenses.** In addition to the Annual Assessments authorized above, the Association may levy a Special Assessment for the purpose of defraying in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, or for the purpose of defraying other extraordinary expenses, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of Members who are voting in person or by written ballot at a meeting duly called for such purpose. The provisions of this Section are not intended to preclude or limit the assessment, collection or use of Annual Assessments for the aforesaid purposes.

**8.6 Notice and Quorum for any Action Authorized Under Sections 8.4 and 8.5.** Written notice of any meeting called for the purpose of taking any action authorized under Sections 8.4 and 8.5 shall be sent to all Members no less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes (exclusive of suspended voting rights) of each class of Membership shall

constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (½) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

**8.7 Establishment of Assessment Period.** The period for which the Annual Assessment is to be levied (the "Assessment Period") shall be the calendar year, except that the first Assessment Period shall commence (a) upon the recording of the Declaration; or (b) upon such later date as the Board shall determine and shall terminate on December 31 of such year. The Board in its sole discretion from time to time may change the Assessment Period by recording with the County Recorder of Maricopa County, Arizona, an instrument specifying the new Assessment Period.

**8.8 Billing and Collection Procedures.** The Board shall have the right to adopt procedures for the purpose of making, billing and collecting the Assessments, provided that said procedures are consistent with the provisions hereof. Annual Assessments may be collected on a monthly, quarterly or annual basis as determined by the Board and Special Assessments may be collected as specified by the Board unless otherwise determined by the resolution of the Members of the Association approving the Special Assessment. The failure of the Association to send a bill to a Member shall not relieve any Member of his liability for any Assessment or charge under this Declaration, but the Assessment Lien therefor shall not be foreclosed or otherwise enforced until the Member has been given not less than fifteen (15) days' written notice prior to such foreclosure or enforcement, at the address of the Member on the records of the Association, that the Assessment or any installment thereof is or will be due and of the amount owing. Such notice may be given at any time prior to or after the delinquency of such payment. Each Member shall be obligated to inform the Association in writing of any change of address. The Association shall be under no duty to refund any payments received by it even though the ownership of a Membership changed during an Assessment Period; successor Owners of Lots shall be given credit for prepayments, on a prorated basis, made by prior Owners. In case the Owner of a Membership becomes liable for payment of an increased sum pursuant to Section 8.4 during the Assessment Period, he shall notify the Association, but his failure to notify the Association shall not relieve him of the liability for such amounts. The amount of the Annual Assessments against Members who become such during an Assessment Period due to the recordation of a Declaration of Annexation shall be prorated and such new Member shall not be liable for any previously levied Special Assessments. Notwithstanding anything contained herein to the contrary, Mortgagees are under no obligation to collect assessments on behalf of the Association.

**8.9 Collection Costs and Interest on Delinquent Assessments.** Any Assessment or installment thereof not paid when due shall be deemed delinquent and shall bear interest beginning fifteen (15) days from the due date until paid at a rate equal to the greater of (a) twelve percent (12%) per annum, or (b) the rate set by the Board, and the Member shall be liable for all fees, costs, and expenses, including attorneys' fees, which may be incurred by the Association in collecting the same, whether or not litigation is required to collect the Assessments. In addition, the Board may charge a late fee for all delinquent payments in accordance with A.R.S. §33-1803. The Board may also record a Notice of Delinquent Assessment against any Lot as to which an Assessment is delinquent and constitutes a lien and may establish a fixed fee to reimburse the Association for the Association's cost in recording such Notice, processing the delinquency and recording a notice of payment, which fixed fee shall be treated as a collection cost of the Association secured by the Assessment Lien to the extent permitted under Arizona Revised Statutes §33-1807. The Association shall not be obligated to release any notice recorded pursuant to this Section until all delinquent Assessments, interest and collection costs have been paid in full, whether or not all of such amounts are set forth in the Notice of Delinquent Assessment.

**8.10 Evidence of Payment of Assessments.** Upon receipt of a written request, and within a reasonable period of time thereafter, the Association shall issue to the requesting party a written certificate stating (a) that all Annual and Special Assessments, Maintenance Charges, Special Use Fees and Remedial Assessments (including interest, costs and attorneys' fees, if any, as provided in Section 8.9 above) have

been paid with respect to any specified Lot as of the date set forth in the certificate, or (b) if such have not been paid, the amounts due and payable as of that date. The Association may make a reasonable charge for the issuance of such certificate. Any such certificate shall be conclusive and binding with respect to any matter therein stated as against any bona fide purchaser of, or lender on, the Lot in question.

**8.11 Remedial Assessments.** Pursuant to this Declaration, the Board may levy an assessment against any Lot to reimburse the Association for costs incurred in bringing such Lot and its Owners into compliance with the provisions of this Declaration or the Association Rules, or in the event any Common Areas, Areas of Association Responsibility or other property or improvements, for which the Association has accepted responsibility, is damaged as a result of the negligence or willful misconduct of any Owner, Resident or invitee of an Owner of the Owner. Remedial Assessments shall be due ten (10) days after the Board gives written notice thereof to the Owner subject thereto. The provisions of the Section titled "Notice and Quorum for any Action Authorized Under Sections 8.4 and 8.5" of this Article with respect to approval of Special Assessments shall not apply in the case of Remedial Assessments.

**8.12 Reserve Analyses.** The Board shall periodically obtain a Reserve Analysis Study and updates to assist the Board in determining an appropriate amount for repair and replacement reserves for the Association; provided, however (i) the results of any such studies and reports shall be advisory only and the Board shall have the right to provide for reserves which are greater or less than those shown in the study; and (ii) in establishing replacement and repair reserves for the Association, in addition to the recommendations of any such studies or reports and other relevant factors, the Board may take into account (a) the past incidences of required repairs at the Property; and (b) projected funds available to the Association pursuant to initial Capital Reserve Fee paid pursuant to Section 8.6 herein above of this Declaration. Such Reserve Analyses shall use the Capital Reserve definition herein above to establish the Capital Assets owned, repaired, or maintained by the Association. A new Reserve Analysis shall be performed no less than every five (5) years by a third party independent from the Declarant, if Class B membership still exists, Association Board or Manager.

**8.13 Cash Flow Reserve.** For the purpose of establishing a Capital Reserve fund for the repair, replacement, and Maintenance of the Association Capital Assets as defined herein above, the Declarant, for the benefit of the Association and its members, shall maintain a reasonable Capital Reserve fund using a cash flow or component method calculation and not a fully funded method. The initial cash flow projections shall take into consideration cash on hand, Initial Capital Reserve Fee contributions, and annual Reserve contributions from Declarant, Developers and Owners. The cash flow Capital Reserve shall be calculated using the following "threshold:" The threshold is hereby established as the minimum reserves to be on hand at the end of the year in which the highest expenses occur in any given year over the thirty (30) year projection, at twenty five percent (25%) of the fully funded Capital Reserve for that particular year. However, under no circumstances shall the cash flow in any other year be less than 100% of the required funds necessary for a particular year's Capital Reserve expenditures.

## **ARTICLE IX. ENFORCEMENT OF PAYMENT OF ASSESSMENTS AND ASSESSMENT**

### **LIEN**

**9.1 Association as Enforcing Body.** As provided in Section 12.2, the Declarant, the Association, the Architectural Committee and the Members shall have the right to enforce the provisions of this Declaration.

**9.2 Association's Remedies to Enforce Payment of Assessments.** If any Member fails to pay the Annual or Special Assessments, Maintenance Charges, Special Use Fees, Remedial Assessments or other charges when due, the Association may enforce the payment thereof by taking either or both of the following actions, concurrently or separately (and by exercising either of the remedies hereinafter set forth, the Association does not prejudice or waive its right to exercise the other remedy):

(a) Bring an action at law and recover judgment against the Member personally obligated to pay the Annual, Special or Remedial Assessments, Special Use Fee or Maintenance Charges;

(b) Foreclose the Assessment Lien against the Lot in accordance with the then prevailing Arizona law relating to the foreclosure of realty mortgages (including the right to recover any deficiency), and the Lot may be redeemed after foreclosure sale as provided by law. The Association may bid on the subject property at such a foreclosure sale.

