

F. ANN RODRIGUEZ, RECORDER  
RECORDED BY: C\_V  
DEPUTY RECORDER  
1016 PE5-43

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CITY OF TUCSON  
PICK UP



DOCKET: 13439  
PAGE: 1226  
NO. OF PAGES: 57  
SEQUENCE: 20082270354  
11/21/2008  
COV 16:05  
PICKUP  
AMOUNT PAID \$ 61.00

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

EL DORADO OFFICE CONDOMINIUM  
Units 101 to 112, 201 to 212, 301 to 315  
Limited Common Elements "A" (Access), "B" (Restrooms)  
and "C" (Private Parking)  
Common Element "D" (Common Element "D" includes  
Private Driveways, General Parking Spaces, Recreation, Landscape Areas and all other  
Portions of the Condominium, except for the Units, that are not Separately Described)

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THIS DECLARATION is made on October 10, 2008 by HSL DORADO PLACE OFFICE, LLC, an Arizona limited liability company, "Declarant."

RECITALS

Declarant is the owner of real property located in Tucson, Pima County, Arizona which is described as EL DORADO OFFICE CONDOMINIUM Units 101 to 112, 201 to 212, 301 to 315, Limited Common Elements "A" (Access), "B" (Restrooms), and "C" (Private Parking) and Common Element "D". Common Element "D" includes the private driveways, general parking spaces, recreation, landscape areas and all other portions of the Condominium, except for the Units, that are not separately described). Such Property ("the "Property"), is set forth in the Plat for EL DORADO OFFICE CONDOMINIUM, as shown in Book 67 of Maps at Page 21, Pima County Recorder.

Declarant states that all of the Property will be held, sold and conveyed subject to the following easements, covenants, conditions and restrictions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the property. These easements, covenants, conditions and restrictions will run with the property and will be binding upon all persons having or acquiring any right, title or interest in the described properties or any part thereof, and will inure to the benefit of each such person.

ARTICLE I  
DEFINITIONS

The definitions in A.R.S. §33-1202, as amended from time to time, apply to this Condominium except as otherwise provided in this Declaration.

- Section 1.1. "Act" refers to the Arizona Condominium Act, A.R.S. §33-1201, et. seq., as amended from time to time.
- Section 1.2. "Annual Assessments" are those assessments which are levied by the Association and used to the benefit of the Owners, the Owners' guests, tenants and invitees, for the improvement of the Common Elements and for all other purposes set forth in the Governing Documents, this Declaration and all applicable laws.
- Section 1.3. "Architectural Committee" or "AC" is the Committee charged with the responsibility of reviewing and approving all plans and specifications for any improvements to the Units and performing any other tasks delegated

to it by the Board or as set forth in the Governing Documents. The members of the AC will be appointed by the Board after the expiration of the Period of Declarant Control.

- Section 1.4. "Articles" refer to the Articles of Incorporation of the Association and any amendments which are filed in the Office of the Arizona Corporation Commission.
- Section 1.5. "Assessment Lien" means a lien against any Unit arising out of the nonpayment of Annual Assessments, or any other sums due to the Association, including late fees, interest, fines, attorney fees and any other collection costs.
- Section 1.6. "Association" means EL DORADO OFFICE CONDOMINIUM ASSOCIATION, its successors and assigns.
- Section 1.7. "Board" means the Board of Directors of the Association.
- Section 1.8. "Building" refers to Buildings 1 through 5, each of which are three story buildings. The third floor of Buildings 1 and 2 are joined by Unit 305, the third floor of Buildings C and D are joined by Unit 308 and the third floor of Buildings 4 and 5 and joined by Unit 313.
- Section 1.9. "Bylaws" refer to the Bylaws of the Association, as may be amended from time to time.
- Section 1.10. "Common Elements" means all portions of the Condominium other than the Units. The Common Elements include the Buildings and the foundations, the roofs, the Parking Spaces, the landscaped areas surrounding the Buildings, and any other property that is controlled by the Association for the common use and enjoyment of the Owners, exclusive of the Units.
- Section 1.11. "Common Utility Expenses" means all expenses for utilities provided to the condominium, including, but not limited to, water, sewer, garbage collection, electricity. Utilities that are separately metered to the Units are the responsibility of the Owner of the Unit and not the Association.
- Section 1.12. "Condominium" refers to the entire project consisting of the Common Elements, Limited Common Elements and Units.
- Section 1.13. "Declarant" refers to HSL DORADO PLACE OFFICE, LLC, an Arizona Limited Liability Company, its successors and assigns.
- Section 1.14. "Declarant's Rights" means any right or combination of rights reserved by or granted to the Declarant in this Declaration to do any of the following:
- 1.14.1. Create easements, Units, Common Elements or Limited Common Elements within the Condominium;