Notwithstanding subordination of an Assessment Lien as described in Section 9.3, the delinquent Member shall remain personally liable for the Assessments and related costs after his Membership is terminated for foreclosure or deed in lieu of foreclosure or otherwise.

**9.3 Priority of Assessment Lien.** The Assessment Lien provided for herein shall have priority over all liens or claims except for: (i) tax liens for real property taxes; (ii) assessments in favor of any municipal or other governmental body; and (iii) the lien of any First Mortgage. Sale or transfer of any Lot shall not affect the Assessment Lien; provided, however, that if the sale or transfer is pursuant to foreclosure of a mortgage or a deed of trust to which the Assessment Lien is subordinate, or pursuant to any sale or proceeding in lieu thereof, the purchaser at the mortgage foreclosure or deed of trust sale, or any grantee taking by deed in lieu of foreclosure, shall take the Lot free of the Assessment Lien for all Annual, Special and Remedial Assessments, Special Use Fees and Maintenance Charges that have accrued up to the date of issuance of a sheriff's or trustee's deed or deed in lieu of foreclosure; provided however, that such mortgage or deed of trust foreclosure sale purchaser or grantee shall take title subject to all Annual, Special and Remedial Assessments, Maintenance Charges or Special Use Fees and the Assessment Lien therefor accruing subsequent to the date of issuance of a sheriff's or trustee's deed or deed given in lieu of foreclosure.

**9.4 Assessment Lien Superior to Homestead Exemption.** Notwithstanding anything herein contained to the contrary, the Declaration, Bylaws and Rules of the Association constitute a contract between the Association and each Owner. Upon taking title to any Lot within the Property, each Owner acknowledges that he or she takes title to the Lot subject to the terms and conditions of this Declaration as a covenant and contract with the Association and the other Owners and that it runs with the land and that the Assessment Lien is superior to any rights the Lot Owner has to the homestead exemption protection regarding a lien for the Association.

#### **ARTICLE X. USE OF FUNDS; BORROWING POWER**

**10.1 Purposes for Which Association's Funds May Be Used.** The Association shall apply all funds and property collected and received by it (including the Annual and Special Assessments, fees, loan proceeds, surplus funds and all funds and property received by it from any other source) for the common good and benefit of Stellar Air Park Estates II and Members and Residents by devoting said funds and property, among other things, to the acquisition, construction, alteration, maintenance, provision and operation, by any manner or method whatsoever, of any kind and all land, properties, improvements, facilities, services, projects, programs, studies or systems, within or without Stellar Air Park Estates II, which may be necessary, desirable or beneficial to the general common interests of Stellar Air Park Estates II, the Members and the Residents. The following are some, but not all, of the areas in which the Association may seek to aid, promote and provide for such common benefit: social interaction among Members and Residents, Maintenance of Common Areas, Areas of Association Responsibility including the public rights-of-way, maintenance of trails, washes and drainage areas within and adjoining Stellar Air Park Estates II, recreation, liability insurance, communications, ownership and operation of taxiway and aircraft and other facilities, vehicle storage areas, transportation, health, utilities, public services, safety and indemnification of officers and directors of the Association. Subject to this Declaration and the Articles and Bylaws, the Association may expend its funds in any manner permitted under the laws of the State of Arizona.

**10.2 Borrowing Power.** The Association may borrow money in such amounts, at such rates, upon such terms and security, and for such periods of time as is necessary or appropriate.

**10.3 Association's Rights in Spending Funds From Year to Year.** The Association shall not be obligated to spend in any year all the sums received by it in such year (whether by way of Annual or Special Assessments, fees or otherwise), and may carry forward as surplus any remaining balances. The Association shall not be obligated to reduce the amount of an Annual Assessment in the succeeding year if a surplus exists from a prior year and the Association may carry forward from year to year such surplus as the Board in its discretion may determine to be desirable for the greater financial security of the Association and the accomplishment of its purposes.

**10.4 Eminent Domain.** The term "taking" as used in this Section shall mean condemnation by eminent domain or sale under threat of condemnation. In the event of a threatened taking of all or any portion of the Common Area, the Owners hereby appoint the Board and such persons as the Board may delegate to represent all of the Members in connection with the taking. The Board shall act in its sole discretion with respect to any awards made or to be made in connection with the taking and shall be entitled to make a voluntary sale to the condemnor in lieu of engaging in a condemnation action. Any awards received on account of the taking shall be paid to the Association. In the event of a total or partial taking, the Board may, in its sole discretion, retain any award in the general funds of the Association or distribute pro rata all or a portion thereof to the Owners and all holders of liens and encumbrances, as their interest may appear of record, at a uniform rate per Membership.

**10.5 Insurance.**

**10.5.1 Authority to Purchase.** The Association shall maintain insurance against liability incurred as a result of death or injury to persons or damage to property on the Common Areas or upon Areas of Association Responsibility, in the total amount of not less than One Million Dollars (\$1,000,000.00). To the extent it is reasonable, the Association shall obtain officers and directors liability insurance in an amount deemed prudent by the Board. In addition, the Association may carry any other insurance coverage which the Board in its discretion deems necessary or desirable. The deductible for any claim thereunder shall be paid by the party who would be liable for the loss or repair in the absence of insurance.

**10.5.2 Individual Responsibility.** Unless otherwise provided in a declaration approved by the Declarant, it shall be the responsibility of each Owner and Resident or other person to provide for himself insurance on his property interests within Stellar Air Park Estates II, including, but not limited to: his additions and improvements thereon, furnishings and personal property therein, his personal liability to the extent not covered by the property and public liability insurance obtained by the Association, if any, and such other insurance as such person desires. No person shall maintain any insurance which would limit or reduce in any manner the insurance proceeds payable under the casualty insurance maintained by the Association in the event of damage to the improvements or fixtures on the Common Areas. Neither the Association nor any Board Member nor the Declarant shall be liable to any person or mortgagee if any risks or hazards are not covered by the insurance obtained by the Association or if the amount of insurance is not adequate.

**10.5.3 Insurance Claims.** The Association is hereby irrevocably appointed and authorized by the Owners to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims, and to do all other acts reasonably necessary to accomplish any of the foregoing. The Board has full and complete power to act for the Association in this regard and may, at its discretion, appoint an authorized representative or committee, or enter into an insurance trust agreement wherein the trustee shall have authority, to negotiate losses under any policy purchased by the Association. All proceeds from insurance acquired by the Association shall be payable to the Association. Any proceeds resulting from damage to the Common Areas shall be used to repair the damage, unless otherwise approved by a majority of the votes of each class of Members at a meeting called for such purpose. Any excess proceeds may be retained by the Association as reserves or to reduce future assessments or, if distributed to Members, such proceeds shall be distributed to Members and their mortgagees as their interests may appear of record at a uniform rate per Membership.



**10.6 Reserve Fund.** From the Annual Assessments received by the Association, the Board may set aside a portion of the Annual Assessment for the Reserve Fund for the Maintenance, repair and replacement of the Common Areas and for the Maintenance, repair and replacement of landscaping and facilities within the Areas of Association Responsibility.