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- 1.14.2. Divide Units, combine Units, convert Units into Common Elements or convert Common Elements into Units;
  - 1.14.3. Amend the Governing Documents during the Period of Declarant Control to comply with applicable law or to correct any error or inconsistency in the Declaration if the amendment does not adversely affect the rights of any Owner in any material respect; and
  - 1.14.4. Amend the Governing Documents during the Period of Declarant Control in accordance with Section 16.5.
  - 1.14.5. Retain all personal property and equipment used in the sales, management, construction, reconstruction, renovation and maintenance of the Condominium that has not been represented as property of the Association. The Declarant reserves the right to remove from the Condominium any and all goods and Improvements used in development, marketing, construction, reconstruction and renovation whether or not they have become fixtures.
- Section 1.15. "First Mortgage" means any mortgage or deed of trust on a Unit with first priority over any other mortgage or deed of trust.
- Section 1.16. "First Mortgagee" means the holder of any First Mortgage.
- Section 1.17. "Governing Documents" refers to the Plat, this Declaration, the Articles of Incorporation, the Bylaws of the Association and any Rules and Regulations promulgated by the Board.
- Section 1.18. "Limited Common Elements" refers to a portion of the Common Elements specifically designated in this Declaration or on the Plat as a Limited Common Element and allocated by this Declaration or by the Act for the exclusive use of one or more, but fewer than all, of the Owners and which are maintained by the Owner of the Unit having the exclusive right to use that Limited Common Element. A Common Element may become a Limited Common Element at such time as Units are either combined or divided in accordance with the provisions of this Declaration.
- Section 1.19. "Member" means the Owner of a Unit who is entitled to membership in the Association, who has the privilege of using and enjoying the Common Elements, and who has a duty to pay assessments for these privileges, as further set forth in this Declaration.
- Section 1.20. "Mortgage" refers to any mortgage, deed of trust or other security instrument by which a Unit or any part of a Unit is encumbered.
- Section 1.21. "Occupant" refers to any person, other than the Owner, who is using or working in a Unit. This includes the Owner's tenants, employees, contractors and invitees.

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- Section 1.22. "Owner" means the record owner, whether one or more persons, of the fee simple title to any Unit which is part of EL DORADO OFFICE CONDOMINIUM, including a buyer under a contract for the sale of real estate, but excluding any person who holds an interest merely as security for the performance of an obligation.
- Section 1.23. "Parking Space" refers to the covered and uncovered spaces in the Common Elements.
- Section 1.24. "Period of Declarant Control" refers to the time during which the Declarant has the right to appoint and remove the officers and members of the Board, to handle all functions of the Architectural Committee, and during which the Declarant has reserved certain rights. The Period of Declarant Control expires no later than the earlier of (1) 90 days after the conveyance of 75% of the Units to Persons other than the Declarant; or (2) four years after the Declarant has ceased to offer Units for sale in the ordinary course of business; or (3) at such time as the Declarant voluntarily surrenders the right to appoint and remove officers and members of the Board, whichever occurs first.
- Section 1.25. "Person" includes a corporation, company, partnership, firm, trust, association or society, as well as a natural person.
- Section 1.26. "Plat" refers to the map of record in the Office of the Pima County Recorder in Book 67 of Maps and Plats at Page 21 and designated as EL DORADO OFFICE CONDOMINIUM. The Plat is incorporated by reference into this Declaration.
- Section 1.27. "Properties" and "Project" mean the real property described in the Plat.
- Section 1.28. "Rules and Regulations" means those policies and procedures adopted by the Board which govern the conduct and actions of Owners, tenants, visitors, and guests in Units, the Common Elements which are not otherwise covered in this Declaration. Rules and Regulations, when adopted by the Board, have the same force and effect as the Restrictions set forth in this Declaration.
- Section 1.29. "Tenant" refers to a person who has the right to use the Unit owned by the Owner, under an agreement from the Owner for a period of time.
- Section 1.30. "Types of Units" refers to whether the Unit is a Type 1, Type 2 or Type 3 Unit. The Type 1 Unit is one-half of the floor of any Building. The Type 2 Unit is one-fourth of the floor of any Building and the Type 3 Unit is only on the third floor and is the arcade area between Buildings 1 and 2, Buildings 3 and 4 and Buildings 4 and 5.
- Section 1.31. "Undivided Interest in the Common Elements" refers to the undivided interest that each Owner has in the Common Elements which is part of the

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ownership of a Unit. The undivided interests in the Common Elements are as follows:

Each Type 1 Unit has an undivided 3.246% interest in the Common Elements

Each Type 2 Unit has an undivided 1.622% in the Common Elements

Each Type 3 Unit has an undivided .88% interest in the Common Elements

Section 1.32.

"Unit" refers to the numbered portion of the Condominium which is designated on the Plat for separate ownership or occupancy. This condominium consists of 39 Units, but the number of Units may be increased as provided for in this Declaration.

- 1.32.1. The boundaries of a Unit are the interior unfinished surfaces of the perimeter walls, floors, ceilings, doors and windows of the Unit with: (i) the underside of the finished but undecorated ceiling as the top horizontal boundary; (ii) the top of the finished but undecorated flooring is the bottom horizontal boundary; and (iii) the interior of the finished but undecorated walls are the vertical boundaries. All lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the finished surfaces are a part of the Unit and all other portions of the walls, floors or ceilings are a part of the Common Elements.
- 1.32.2. The existing physical boundaries of a Unit or the physical boundaries of a Unit that is reconstructed as a result of damage or destruction in substantial accordance with the description of the Unit as set forth in this Declaration are considered as the legal boundaries of the Unit, even if there has been vertical or lateral movement of the building or there is a minor variance between the actual boundaries and those set forth in Section 1.31.1, above. This provision does not absolve a Unit owner from liability if he/she has failed to adhere to any plats or plans or is determined to be guilty of any willful misconduct.
- 1.32.3. None of the structural components of the Building in which each Unit is located, and no pipes, wires, conduits, ducts, flues, shafts or public utility, water or sewer lines situated within a Unit which form part of any system which serves more than one Unit or the Common Elements is part of a Unit. If any pipe, wire, conduit, duct, flue, water, sewer or plumbing system serves only one Unit, then it is considered as part of that Unit from the connection point where it begins to serve just that Unit. The plumbing fixtures, light fixtures, built-in fixtures and any appliances lying within the boundaries of any Unit are part of that Unit.
- 1.32.4. The air conditioning and heating units for each Unit serve only that particular Unit. Even though a portion of the air conditioning and heating unit may be located in the Common Elements, each Owner is entitled to the exclusive right to use that air conditioning and heating unit and will be

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responsible for the repair, replacement and maintenance of the air conditioning and heating unit which serves that Unit.

- 1.32.5. All spaces, interior partitions and other fixtures and improvements within the boundaries of a Unit are part of the Unit.
- 1.32.6. Each Owner has an unrestricted right of ingress and egress to his/her unit.
- 1.32.7. In the event of an inconsistency or conflict between the provisions of this Section and the Plat, this Section controls.
- 1.32.8. Notwithstanding anything to the contrary in the Declaration, until such time as Units are combined as set forth herein, the expenses of maintaining the Type 3 Units, which are known as Units 305, 308 and 311, will be shared among the Owners of the adjacent Units who use the elevators and arcade area in the Type 3 Units to provide access to the third floors of the Buildings, regardless of who is the Owner of any Type 3 Unit. The Board will, in its sole discretion, determine the apportionment of the maintenance expenses attributable to the Type 3 Units among the Owners who use the facilities and amenities in the Type 3 Units. If the Type 3 Units are combined with other Units, then the Owner thereof will assume full responsibility for the maintenance thereof.

ARTICLE II  
ALLOCATION OF INTERESTS

- Section 2.1. Allocation of Interests in Common Elements. Each Unit has an undivided interest in the Common Elements, based upon the Type of Unit, as set forth in Exhibit "A"
- Section 2.2. Allocation of Votes in the Association. Each Owner's vote in the Association is based upon the Owner's undivided interest in the Common Elements held by that Owner.
- Section 2.3. Allocation of Limited Common Elements.
  - 2.3.1. The following portions of the Common Elements are Limited Common Elements and are allocated to the exclusive use of one Unit as follows:
    - 2.3.1.1. Any meter serving only one Unit is allocated to the Unit it serves.
    - 2.3.1.2. If any chute, flue, duct, wire, conduit, bearing wall, bearing column, heating or air conditioning unit or apparatus or other fixture lies partially within and partially outside of the boundaries of a Unit, any portion serving only that Unit is a Limited Common Element allocated solely to that Unit and any portion serving more than one Unit or any portion of the Common Elements is a part of the Common Elements.

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2.3.1.3. Any heating and air-conditioning units, hot water heaters and all exterior doors and glass windows, including the frames around the doors and windows, or any other fixtures designed to serve a single Unit are allocated to the Unit, even if located outside of the Unit's physical boundaries, and are Limited Common Elements allocated exclusively to that Unit.

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

2.3.3. The Board has the right, without a vote of the Members, to allocate any portion of the Common Elements not previously allocated, as a Limited Common Element. Any such allocation by the Board must be evidenced by an amendment to this Declaration and an amendment to the Plat if required by the Act

Section 2.4. Assignment of Parking Spaces. The Association has the authority to assign Parking Spaces to designated Owners and to charge Owners for the use of the covered parking spaces. The Association has the right to reassign such Parking Spaces to accommodate disabled residents or those residents with special needs, or to more equitably distribute the walking distances between the Units and the Parking Spaces. Parking Spaces which are not assigned to a specific Unit can be used and shared by all Owners for employee and guest parking. The Association may adopt regulations governing the use of the Parking Spaces that have not been assigned to a specific Unit. The Declarant has the right, during the Period of Declarant Control to assign and reallocate Parking Spaces.

### ARTICLE III MEMBERSHIP

Section 3.1. Every person who is an Owner of a Unit is a Member of the Association and is subject to assessment by the Association. Membership is appurtenant to and may not be separated from ownership of a Unit. Only persons who own Units are Members of the Association.

Section 3.2. Membership cannot be transferred, pledged, or alienated in any way except upon the transfer of ownership of the Unit and then Membership will only be transferred to the transferee. Any attempt to make a prohibited transfer will be void. Any transfer of ownership of a Unit will operate to automatically transfer the membership in the Association to the new Owner.