**10.7 Fidelity Bonds.** The Board, acting on behalf of the Association, shall obtain and maintain at all times adequate fidelity bond coverage to protect against dishonest acts on the part of officers, directors and employees of the Association and all others who handle, or are responsible for handling funds held or administered by the Association. Any independent management agent which handles funds for the Association shall also obtain (and pay for) such fidelity bond coverage with respect to its own activities (and those of its directors, officers and employees receiving compensation for services rendered.) Such fidelity bond (i) shall name the Association as obligee; (ii) shall be issued by one or more companies authorized to issue such bonds in the State of Arizona; and, (iii) shall be in an amount sufficient to cover the maximum total of funds reasonably expected by the Board to be in the custody of the Association or such agent at any time while such bond is in force, but in no event shall the amount of such fidelity bond coverage be less than the sum of three months' Annual Assessments on all Lots, plus the total of dues held in the Association's reserves. Each such fidelity bond shall provide that the issuer thereof shall provide not less than ten (10) days' written notice to the Association and to each first mortgage lien holder who has requested written notice before such bond may be canceled or substantially modified for any reason.

#### ARTICLE XI. MAINTENANCE

**11.1 Maintenance by Owner.** Unless otherwise provided in a recorded instrument approved by Declarant or the Association, each Owner shall be responsible for the proper Maintenance of his Lot, and all buildings, Residential Units, landscaping or other Improvements situated thereon, except for any area on his Lot that is an Area of Association Responsibility. All buildings, Residential Units Landscaping and other Improvements shall at all times be kept in good condition and repair. All grass, hedges, shrubs, vines, trees and plants of any kind on a Lot shall be irrigated, mowed, trimmed and cut at regular intervals to be maintained in a neat and attractive manner. Trees, shrubs, vines, plants and grass which die shall be promptly removed and replaced with living foliage of like kind, unless different foliage is approved in writing by the Architectural Committee. No yard equipment, wood piles or storage areas may be maintained so as to be Visible From Neighboring Property. All Lots upon which no Residential Unit has been constructed shall be maintained in a weed-free and attractive manner. As used herein maintenance shall include, but not be limited to, keeping the areas neatly trimmed, cultivated and free from trash, weeds and unsightly material. Each Owner will be required to comply with Design Guidelines for landscaping and any approved plant palette established by the Architectural Committee, including, but not limited to, specific plant selections and the timing of landscape installation.

**11.2 Common Areas and Areas of Association Responsibility.** The Association shall maintain any landscaping and other Improvements not located on Lots which are within the boundaries of Stellar Air Park Estates II and are identified on a recorded instrument as Common Areas, or which are located on property not owned by the Association but which are intended for the general benefit of the Owners and Residents of Stellar Air Park Estates II, except the Association shall not be required to maintain (but may elect to maintain) areas which (i) the City of Chandler or its successor, an improvement district or other government entity is maintaining, or (ii) are to be maintained by the Owners of a Lot pursuant to Section 11.1 of this Declaration. Specific areas to be maintained by the Association may be identified on recorded subdivision plats approved by the Declarant, and/or in deeds from the Declarant to the Association or to a transferee of a Lot, but the failure to so identify such areas shall not affect the Association's rights or responsibilities with respect to Common Areas, Areas of Association Responsibility or the Association's rights with respect to other areas intended for the general benefit of Stellar Air Park Estates II. Notwithstanding anything to the contrary herein, the Board shall have discretion to enter into an agreement with the City of Chandler to permit the Association to upgrade and/or maintain landscaping on property

owned by the City of Chandler, whether or not such property is within Stellar Air Park Estates II, if the Board determines such agreement benefits the Association.

11.2.1 Standard of Care. The Board shall use a reasonably high standard of care in providing for the repair, management and Maintenance of the Common Areas, Areas of Association Responsibility and other properties and improvements maintained by the Association; however, the Board shall be the sole judge as to the appropriate Maintenance of all such areas. The Common Areas and Areas of Association Responsibility, including, but not limited to, bicycle paths and any swimming pool, cabanas, playground or other play areas or equipment furnished or maintained by the Association shall be used at the risk of the user; and neither the Declarant nor the Association shall not be liable to any person or entity for any claim, damage, or injury occurring thereon or related to the use thereof.

11.2.2 Compliance with State and Local Laws. The Board, on behalf of the Association, shall carry out its management, Maintenance and enforcement responsibilities in such a manner as to comply with all applicable city, county and state ordinances, regulations and laws. In the event of any conflict between the Association Documents and any local or state ordinance, regulation or law, the more restrictive requirement or provision shall apply.

11.2.3 Delegation of Responsibilities. In the event any subdivision plat, deed restriction or this Declaration permits the Board to determine whether or not Owners of certain Lots will be responsible for Maintenance of certain Common Areas or Areas of Association Responsibility including public rights-of-way, the Board shall have the sole discretion to determine whether or not it would be in the best interest of the Owners and Residents of Stellar Air Park Estates II for the Association or for an individual Owner to be responsible for such Maintenance, considering cost, uniformity of appearance, location and other factors deemed relevant by the Board. The Board may cause the Association to contract with others for the performance of the Maintenance and other obligations of the Association under this Article XI and, in order to promote uniformity and harmony of appearance, the Board may also cause the Association to contract to provide Maintenance services to Owners of Lots in exchange for the payment of such fees as the Association and Owner may agree.

11.2.4 Failure to Maintain Common Areas; City's Right to Maintain. In the event the Association fails to maintain any of the Areas of Association Responsibility in a manner reasonably satisfactory to the City of Chandler, the City may advise the Association in writing (by delivery of such notice to the principal place of business of the Association or to the Association's statutory agent and by delivery of such notice to each of the Owners) of such failure and the action specifically requested by the City to rectify that failure. If the Association fails, within thirty (30) days (or such longer period as may be reasonably necessary to cure such failure) after its receipt of such notice from the City, the City may perform the required maintenance and may recover the maintenance costs as hereinafter set forth:

(a) The Owners of all Lots shall be jointly and severally liable to the City for reasonable maintenance costs incurred by the City pursuant to this Subsection, together with interest at the legal rate and reasonable attorneys' fees. If those amounts are not paid within thirty (30) days after written demand to the Association for payment of maintenance costs incurred by the City pursuant to this Section 11.2.4, the City may record a Notice of Claim of Lien against each of the Lots to secure the payment of such amounts, a copy of which must be forwarded to each of the Owners, provided however that the amount of any claim by the City against a Lot shall not exceed the Lot or Owner's pro rata share of such obligation as provided for in Article VIII of this Declaration.

(b) If the Association is no longer in existence, this Section 11.2.4 shall be read as if the references to the Association instead refer to the Owners.

(c) The City shall have the right, at its option, to enforce collection of any amounts owed to the City under Subsection 11.2.4 above in any manner allowed by law, including, without limitation, bringing an action against one or more of the Owners to pay such

amounts, or bringing an action to foreclose its lien against any or all of the Lots in the manner provided by law for the foreclosure of a realty mortgage. The City shall have the power to bid at any foreclosure sale and to purchase the Lots subject to sale.

(d) Any Owner which, by reason of the City's exercise of its rights as described herein, is forced to pay a greater amount of such maintenance expenses than would have been its pro rata share under Article VIII of this Declaration, shall have a claim for contribution and reimbursement against any Owner which paid less than its pro rata share of such expenses, and may file a Notice and Claim of Lien against such Owner's Lot in the same manner as the City under Subsection (c) hereinabove, and may enforce that lien as herein described. In the event any maintenance performed by the City pursuant to this Paragraph is the result of the failure of any Owner to perform its obligations under this Declaration, then the Association and/or each other Owner(s) shall have a claim for contribution and reimbursement against the Owner(s) who failed to perform such obligations.

(e) Notwithstanding any provisions of this Declaration to the contrary, this Subsection 11.2.4 cannot be amended in a manner that will reduce the City's rights or increase its obligations without obtaining the City's consent in recordable written form.

**11.3 Assessment of Certain Maintenance Costs.** In the event that the need for Maintenance or repair of Common Areas, Areas of Association Responsibility, structures and other property maintained by the Association is caused through the willful or negligent act of any Owner, or that Owner's family, guests or tenants, the cost of such Maintenance or repairs shall be added to and become a part of the Assessment to which such Owner and the Owner's Lot is subject and shall be secured by the Assessment Lien. Any charges or fees to be paid by the Owner of a Lot pursuant to this Section 11.3 in connection with a contract entered into by the Association for the performance of an Owner's Maintenance responsibilities shall also become a part of such Assessment and shall be secured by the Assessment Lien as a Remedial Assessment.

**11.4 Improper Maintenance and Use of Lots.** In the event any portion of any Lot is so maintained as to present a nuisance, or substantially detract from the appearance or quality of the surrounding Lots or other areas of Stellar Air Park Estates II which are substantially affected thereby or related thereto, or in the event any portion of a Lot is being used in a manner which violates this Declaration or in the event the Owner of any Lot is failing to perform any of its obligations under this Declaration, any declaration of annexation, the Association Rules or Design Guidelines, the Board may, by resolution, make a finding to such effect, specifying the particular condition or conditions which exist. The Board shall then give written notice of its findings to the offending Owner and inform the Owner that unless corrective action is taken within fourteen (14) days, the Board may cause such action to be taken at said Owner's cost. If at the expiration of said 14-day period of time the requisite corrective action has not been taken, the Board is authorized and empowered to cause such action to be taken and the cost thereof shall be added to and become a part of the Assessment to which the offending Owner and the Owner's Lot is subject and shall be secured by the Assessment Lien as a Remedial Assessment.

**11.5 Boundary Walls.** Except as hereinafter provided, the rights and duties of Owners of contiguous properties which have walls or fences which are located between two Lots (including, but not limited to walls separating portions of a Hanger) shall constitute a "Boundary Wall" and to the extent consistent with this Section 11.5, the general rules of law regarding boundary walls shall apply.

(a) Each Owner shall have the right to use the Boundary Wall, provided that such use does not interfere with the other Owner's use and enjoyment thereof.

(b) If a Boundary Wall is damaged or destroyed through the act or failure to act of an Owner or any of his tenants, agents, guests or members of his family (whether such act is negligent or otherwise culpable), it shall be the obligation of such Owner to promptly rebuild and repair the Boundary Wall without cost to the Owner of the adjoining property.

(c) In the event any Boundary Wall is destroyed or damaged (including deterioration from ordinary wear and tear and lapse of time), other than by the act or failure to act of an adjoining Owner, his tenants, agents, guests or family, it shall be the obligation of all Owners whose properties adjoin such Boundary Wall to rebuild and repair such Structure at their joint expense, such expense to be allocated among the Owners in accordance with the frontage of their respective properties on the damaged or destroyed Boundary Wall.

(d) In the event of a dispute between Owners with respect to construction, repair or rebuilding of a Boundary Wall, or with respect to the sharing of the cost thereof, such adjoining Owners shall submit the dispute to the Board, the decision of which shall be binding. Notwithstanding any such decision, an Owner may seek indemnity from any party causing the damage.

(e) Subject to Sections 11.3 and 11.4, any Owner may construct a Boundary Wall. Any Owner who constructs a Boundary Wall shall only be obligated to stucco and paint the side of the Boundary Wall which faces the Owner's Lot. The side of the Boundary Wall facing the adjoining Lot or Lots shall be left in an unfinished condition until each adjoining Owner constructs a Residence on its respective Lot, at which time the adjoining Owner will be responsible for stuccoing and painting its side of the Boundary Wall.

(f) Subject to Sections 11.3 and 11.4, any Owner who constructs a Boundary Wall (the "Reimbursable Owner") shall be entitled to reimbursement from each adjoining Lot Owner who commences construction of a Residence on his Lot (the "Owing Owner") of an amount equal to one-half of the lesser of the reasonable cost (at the time of construction) of a six feet high, six inch Boundary Wall located between the adjoining Lots and any retaining wall attached to the Boundary Wall. Reimbursement shall be due when construction of a Residence is commenced on the Lot adjoining the Lot owned by the Reimbursable Owner. The reimbursement obligation of an Owing Owner under this Section shall be the personal obligation of the Owing Owner and shall not pass to or be binding upon the Owing Owner's successors in title. The conveyance of the Lot by the Owing Owner before reimbursement is made to the Reimbursable Owner shall not relieve such Owing Owner of responsibility for such reimbursement. No Owing Owner shall stucco or paint the side of the Boundary Wall facing its Lot or attached any wall or fence to the Boundary Wall until the such time as the Reimbursable Owner has been paid all amounts due under this Section.

(g) The Owners of contiguous Lots who share a Boundary Wall shall both equally have the right to use such Boundary Wall provided that such use by one Owner does not interfere with the use and enjoyment of same by the other Owner. Except as otherwise provided in this Section, the Owners of contiguous Lots who share a Boundary Wall shall each pay one-half (1/2) of the cost of any maintenance, repair or replacement of the Boundary Wall. Either of such Owners may perform any necessary repair, maintenance or replacement of the Boundary Wall and in such event, such Owner shall be entitled to reimbursement from the other Owner for one-half (1/2) of such cost. In the event that any Boundary Wall is damaged or destroyed through the negligence or willful act of an Owner, his agents, tenants, licensees, guests or family, it shall be the obligation of such Owner to rebuild and repair the Boundary Wall without cost to the other Owner or Owners who share the Boundary Wall.

(h) The right of any Owner to contribution or reimbursement from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors in title. In addition to meeting the other requirements of this Declaration and of any other building code or similar regulations or ordinances, any Owner proposing to modify, make additions to or rebuild a Boundary Wall shall first obtain the written consent of the adjoining Owners.

(i) In the event any Boundary Wall encroaches upon a Lot, a valid easement for such encroachment and for the maintenance of the Boundary Wall shall and does exist in favor of the

Owners of the Lots which share such Boundary Wall.

## **ARTICLE XII. RIGHTS AND POWERS OF ASSOCIATION**

**12.1 Association's Rights and Powers As Set Forth in Articles and Bylaws.** In addition to the rights and powers of the Association set forth in this Declaration, the Association shall have such rights and powers as are set forth in its Articles and Bylaws, which shall include all rights and powers as may be reasonably necessary in order to affect the purposes of the Association as set forth herein. After incorporation of the Association, a copy of the Articles and Bylaws of the Association shall be available for inspection by Members, prospective purchasers, mortgagees and other persons or entities with an interest in Stellar Air Park Estates II at the office of the Association during reasonable business hours.

**12.2 Enforcement of the Association Documents.** The Association, in the first instance, and the Architectural Committee, each as the agent and representative of the Owners or any Owner (including Declarant, so long as Declarant is an Owner), shall have the right (without obligation) to enforce, by any proceeding at law or in equity, the Covenants set forth in the Association Documents and any and all covenants, restrictions, reservations, charges, servitudes, assessments, conditions, liens or easements provided for in any contract, deed, declaration or other instrument which (a) shall have been executed pursuant to, or subject to, the provisions of this Declaration, or (b) otherwise shall indicate that the provisions of such instrument were intended to be enforced by the Association or by Declarant. The Association is authorized to impose sanctions for violations without court approval. Such sanctions may include reasonable monetary fines and suspension of the right to vote or use any facilities on the Common Area as provided in Section 3.1(c). In the event suit is brought or arbitration is instituted or an attorney is retained by the Association or the Architectural Committee to enforce the terms of this Declaration or other documents as described in this Section 12.2 and the Association or the Architectural Committee prevails, the Association or Architectural Committee, as applicable, shall be entitled to recover, in addition to any other remedy, reimbursement for attorneys' fees, court costs, costs of investigation and other related expenses incurred in connection therewith, including, but not limited to, the Association's administrative costs and fees. Said attorneys' fees, costs and expenses shall be the personal liability of the breaching Owner and shall also be secured by the Assessment Lien against said Owner's Lot. The Association and the Declarant are authorized, although not required, to retain an attorney in conjunction with the enforcement of this Declaration. An Owner in violation of this Declaration shall be liable for all reasonable attorneys' fees, witness fees, costs and related expenses associated with the enforcement, and the foregoing enforcement costs shall be secured by the Assessment Lien. If the Association and the Architectural Committee shall fail or refuse to enforce this Declaration for an unreasonable period of time after written request by a Member to do so, then any Member may enforce the provisions of the Declaration at his own expense by any appropriate action, whether in law or in equity, but regardless of the outcome, no expenses of the action shall be paid by the Association.