### ARTICLE IV VOTING RIGHTS

Section 4.1. Declarant's Voting Rights. Declarant is a Member of the Association for so long as it owns any Unit.

- Section 4.2. Voting. The Owners of each Unit are entitled to exercise the votes allocated to that Unit; provided, however, that the Declarant is entitled to appoint and remove the officers and members of the Board of the Association during the Period of Declarant Control.
- Section 4.3. Right to Vote. No change in the ownership of a Unit is effective for voting purposes until the Board receives written notice of the change together with satisfactory evidence of the transfer. The votes cast by Owner must be cast as a single unit. Co-owners cannot split the votes between them. If a Unit is owned by more than one Person and the Owners cannot agree on how their vote or votes will be cast, then they will not be entitled to vote on the matter in question. If any Owner exercises his/her vote on any matter, it will be conclusively presumed that the Owner is acting with the authority and consent of the all other Owners of the Unit unless an objection is made to the Board, in writing, at or prior to the time the vote is cast. If more than one Person votes or attempts to exercise the vote for a particular Unit all of those votes will be void.
- Section 4.4. Members' Rights. Each Member has all of the rights, duties and obligations set forth in the Governing Documents.
- Section 4.5. Suspension of Voting Rights. The right of any Member to vote is automatically suspended during any period where any assessment, or other sum due to the Association [including any attorney fees or other costs incurred by the Association attributable to the Unit or the Owner] is unpaid and delinquent. The Association may suspend the voting rights of any Member for a period specified by the Board when, in the Board's discretion, such Member has caused any non-monetary violation of the Governing Documents.

ARTICLE V  
PROPERTY RIGHTS

- Section 5.1. Members' Easements of Enjoyment. Every Owner has the right and an easement to enjoy the Common Elements. Such easement is appurtenant to and is conveyed with the title to each Unit. This right is subject to the following provisions:
- 5.1.1. The right of the Association to adopt Bylaws and reasonable Rules and Regulations governing the use of the Units, the Common Elements and the Limited Common Elements, as well as the Owners' conduct in the Units, Common Elements and Limited Common Elements.
  - 5.1.2. The right of the Association to limit the number of guests and invitees who may use the Common Elements at any one time and to restrict the use of the Common Elements by guests and invitees to specific times.

- 5.1.3. The right of the Association to borrow money for the purpose of improving and maintaining the Common Elements; provided, however, that the Association cannot borrow funds secured by the Reserve Account maintained by the Association.
- 5.1.4. The right of the Association to dedicate or transfer all or any part of the Common Elements for such purposes and subject to such conditions as may be agreed to by the Members. No dedication or transfer of the Common Elements is effective unless approved by the Owners of at least 80% of the Units.
- 5.1.5. The right of the Association to enter into such agreements and take any action which is reasonably necessary and convenient to accomplish the Association's obligations and to operate and maintain the Common Elements. Any agreement providing for services by Declarant (or any affiliate of Declarant) must provide for termination by either party without cause upon 60 days' or less written notice or for cause upon 30 days' or less written notice and without the payment of any termination fee or penalty.

Section 5.2. Delegation of Use. Any Owner may delegate his/her right to use the Common Elements and Limited Common Elements to tenants, guests or invitees, provided that such delegation is made in accordance with the Governing Documents.

Section 5.3. Declarant's Use of Units and Common Elements for Sales and Leasing Purposes.

- 5.3.1. Declarant has the right to maintain sales or leasing offices, management offices and model Units throughout the Condominium and to maintain one or more advertising, model and directional signs on the Common Elements while the Declarant is selling or preparing to sell Units in the Condominium. Declarant reserves the right to place models, management offices and sales and leasing offices in any Units owned by Declarant and on any part of the Common Elements in such number, of such size and in such locations as Declarant deems appropriate.
- 5.3.2. Declarant has the right to relocate model Units, management offices and sales and leasing offices to different locations within the Condominium and to relocate any business facilities (including any office, sales center or business office) on any portion of the Condominium, including on the Common Elements or within any Unit owned by Declarant. If a model Unit, management, business, sales or leasing office is relocated, Declarant has the right to remove all personal property and fixtures.
- 5.3.3. Declarant has the right to reserve Parking Spaces to be used by prospective purchasers of the Units, Declarant's employees and others engaged in sales, leasing, maintenance, construction, reconstruction, renovation, or management activities.

- 5.3.4. The Declarant has the right to retain all personal property and equipment used in the sales, management, construction, reconstruction, renovation and maintenance of the Condominium that has not been represented as property of the Association. The Declarant is entitled to remove any and all goods and Improvements used in the development, marketing, construction, reconstruction and renovation regardless of whether they have become fixtures.

ARTICLE VI  
EASEMENTS AND LICENSES

Section 6.1. Easements for Encroachments. If any Unit or the Common Elements encroaches on any other Unit or portion of the Common Elements as a result of the original construction, shifting or settling, or any alteration or restoration authorized by the Governing Documents, a valid easement for the encroachments exists. A valid easement for those encroachments and for the maintenance of such will continue for so long as the encroachments exist. This easement does not cover any improvements constructed by an Owner after the original sale of that Unit by the Declarant.