**12.3 Contracts with Others for Performance of Association's Duties.** Subject to the restrictions and limitations contained herein, the Association may enter into contracts and transactions with others, including the Declarant and its affiliated companies, and such contracts or transactions shall not be invalidated or in any way affected by the fact that one or more directors or officers of the Association or members of any committee are employed by or otherwise connected with Declarant or its affiliates, provided that the fact of such interest shall be disclosed or known to the other directors acting upon such contract or transaction, and provided further that the transaction or contract is fair and reasonable. Any such director, officer or committee member may be counted in determining the existence of a quorum at any meeting of the Board or committee of which he is a member which shall authorize any contract or transaction described above or grant or deny any approval sought by the Declarant, its affiliated companies or any competitor thereof and may vote thereat to authorize any such contract, transaction or approval with like force and effect as if he were not so interested. Notwithstanding anything to the contrary contained herein, during the period when the Declarant has a Class B vote, any professional management contract

entered into by the Association must be terminable with or without cause, upon no more than ninety (90) days written notice and without payment of any penalty.

**12.4 Procedure for Change of Use of Common Area.** Upon (a) adoption of a resolution by the Board stating that in the Board's opinion, the then present use of a designated part of the Common Area or of the Association's interest in other Common Areas is no longer in the best interests of the Owners and Residents and (b) the approval of such resolution by two-thirds (2/3) of the votes of each class of Members at a meeting duly called for such purpose, the Board shall have the power and right to change the use thereof (and in connection therewith, construct, reconstruct, alter or change the buildings, structures and improvements thereon in any manner deemed necessary by the Board to accommodate the new use), provided such new use (i) shall be for the benefit of the Owners and Residents, and (ii) shall be consistent with any deed restrictions and zoning regulations restricting or limiting the use of the land. Alternatively, the Board, upon satisfaction of Subsection (a) above, may, in lieu of calling a meeting, notify in writing all Owners of the proposed change of use and of their right to object thereto and, if no more than twenty percent (20%) of the Class A Memberships eligible to vote object in writing within thirty (30) days after receipt of such notice, the proposed transaction shall be deemed approved by the Members and a meeting of the Members shall not be necessary.

**12.5 Procedure for Alteration of Common Area; Contracts Concerning the Common Area.** The Association shall have the right to dedicate or transfer all or any part of the Common Areas to any public authority or utility as provided in Section 3.1(a). In addition, the Association shall have the right to change the size, shape or location of the Common Areas, to exchange the Common Areas for other property or interests which become Common Areas, and to abandon or otherwise transfer Common Areas (to a non-public authority) upon (i) the adoption of a resolution by the Board stating that ownership and/or use of the relevant Common Areas is no longer in the best interests of the Owners and Residents and that the change desired shall be for their benefit and shall not substantially adversely affect them, and (ii) the approval of such resolution by two-thirds of the votes of each class of Members, voting in person or by proxy, at a meeting called for such purpose. Alternatively, the Board, upon satisfaction of Subsection (i) above, may, in lieu of calling a meeting pursuant to Subsection (ii) above, notify in writing all Owners of the proposed transaction and of their right to object thereto and, if no more than twenty percent (20%) of the Class A Members eligible to vote object in writing within thirty (30) days after receipt of such notice, the proposed transaction shall be deemed approved by the Members and a meeting of the Members shall not be necessary.

### **ARTICLE XIII. TERM; AMENDMENTS; TERMINATIONS**

**13.1 Term; Method of Termination.** This Declaration shall be effective upon the date of recordation hereof and, as amended from time to time, shall continue in full force and effect for a term of twenty (20) years from the date this Declaration is recorded. From and after said date, this Declaration, as amended, shall be automatically extended for successive periods of ten (10) years each. This Declaration may be terminated at any time if ninety percent (90%) of the authorized votes shall be cast in favor of termination at an election duly called and held for such purpose. If the necessary votes are obtained, the Board shall cause to be recorded with the Maricopa County Recorder, Arizona, a Certificate of Termination, duly signed by the President or Vice President and attested by the Secretary or Assistant Secretary of the Association, with their signatures acknowledged. Thereupon, this Declaration shall have no further force and effect, and the Association shall be dissolved pursuant to the terms set forth in its Articles. Any Association funds remaining following such termination and dissolution shall be distributed to the Members and their mortgagees as their interest may appear at a uniform rate per Membership.

**13.2 Amendments.** Until the first sale of a Lot within the Property to an Owner for use and occupancy as a Dwelling Unit, this Declaration may be amended by recorded instrument duly executed by Declarant, without the necessity of calling a meeting of Owners or obtaining the consent of Owners. Thereafter, this Declaration may be amended either at any time during the initial twenty-year term or during any extension thereof, pursuant to Section 13.1 by recording with the Maricopa County Recorder, Arizona,

a Certificate of Amendment, duly signed and acknowledged in the same manner as required for a Certificate of Termination in Section 13.1. The Certificate of Amendment shall set forth in full the amendment adopted, and, except as provided hereafter, shall certify that at an election duly called and held for this purpose pursuant to the provisions of the Articles and Bylaws, the Members casting seventy-five percent (75%) of the votes cast at the election voted affirmatively for the adoption of the amendment. The Declaration may be amended with respect to all or any portion of the Lots covered hereby. This Declaration may not be amended to reduce or alter the rights of the Declarant without the written approval of the Declarant. The Declarant alone may amend this Declaration at any time to relinquish its right to appoint the members of the Architectural Committee as provided in Section 5.1, or to amend as permitted in Section 13.3 hereafter. In addition, at any time, the Declarant alone shall have the right to amend the Declaration or any declaration of annexation to comply with applicable law or to correct any error or inconsistency in the Declaration or the Declaration of Annexation if the amendment does not adversely affect the rights of any Owner.

### 13.3 Intentionally Deleted.

**13.4 Right of Amendment if Requested by Governmental Agency or Federally Chartered Lending Institutions.** Anything in this Article to the contrary notwithstanding, Declarant reserves the right to amend all or any part of this Declaration to such extent and with such language as may be requested by the Federal Housing Administration ("FHA"), the Veterans Administration ("VA"), the Federal Home Loan Mortgage Corporation ("FHLMC") or the Federal National Mortgage Corporation ("FNMA") and to further amend to the extent requested by any other federal, state or local government agency which requests such an amendment as a condition precedent to such agency's approval of the Declaration, or by any federally chartered lending institution as a condition precedent to lending funds upon the security of any Lot(s) or any portions thereof. Any such amendment shall be affected by the recordation by Declarant of the Amendment duly signed by or on behalf of the authorized agents of Declarant with their signatures acknowledged, specifying the federal, state or local government agency or the federally chartered lending institution requesting the amendment and setting forth the amendatory language requested by such agency or institution. Recordation of such Amendment shall be deemed conclusive proof of the agency's or institution's request for such an amendment, and such Amendment, when recorded, shall be binding upon all of the Stellar Air Park Estates II and all persons having an interest therein.

**13.5 Separate Taxation.** The Common Area shall be deemed to be a parcel of real property and shall be assessed separately for all taxes, assessments and other charges of the State of Arizona or any political subdivision or of any special improvement district or of any other taxing or assessing authority.

**13.6 Mechanics Liens.** No labor performed or material furnished for use in connection with any Lot with the consent or request of an Owner or his agent or subcontractor shall create any right to file a statement of mechanic's or materialmen's lien against the Lot of any other Owner not expressly consenting to or requesting the same or against any interest in the Common Areas.

## ARTICLE XIV. DISPUTE RESOLUTION

**14.1 Agreement to Resolve Certain Disputes Without Litigation.** As used in this Article XIV, the term "Claim" shall mean: (a) any claim or cause of action arising out of or related in any way to the planning, design, engineering, grading, construction or development of the Common Area or any Lot or any Improvements situated thereon, including, without limitation, any claim or cause of action that the Common Areas are defective or that the Declarant or its agents, contractors, employees, subcontractors, architects, engineers or consultants were negligent in the planning, design, engineering, grading, construction or development thereof; or (b) any claim or cause of action against the Declarant or any employee, agent, director, member or officer of Declarant arising out of or in any way related to the development of the Property or the management or operation of the Association, including, without limitation, any claim for negligence, fraud, intentional misconduct or breach of fiduciary duty. The Association, the Declarant, all Owners, Lessees, Residents and other Persons bound by this Declaration,

and any Person not otherwise bound by this Declaration who agrees to submit to this Article (collectively, the "Bound Parties") agree that the dispute resolution procedures set forth in this Article shall apply to all Claims.

**14.2 Notice of Claim.** Any Bound Party having or alleging to have a Claim (a "Claimant") against any other Bound Party (a "Respondent") shall notify each Respondent in writing of the Claim (the "Claim Notice"), stating plainly and concisely: (a) the nature of Claim, including, date, time, location, Persons involved, and Respondent's role in the Claim; (b) the factual and legal basis of the Claim; and (c) what Claimant wants Respondent to do or not do to resolve the Claim.

In the event the Claimant is the Association, the Association must provide written notice to all Members prior to delivering a Claim Notice or commencing any legal action, cause of action, proceeding, reference or arbitration against Declarant or any employee, agent, director, officer or other authorized person which notice shall (at a minimum) include: (a) a description of the Claim, (b) a description of the attempts of Declarant to correct such Alleged Defect (as defined and described in the Claim) and the opportunities provided to Declarant to correct such Alleged Defect, (c) the estimated cost to repair such Alleged Defect, (d) the name and professional background of the attorney retained by the Association to pursue the claim against Declarant and a description of the relationship between such attorney and member(s) of the Board (if any), (e) a description of the fee arrangement between such attorney and the Association, (f) the estimated attorneys' fees and expert fees and costs necessary to pursue the claim against the Declarant and the source of the funds which will be used to pay such fees and expenses, (g) the estimated time necessary to conclude the action against the Declarant, (h) a description of the manner in which the action will be funded and a description of any demands, notices, offers to settle or responses to offers to settle made either by the Association or a Bound Party, and (i) an affirmative statement from the Board that the action is in the best interests of the Association and its Members. If the Alleged Defect is alleged to be the result of an act or omission of a person licensed by the State of Arizona under Title 20 or Title 32 of the Arizona Revised Statutes (a "Licensed Professional"), then the notice from the Association must be accompanied by an affidavit from a Licensed Professional in the same discipline as the Licensed Professional alleged to be responsible for the Alleged Defect. The affidavit must contain the information required to be contained in a preliminary expert opinion affidavit submitted pursuant to Section 12-2602B of the Arizona Revised Statutes.

**14.3 Mediation.** If the Parties do not resolve the Claim through negotiation within thirty (30) days after the date of the Claim Notice or within such longer period as may be agreed upon by the Parties ("Termination of Negotiations"), Claimant shall have thirty (30) additional days within which to submit the Claim to mediation by the American Arbitration Association ("AAA") or such other independent mediation service agreed to by the Claimant and Respondent.

If Claimant does not submit the Claim to mediation within thirty (30) days after Termination of Negotiations, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim.

If the Parties do not settle the Claim within thirty (30) days after submission of the matter to the mediation process, or within such time as determined reasonable or appropriate by the mediator, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation Notice"). The Termination of Mediation Notice shall set forth when and where the Parties met, that the Parties are at an impasse, and the date that mediation was terminated.

**14.4 Binding Arbitration.** In the event a Claim is not resolved by Mediation, the Claimant shall have fifteen (15) days after the date of the Termination of Mediation Notice to submit the Claim to binding arbitration in accordance with this Section 14.4. If the Claimant fails to timely submit the Claim to arbitration, then the Claim shall be deemed waived and abandoned and the Respondent shall be relieved of any and all liability to Claimant arising out of the Claim. If the Claimant submits the Claim to binding



arbitration in accordance with this Section 14.4, the arbitration shall be conducted in accordance with the following:

- (a) Initiation of Arbitration. The arbitration shall be initiated by either party delivering to the other a Notice of Intention to Arbitrate as provided for in the AAA Commercial Arbitration Rules, or such other AAA rules as the AAA determines to be applicable (the "AAA Rules"). A Respondent may join as a party to the arbitration any Bound Party who may be liable to the Respondent or the Claimant with respect to the Claim.
- (b) Governing Procedures. The arbitration shall be conducted in accordance with the AAA Rules and A.R.S. § 12-1501, *et seq.* In the event of a conflict between the AAA Rules and this Section 14.4, the provisions of this Section 14.4 shall govern.
- (c) Appointment of Arbitrator. The parties shall appoint a single Arbitrator by mutual agreement. If the parties have not agreed within ten (10) days of the date of the Notice of Intention to Arbitrate on the selection of an arbitrator willing to serve, the AAA shall appoint a qualified Arbitrator to serve. Any arbitrator chosen in accordance with this Subsection (c) is referred to in this Section 14.4 as the "Arbitrator".
- (d) Qualifications of Arbitrator. The Arbitrator shall be neutral and impartial. The Arbitrator shall be fully active in such Arbitrator's occupation or profession, knowledgeable as to the subject matter involved in the dispute, and experienced in arbitration proceedings. The foregoing shall not preclude otherwise qualified retired lawyers or judges.
- (e) Disclosure. Any candidate for the role of Arbitrator shall promptly disclose to the parties all actual or perceived conflicts of interest involving the dispute or the parties. No Arbitrator may serve if such person has a conflict of interest involving the subject matter of the dispute or the parties. If an Arbitrator resigns or becomes unwilling to continue to serve as an Arbitrator, a replacement shall be selected in accordance with the procedure set forth in Subsection (c) above.
- (f) Compensation. The Arbitrator shall be fully compensated for all time spent in connection with the arbitration proceedings in accordance with the Arbitrator's usual hourly rate, unless otherwise agreed to by the parties, for all time spent by the Arbitrator in connection with the arbitration proceeding. Pending the final award, the Arbitrator's compensation and expenses shall be advanced equally by the parties.
- (g) Preliminary Hearing. Within thirty (30) days after the Arbitrator has been appointed, a preliminary hearing among the Arbitrator and counsel for the Parties shall be held for the purpose of developing a plan for the management of the arbitration, which shall then be memorialized in an appropriate order. The matters which may be addressed include, in addition to those set forth in the AAA Rules, the following: (i) definition of issues; (ii) scope, timing and types of discovery, if any; (iii) schedule and place(s) of hearings; (iv) setting of other timetables; (v) submission of motions and briefs; (vi) whether and to what extent expert testimony will be required, whether the Arbitrator should engage one or more neutral experts, and whether, if this is done, engagement of experts by the Parties can be obviated or minimized; (vii) whether and to what extent the direct testimony of witnesses will be received by affidavit or written witness statement; and (viii) any other

matters which may promote the efficient, expeditious, and cost-effective conduct of the proceeding.