Section 6.2. Easement Over Common Elements. A blanket easement is created upon, across, over and under the Common Elements for the use and enjoyment of all the Members, their guests, invitees, licensees and Tenants, subject to reasonable regulations of the Association, and for ingress, egress, installation, replacing, repairing and maintaining all utilities, including, but not limited to, water, sewer, telephones and electricity.

Section 6.3. Easements in Favor of the Association. The Association, its Board and officers and the agents, employees and independent contractors, are entitled to an easement over each Unit for the purpose of inspecting, maintaining, repairing, replacing or painting the Common Elements. The Association, its Board and officers and the agents, employees and independent contractors, also have the following easements over the Units and Limited Common Elements.

- 6.3.1. To inspect the exterior of the Units and Limited Common Elements to verify that the Owners have performed all items of maintenance and repair for which they are responsible.
- 6.3.2. To inspect, maintain, repair and replace the Common Elements or the Limited Common Elements situated in or accessible from the exterior of Units or Limited Common Elements.
- 6.3.3. To verify and correct emergency conditions in one or more Units or Limited Common Elements or casualties to the Common Elements, the Limited Common Elements or the Units. The Association will endeavor to provide reasonable notice to the Owner of the need to enter a Unit to correct emergency conditions, but in the event that the Association cannot make

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contact with the Owner and has made a reasonable attempt to do so, the Association has the right to enter the Unit and to correct these emergency conditions, especially when such conditions are causing damage to another Unit and/or the Common Elements. Any Owner may supply the Association with a key to the Unit to be used in emergency situations and understands that the Association has the right to use a locksmith to enter the Unit in such emergency situations if it has been unable to contact the Owner or any agent of the Owner if the Owner has provided the name, address and telephone number of his/her agent, in writing to the Association, or if the Owner has failed to provide a key to the Unit. If the Association damages any portion of the Unit in entering the Unit in the event of an emergency, it must promptly repair such damage at its expense.

- 6.3.4. To enable the Association, the Board or any committees appointed by the Board to exercise and discharge their respective rights, powers and duties under the Governing Documents.
- 6.3.5. To inspect, at reasonable times and upon reasonable notice to the Owner, the Units and the Limited Common Elements to verify that the Owners, their guests, Tenants, invitees and the other occupants of the Unit are in compliance with the Governing Documents.

Section 6.4. Easement for Support. To the extent necessary, each Unit has an easement for structural support over every other Unit, the Common Elements and the Limited Common Elements, and each Unit and the Common Elements are subject to an easement for structural support in favor of every other Unit, the Common Elements and the Limited Common Elements.

Section 6.5. Easements to Use Type 3 Units. Until such time as the Type 3 Units are combined with other Units, as set forth herein, the Owners of the adjacent Units have an easement over, under and across such Type 3 Units to use and enjoy the elevators and arcade areas in the Type 3 Units.

Section 6.6. Declarant's Easements.

- 6.6.1. The Declarant has an easement on and over the Common Elements to construct or install any improvements which the Declarant may deem necessary and to use the Common Elements and any Units owned by the Declarant for construction purposes, including the storage of tools, machinery, equipment, building materials, and supplies.
- 6.6.2. The Declarant has the right and an easement to maintain sales or leasing offices, management offices and models throughout the Condominium, to maintain one or more advertising signs in the Common Elements and on the Units owned by the Declarant while it is marketing and selling the Units.

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- 6.6.3. Declarant has the right to cut any trees, bushes or shrubbery, to grade the soil or to take any other action reasonably necessary to maintain the drainage areas.
- 6.6.4. Declarant has an access easement through all of the Units at reasonable times and upon reasonable notice to complete renovations, warranty work, modifications or improvements to be performed or constructed by the Declarant, if any.
- 6.6.5. The Declarant has the right and an easement on, over, and through the Common Elements as necessary to discharge its obligations and exercise any Special Declarant Rights whether arising under the Act or reserved in this Declaration.

ARTICLE VII  
ASSESSMENTS

Section 7.1. Creation of the Lien and Personal Obligation to Pay Assessments. The Declarant, and each Owner upon the recordation of a deed to any Unit, whether or not it is stated in that deed, covenants and agrees to pay to the Association: (1) Annual Assessments or charges, (2) Reimbursement Assessments; (3) Supplemental Assessment; and (4) Special Assessments. These assessments will be established and collected as provided in this Article. All assessments, together with interest, late fees, costs, and reasonable attorney fees, will be charged against the Owner and will be a continuing lien upon the Unit. Delinquent assessments, together with interest, late fees, costs, and reasonable attorney fees, are the personal obligation of the person who was the Owner of the Unit at the time when the assessment was levied.

Section 7.2. Purpose of Annual Assessments. The Annual Assessments levied by the Association will be used to carry out the Association's obligations under the Governing Documents, including the maintenance of the Common Elements; to pay all expenses and charges which are the responsibility of the Association, including any Common Utility Expenses and the maintenance of any common water distribution lines and wastewater drain lines used by all of the Owners, and for all other purposes set forth in the Governing Documents. The cost of all such repairs, maintenance and improvements is a Common Expense and will be paid for by the Association.