- (h) Management of the Arbitration. The Arbitrator shall actively manage the proceedings as the Arbitrator deems best so as to make the proceedings expeditious, economical and less burdensome than litigation.
- (i) Confidentiality. All papers, documents, briefs, written communication, testimony and transcripts as well as any and all arbitration decisions shall be confidential and not disclosed to anyone other than the Arbitrator, the parties or the parties' attorneys and expert witnesses (where applicable to their testimony), except that upon prior written consent of all parties, such information may be divulged to additional third parties. All third parties shall agree in writing to keep such information confidential.
- (j) Hearings. Hearings may be held at any place within the State of Arizona designated by the Arbitrator and, in the case of particular witnesses not subject to subpoena at the usual hearing site, at a place where such witnesses can be compelled to attend.
- (k) Final Award. The Arbitrator shall promptly (within sixty (60) days of the conclusion of the proceedings or such longer period as the parties mutually agree) determine the claims of the parties and render a final award in writing. The Arbitrator may award the prevailing party in the proceeding all or a part of such party's reasonable attorneys' fees and expert witness fees, considering the final result of arbitration, the conduct of the parties and their counsel in the course of the arbitration, and other relevant factors. The Arbitrator shall not award any punitive damages. The Arbitrator shall not award indirect, consequential or special damages regardless of whether the possibility of such damage or loss was disclosed to, or reasonably foreseen by the party against whom the claim is made; provided, however, that such damages may be deemed by the Arbitrator to be direct damages in an award reimbursing payments made by a party therefor to a third party. The Arbitrator shall assess the costs of the proceedings (including, without limitation, the fees of the Arbitrator) against the non-prevailing party.

**14.5 Right to Enter, Inspect, Repair and/or Replace.** Within a reasonable time after the receipt by the Declarant of a Claim Notice, the Declarant shall have the right, upon reasonable notice to Claimant and during normal business hours, to enter onto or into, as applicable, the Common Area, any Lot, including any Residential Unit constructed thereon, and/or any Improvements for the purposes of inspecting and/or conducting testing to determine the validity of the Claim and, if deemed necessary by the Declarant, to correct, repair and/or replace the alleged deficiency in the planning, design, engineering, grading, construction or development of the Common Area or any Lot, or any Improvement constructed on the Common Area or a Lot which is the basis for the Claim (the "Alleged Defect"). In conducting such inspection, testing, repairs and/or replacement, Declarant shall be entitled to take any actions as it shall deem reasonable and necessary under the circumstances.

Nothing set forth in this Section 14.5 shall be construed to impose any obligation on the Declarant to inspect, test, repair, or replace any item or Alleged Defect for which the Declarant is not otherwise obligated under applicable law or any limited warranty provided by the Declarant in connection with the sale of the Lots and/or the Improvements constructed thereon. The right of the Declarant to enter, inspect, test, repair and/or replace reserved hereby shall be irrevocable and may not be waived or otherwise terminated except by a writing, in recordable form, executed and recorded by the Declarant. In no event shall any statutes of limitations be tolled during the period in which the Declarant conducts any inspection or testing of any Alleged Defects.

**14.6 Use of Funds.** In the event the Association recovers any funds from a Declarant or any other Person as a result of a claim involving an Alleged Defect, the funds shall first be used to correct and or repair the Alleged Defect or to reimburse the Claimant for any costs actually incurred by such Claimant in correcting and/or repairing the Alleged Defect, and any excess funds shall be paid into the Association's reserve fund.

**14.7 Approval of Litigation.** The Association shall not deliver a Claim Notice to any Bound Party, commence any legal action or arbitration proceeding against any Bound Party or incur any expenses (including, without limitation, attorneys' fees) in connection with any Claim without the written approval of Owners entitled to cast more than seventy-five percent (75%) of the total votes in the Association, excluding the votes of any Owner who would be a defendant in such proceedings. The Association must pay for any such legal action or arbitration proceeding with monies that are specifically collected for such purposes and may not borrow money or use reserve funds or other monies collected for specific Association obligations other than legal fees. If the Association commences any legal action or arbitration proceeding involving a Claim, all Owners must notify prospective purchasers of such legal action or arbitration proceeding and must provide such prospective purchasers with a copy of the notice received from the Association in accordance with Section 14.2.

**BY ACCEPTANCE OF A DEED OR BY ACQUIRING A LOT, EACH PERSON, FOR HIMSELF, HIS HEIRS, PERSONAL REPRESENTATIVES, SUCCESSORS, TRANSFEREES AND ASSIGNS, AGREES TO HAVE ANY CLAIM FOR ALLEGED DEFECT RESOLVED ACCORDING TO THE PROVISIONS OF THIS ARTICLE XIV AND WAIVES THE RIGHT TO PURSUE DECLARANT, OR ANY OF DECLARANT'S AGENTS IN ANY MANNER OTHER THAN AS PROVIDED IN THIS ARTICLE XIV. THE ASSOCIATION, EACH LOT OWNER AND DECLARANT ACKNOWLEDGE THAT BY AGREEING TO RESOLVE ALL CLAIMS FOR ALLEGED DEFECTS AS PROVIDED IN THIS ARTICLE XIV, THEY ARE GIVING UP THEIR RESPECTIVE RIGHTS TO HAVE SUCH CLAIMS TRIED BEFORE A JURY. THE ASSOCIATION, EACH LOT OWNER AND DECLARANT FURTHER WAIVE THEIR RESPECTIVE RIGHTS TO AN AWARD OF PUNITIVE AND CONSEQUENTIAL DAMAGES RELATING TO A CLAIM FOR ALLEGED DEFECT BY ACCEPTANCE OF A DEED OR BY ACQUIRING A LOT, EACH LOT OWNER VOLUNTARILY ACKNOWLEDGES THAT HE IS GIVING UP ANY RIGHTS HE MAY POSSESS TO PUNITIVE AND CONSEQUENTIAL DAMAGES OR THE RIGHT TO A TRIAL BEFORE A JURY RELATING IN ANY WAY TO A CLAIM FOR ALLEGED DEFECT.**

**14.8 Arizona Statutory Compliance.** In the event a court of competent jurisdiction invalidates all or part of this Article XIV regarding resolution of Alleged Defects and litigation becomes necessary, Declarant, Association and all Owners shall be bound by the applicable Arizona construction defect statute presently codified at A.R.S. §12-1361, et seq. and A.R.S. §33-2001 et seq.

#### **ARTICLE XV. MISCELLANEOUS**

**15.1 Interpretation of the Covenants.** Except for judicial construction, the Association, by its Board and Architectural Committee, shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all persons and property benefitted or bound by the Covenants hereof.

**15.2 Severability.** Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity or enforceability of any of the other provisions hereof.

**15.3 Change of Circumstances.** Except as otherwise expressly provided in this Declaration, no change of conditions or circumstances shall operate to extinguish, terminate or modify any of the provisions of this Declaration.

**15.4 Association Rules and Regulations.** By a majority vote of the Board, the Association may, from time to time and subject to the provisions of this Declaration, adopt, amend and repeal rules and regulations, provided the Association Rules are consistent with the provisions of this Declaration, the Articles and Bylaws. The Association's Rules may regulate and pertain to any of the Association's Members, Owners or Occupants rights, activities and duties, including but not limited to rules regulating and governing the use of any Common Area or Areas of Association Responsibility as well as the uses and permitted activities on any Lot within the Property by an Owner, Resident, and their respective heirs, personal representatives, assignees, vendors, contractors, guests and invitees. Upon adoption, the Association's Rules shall have the same force and effect as if they were set forth in and were a part of this Declaration.

**15.5 Declarant's Disclaimer of Representations.** Anything to the contrary in this Declaration notwithstanding, and except as otherwise may be expressly set forth on a recorded plat or other instrument recorded in the office of the Maricopa County Recorder, Declarant makes no warranties or representations whatsoever that the plans presently envisioned or the complete development of Stellar Air Park Estates II can or will be carried out, or that any land now owned or hereafter acquired by the Declarant is or will be subjected to this Declaration or any other declaration, or that any such land (whether or not it has been subjected to this Declaration) is or will be committed to or developed for a particular (or any) use, or if that land is one used for a particular use, such use will continue in effect.

**15.6 No Warranty of Enforceability.** While Declarant has no reason to believe that any of the covenants contained in this Declaration are or may be invalid or unenforceable for any reason or to any extent, Declarant makes no warranty or representation as to the present or future validity or enforceability of any such covenants. Any Owner acquiring a Lot in Stellar Air Park Estates II in reliance on one or more of the Provisions in this Declaration shall assume all risks of the validity and enforceability thereof and by acquiring any Lot agrees that Declarant shall have no liability therefor.

**15.7 References to the Covenants in Deeds.** Deeds or any instruments affecting any part of Stellar Air Park Estates II may contain the covenants herein set forth by reference to this Declaration; but regardless of whether any such reference to this Declaration is made in any deed or instrument, each and all of the covenants shall be binding upon the Owner or other person claiming through any instrument and his heirs, executors, administrators, successors and assigns.

**15.8 Gender and Number.** Wherever the context of this Declaration so requires, words used in the masculine gender shall include the feminine and neuter genders; words used in the neuter gender shall include the masculine and feminine genders; words in the singular shall include the plural and words in the plural shall include the singular.

**15.9 Captions and Titles.** All captions, titles or headings of the Articles and Sections in this Declaration are for the purpose of reference and convenience only and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof or to be used in determining the intent or context thereof.

**15.10 Notices.** If notice of any action or proposed action by the Board or any committee or of any meeting is required by applicable law, this Declaration or resolution of the Board to be given to any Owner or Resident then, unless otherwise specified herein or in the resolution of the Board, such notice requirement shall be deemed satisfied if notice of such action or meeting is published once in any newspaper in general circulation within Maricopa County or its successor. This Section shall not be construed to require that any notice be given if not otherwise required, and shall not prohibit satisfaction of any notice requirement in any other manner. If notice is made by mail, it shall be deemed to have been received twenty-four (24) hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to such person at the address given by that person to the Association for the purpose of service of such notice, or to the address of the Lot owned by such person if no address has been given. Notice to the Board or to the Architectural Committee shall be delivered or sent by certified mail to the office of the Association.

**15.11 Litigation.** Notwithstanding anything set forth in Article XIV herein above, the following actions may be filed in a court of competent jurisdiction by the Association: (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens), (b) the imposition and collection of Assessments as provided in Article IX hereof, (c) proceedings involving challenges to taxation, or (d) counterclaims brought by the Association in proceedings instituted against it. In such legal actions the prevailing party may be awarded its attorneys' fees, costs and expenses of bringing the action. The Association (or Board of Directors) shall not initiate legal proceedings or join as a plaintiff in legal proceedings without the prior approval of seventy-five percent (75%) of the members of the Association who are entitled to vote. The cost of any such legal proceeds initiated by the Association shall be funded by the Association with monies that are specifically collected for that purpose and the Association shall not borrow money, use reserve funds or use monies collected for other specific Association obligations for such purpose. With respect to matters involving property or improvements to property, the Association or the Board additionally not initiate legal proceeding unless: (1) such property or improvements is owned either by the Association or jointly by all Members of the Association; (2) the Association has the Maintenance responsibility for such property or improvements pursuant to this Declaration; (3) the Owner who owns the property or improvements consents in writing to the Association initiating or joining such legal proceeding. Nothing in this section shall preclude the Board from incurring expenses of legal advice in complying with statutes or regulations related to the operation of the Association or otherwise in the normal course of operating the Association when legal proceedings are not involved. Notwithstanding anything herein contained to the contrary, this Section 15.11 and Article XIV shall not be amended without the vote of at least eighty percent (80%) of the total votes in the Association consent or approve such amendment or modification.

**15.12 Rights of First Mortgagees.**

15.12.1 Written Request. Any First Mortgagee will, upon written request, be entitled to: (i) inspect the books and records of the Association during normal business hours; (ii) receive within ninety (90) days following the end of any fiscal year of the Association, a 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 Association and be permitted to designate a representative to attend all such meetings.

15.12.2 No Subdivision. No Lot shall be partitioned or subdivided without the prior written approval of the holder of any First Mortgage on such Lot.

15.12.3 Actions of the First Mortgagees. Unless at least two-thirds (2/3) of the First Mortgagees (based upon one vote for each First Mortgagee) or Owners (other than the Declarant or Developer) of at least two-thirds (2/3) of the Lots have given their approval, the Association shall not be entitled to:

- a) Seek to abandon, partition, subdivide, sell or transfer the Common Areas owned, directly or indirectly, by the Association for the benefit of the Lots. The granting of easements for public utilities or other public purposes consistent with the intended use of such Common Area shall be deemed a transfer within the meaning of this Subsection.
- b) Change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner.
- c) Change, waive or abandon any scheme or regulations, or enforcement thereof, pertaining to the architectural designs or the exterior appearance of Lots or the Maintenance of the Common Area.

- d) Fail to maintain the fire and extended coverage on insurance on Common Areas on current replacement cost basis on an amount of at least 100 percent (100%)

15.12.4 No Priority. No provision of this Declaration gives or shall be construed as giving any Owner or other person priority over any rights of a First Mortgage of a Lot in the case of the distribution to such Owner of insurance proceeds or condemnation awards for losses to or taking of the Common Areas.

15.12.5 Conflict Among Documents. In the event of any conflict or inconsistency between the provisions of this Section 15.12 and any other provision of the Association Documents, the provisions of this Section 15.12 shall prevail; provided however, that in the event of any conflict or inconsistency between the provisions of this Section 15.12 and any other provisions of the Association Documents with respect to the number or percentage of Owners or First Mortgagees that must consent to (i) an amendment of the Declaration, Articles or Bylaws; (ii) termination of the project; or (iii) certain actions of the Association requiring the greatest number or percentage of Owners shall prevail; provided however, that the Declarant, so long as the Declarant owns any Lot, and thereafter the Board, without the consent of any Owner or First Mortgagee being required shall have the right to amend this Declaration, the Articles or the Bylaws in order to conform to the guidelines or requirements of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Veterans Administration or any federal, state or local government agency whose approval of the Property, the Plat or the Declaration is required or requested by the Declarant or the Board.

*[The Balance of Page is Left Intentionally Blank. Signature on Following Page.]*

IN WITNESS WHEREOF, the undersigned has executed this Declaration as of the day and year first above written.

**STELLAR ESTATES II, LLC**, an Arizona limited liability company

**By: JNJE, LLC**, an Arizona limited liability company, Manager

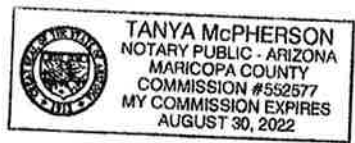
By: *John Cochran*  
Title: *Manager*  
Its: \_\_\_\_\_

STATE OF ARIZONA )  
County of Maricopa )

The foregoing instrument was acknowledged before me this *16* day of *February, 2019*, by *John Cochran*, individually and as manager of Stellar Estates II, LLC, an Arizona limited liability company.

*Tanya McPherson*  
NOTARY PUBLIC

My Commission Expires:  
*8-30-22*



**Exhibit A – Legal Description**

LOTS 1 THROUGH 14, TRACTS AA, BB, CC AND DD, OF STELLAR AIRPARK ESTATES II AMENDED, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF MARICOPA COUNTY, ARIZONA, RECORDED AS BOOK 1309 OF MAPS, PAGE 16.