Section 7.3. Annual Assessments.

7.3.1. Authority to Determine Assessments. The Board is vested with full authority and absolute discretion to adopt and amend budgets for the Association and to determine the amount of the Annual Assessment based upon that budget, including appropriate reserves. No ratification of any budget or amendment by the Owners is required.

7.3.2. Assessment Based on Type of Unit. The Board will assess the Units depending upon the type of the Unit, as shown on the Plat. The Unit Type is based upon the size of the Unit. The Annual Assessment for all Type 1 Units will be the same. The Annual Assessment for all Type 2 Units will be the same and the Annual Assessment for all Type 3 Units will be the same. In the event that Units are combined, then the Annual Assessment will be determined by adding the assessment for each type of Unit together. For example, if Units 306 and 307 (both of which are Type 1 Units) are combined with Unit 308 (a Type 3 Unit) and 309 and 310 (both of which are Type 2 Units), then the assessment for that combined Unit would be two Type 1 assessments, plus two Type 2 assessments and one Type 3 assessment. If the Unit is divided, then the Assessment will still be based upon the type of the Unit, but will be prorated based upon the square footage of the units that have been divided from the larger Unit, by the total square footage of the original Unit.

7.3.3. Notification to Owners of Annual Assessments. Notice of any change in the amount of the Annual Assessment for the next calendar year will be provided to the Owners by December 1 of each year; provided, however, that if the Board for any reason has not determined the amount of the next fiscal year's assessment and provided notice to the Owners by December 1, the Board has the right to make that determination at any time with the payment of each Owner's prorated share of the Annual Assessment being due 30 days after notice is provided to the Owners.

7.3.4. Payment of Annual Assessment in Installments. The Board may determine that the Annual Assessment is payable in equal monthly installments or on any other periodic basis. If the Board determines that the annual assessment may be paid in installments, then at such time as an Owner is delinquent in the payment of any installment, the Board has the right to accelerate the balance of the year's assessment, all of which will be due within 15 days after written notice has been mailed by first-class mail, postage prepaid by the Board to the Owner.

7.3.5. Payment of Prorated Annual Assessments. Each Owner will begin paying the Annual Assessments on the first day of the month following the conveyance of a Unit to that Owner. This amount will be adjusted according to the number of months remaining in the calendar year.

Section 7.4. Reserves. The reserves which are collected as part of the Regular Assessments will be deposited by the Association in a separate bank account to be held for the purposes for which they are collected. Such reserves will be deemed a contribution to the capital account of the Association by the Owners and once paid, no Owner will be entitled to any reimbursement of those funds. The Board is only responsible for providing for such reserves as the Board in good faith deems reasonable, and no Member of the Board is liable to any Owner or to the Association if the amount in the reserve account proves to be inadequate.

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- 7.4.1. Prior to the sale of the first Unit, the Declarant may obtain a Reserve Study ("Reserve Study") prepared by a professional engineer licensed in the State of Arizona (or other qualified person). Thereafter, the Board must conduct a Reserve Study at least once every five years after the expiration of the Period of Declarant Control. At a minimum, any Reserve Study must include: (a) identification of the major components of the Common Elements which the Association is obligated to repair, replace, restore or maintain that, as of the date of the study have a remaining useful life of less than 30 years; (b) identification of the probable remaining useful life of the identified major components as of the date of the study; (c) an estimate of the cost of repair, replacement, restoration, or maintenance of the identified major components during and at the end of their useful life; (d) an estimate of the total annual contribution necessary to defray the costs to repair, replace, restore, or maintain the identified major components during and at the end of their useful life, after subtracting total reserve funds as of the date of the study and expected contributions to the reserves from the initial sale of the Units and taking into account warranties and/or guaranties, if any. The results of any Reserve Study are for advisory purposes only and the Declarant or Board has the right to provide for reserves which are greater or less than those shown in the Reserve Study, and may take into account other factors deemed relevant in establishing the reserve amounts. However, if the Declarant obtains an initial Reserve Study, then it will contain a recommendation that the total of all Reserve Contributions required to establish the beginning Reserve Account ("Initial Reserve Account") will not exceed \$1,500.00 for each Unit. Thereafter the amount of the Initial Reserve Contribution will be determined from time by the Declarant or the Board, after the expiration of the Period of Declarant Control.
- 7.4.2. The Reserve Contributions are not effective until the date the first Unit is sold to a Person, as distinguished from a sale of the entire Condominium.
- 7.4.3. Each Person who purchases a Unit for value must pay to the Association, immediately upon becoming the Owner of the Unit, a dollar amount to be determined either by the Declarant prior to the expiration of Declarant Control or by the Board thereafter ("Reserve Contribution"). The amount of the Reserve Contribution must be uniform for all Units. The Reserve Contributions to be paid at the time of the initial sale of all Units cannot exceed the amount of the Initial Reserve Contribution. After the expiration of Declarant Control, the Board may increase the Reserve Contribution for those Units that are resold by Owners, but not for the Units retained by Declarant to be sold in the future, provided that the increase in the Reserve Contribution is approved by the vote of two-thirds of the Members voting in person or by absentee ballot at any meeting of the Members.
- 7.4.4. Declarant is not obligated to pay any Reserve Contribution based upon its ownership or sale of Units, but will fund the Reserve Account, upon the sale of each Unit, with the payment of the sum of \$500.00, which will be a refundable Reserve Account Deposit ("Declarant's Reserve Contribution").

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The Association will maintain the Declarant's Reserve Contributions in a separate interest-bearing trust account designated for the deposit of Declarant's Reserve Contributions ("Declarant's Reserve Account"). Declarant's Reserve Contributions will not be included as part of the Association's budget. Declarant's Reserve Contributions together with all interest earned on such contributions non-refundable to Declarant, and may be retained by the Association and deposited into the Reserve Account provided that (1) five years has passed from the sale of the last Unit by Declarant, (2) no Claim (as defined in Article XII below) has been brought by the Association within the foregoing five-year period, and (3) the Association provides Declarant with a letter confirming that no Claims exist and waiving any and all rights to any potential Claim, whether known or unknown. If Claim is brought by the Association within this five-year period, Declarant will be entitled to an immediate refund of all Declarant's Reserve Contributions held in Declarant's Reserve Account together with all interest earned.

7.4.5. No Reserve Contribution is payable in the following instances: (a) the transfer or conveyance of a Unit by devise or intestate succession; (b) a transfer or conveyance of a Unit to a family trust, family limited partnership or other Person for bona fide estate planning purposes; (c) a transfer or conveyance of a Unit to a corporation, partnership or other entity in which the grantor owns a majority interest unless the Board determines, in its sole discretion, that a material purpose of the transfer or conveyance was to avoid payment of the Reserve Contribution in which case the Reserve Contribution is payable as a result of that transfer or conveyance; (d) the conveyance of a Unit by a trustee's deed following a trustee's sale under a deed of trust; or (e) a conveyance of a Unit as a result of the foreclosure of a realty mortgage or the forfeiture of a Purchaser's interest under a recorded contract for the conveyance of real property or a deed in lieu of foreclosure subject to A.R.S. § 33-741, et seq.

7.4.6. All Reserve Contributions must be deposited in the Reserve Account established pursuant to this Section. Reserve Contributions are non-refundable and will not be considered as an advance payment of Assessments.

Section 7.5. Special Assessments. In addition to the Regular Assessments, the Board may levy Special Assessments for any of the following purposes: (1) constructing capital improvements in the common elements; (2) correcting an inadequacy in the current operating account; (3) defraying, in whole or in part, the cost of any construction, reconstruction, unexpected repair or replacement of improvements in the Common Elements; or (4) paying for such other matters as the Board deems appropriate. The Board will determine the due date of any Special Assessment.

Section 7.6. Uniform Rate of Assessment. All Assessments will be based upon the Owner's allocated interest in the Common Elements. Any common expense associated with the maintenance, repair or replacement of any Limited

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Common Element will be equally assessed against the Units to which the Limited Common Elements are assigned and any common expense or portion of a common expense which benefits fewer than all of the Units will, at the election of the Board, be assessed exclusively against the Units benefitted.

Section 7.7. Reimbursement Assessments.

7.7.1. Bringing the Unit and Limited Common Elements into Compliance. The Association has the right to assess a Reimbursement Assessment against any Owner if a failure to comply with the Governing Documents has necessitated the expenditure of money by the Association to bring the Owner, his/her Unit or the Limited Common Elements attributable to that Unit, into compliance, including any attorney fees and costs which were incurred by the Association.

7.7.2. Collection of Reimbursement Assessments. Reimbursement Assessments may be collected in the same manner as Annual Assessments.

Section 7.8. Supplemental Assessment. In the event that the Association maintains, repairs or replaces any Limited Common Element, it has the right to impose a Supplemental Assessment against the Units to which the Limited Common Element was allocated in such proportion as the Board, in its discretion determines.

Section 7.9. Surplus Funds. Surplus funds of the Association remaining after payment of the Common Expenses and any prepayment of reserves may in the discretion of the Board either be retained in the operating account to fund the next year's Common Expenses, or credited to the Owners to reduce each Owner's future liability for Common Expenses.

Section 7.10. Effect of Nonpayment of Assessments; Remedies of the Association.

7.10.1. In addition to all other remedies provided by law, the Association, or any authorized agent of the Association, may enforce the obligations of any Owner to pay the Assessments in any manner provided by law or by either or both of the following procedures:

7.10.1.1. By Suit. The Association may file a lawsuit against any Owner who is personally obligated to pay the delinquent assessments. Any judgment obtained in the Association's favor will include the amount of the delinquent assessments, any additional charges incurred by the Association, attorney fees and court costs, collection costs and any other amounts which a court may award. A proceeding to obtain a judgment for unpaid assessments may be maintained without the necessity of foreclosing or waiving the Association's lien.

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7.10.1.2. By Lien. The Association has a lien on the Unit owned by that Owner for any unpaid assessments when such assessments are not paid within 15 days of the due date. As more fully provided for in A.R.S. §33-1256 of the Act, the recording of this Declaration constitutes record notice and perfection of the Association's lien. The Association is not required to record a lien for delinquent assessments, but may do so to provide notice to third parties of its interest in the Unit. Except for the transfer of a Unit pursuant to a foreclosure proceeding, the sale or transfer of a Unit does not affect the Association's lien. The Association may commence and maintain proceedings to foreclose its lien in the same manner as the foreclosure of mortgages. The lien for assessments is prior and superior to all other liens, except (1) A recorded first mortgage on the unit; (2) all taxes, bonds, assessments and other levies which, by law, would be superior thereto; and (3) the lien of any other mortgage or deed of trust which is recorded before the date this Declaration was recorded.

7.10.2. Additional Charges. In addition to any other amounts due or any other relief or remedy obtained against an Owner who is delinquent in the payment of any assessments, each Owner agrees to pay such additional costs, fees, charges and expenditures ("Additional Charges") as the Association may incur in the process of collecting funds from any Owner. All additional charges will be included in any judgment in any suit to collect delinquent assessments or may be levied against a Unit as a reimbursement assessment. Additional charges will include, but not be limited to, the following:

7.10.2.1. Late Charges. The Board will charge a late charge in an amount to be determined from time to time by the Board. An Assessment is delinquent if it is not paid within 15 days from the date it is due.

7.10.2.2. Attorney Fees. Reasonable attorney fees and costs incurred if an attorney is employed to collect any assessment or sum due, including the placement of the lien, or the filing of a suit or otherwise.

7.10.2.3. Collection Costs. Litigation expenses, collection costs and court costs incurred.

7.10.2.4. Interest. Interest on all sums due from the Owner, including delinquent assessments, costs of collection, attorney fees and late charges, at an annual percentage rate as established by the Board; and

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7.10.2.5. Other. Any other additional costs which the Association may incur in the process of collecting delinquent assessments or other sums due to the Association.

Section 7.11. Application of Payments. Unless the Owner directs otherwise, all payments received by the Association will be applied in the following order: first to any unpaid assessments, then to the unpaid late charges assessed on the unpaid assessments, then to reasonable collection fees, unpaid attorney fees and costs incurred in the collection of the unpaid assessments. Any remaining amounts will be applied to other unpaid fees, charges and monetary penalties or interest and late charges on any of those amounts.

Section 7.12. Statement of Assessment Lien. Upon the written request from any Owner, the Owner's agent, or a lienholder, the Association will furnish the person who made the request with a written certificate, in a recordable form, signed by an officer or authorized agent of the Association stating the amount of any assessment which is due and any additional charges secured by the lien upon his/her Unit. The Board may impose a reasonable charge for the issuance of that certificate.

Section 7.13. No Exemption of Owner. No Owner is exempt from liability for the payment of assessments because he/she does not use the Common Elements, the Limited Common Elements, or has abandoned his/her Unit, or for any other reason, including any allegation that the Board is not performing its obligations under the Governing Documents.

Section 7.14. Subordination of the Lien to Mortgages. The lien for assessments is subordinate to the lien of any first mortgage or deed of trust recorded against the Unit. The sale or transfer of any Unit does not affect the assessment lien. However, the sale or transfer of any Unit pursuant to a mortgage foreclosure, or any proceeding in lieu thereof, extinguishes the lien for such assessments but only as to those payments which became due prior to such sale or transfer. No sale or transfer of any Unit will relieve the Unit from liability for any assessments which become due before the sale or transfer, or from the lien for assessments.

Section 7.15. Transfer Fee. At the time title is transferred to a purchaser, the Association may require that a purchaser of a Unit pay a transfer fee to the Association in an amount determined by the Board to compensate the Association for the administrative costs resulting from the transfer of a Unit. The transfer fee is not intended to compensate the Association for the costs incurred in the preparation of the statement which the Association is required to mail or deliver to a purchaser under A.R.S. § 33-1260A and, therefore, the transfer fee is in addition to the fee which the Association is entitled to charge pursuant to A.R.S. § 33-1260C.

Section 7.16. Mortgage Protection and Additional Assessment as Common Expense. Notwithstanding and prevailing over any other provision of the Governing

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Documents, the following provisions will apply to and benefit each First Mortgagee:

- 7.16.1. The Mortgagee will not be personally liable for the payment of any assessment, nor for the observation or performance of any provision of the Governing Documents, except for those matters which are enforceable by injunctive or other equitable actions, and which do not require the payment of money.
- 7.16.2. During the pendency of any proceeding to foreclose any mortgage, including any period of redemption, the mortgagee may, but is not required to, exercise any or all rights and privileges belonging to the Owner of the mortgaged Unit, including but not limited to the exclusion of the Owner's exercise of such rights and privileges.
- 7.16.3. When a mortgagee becomes the record Owner of a Unit, ownership will be subject to all of the terms and conditions of the Governing Documents, including but not limited to the obligation to pay all assessments and charges accruing thereafter, in the same manner as any Owner.
- 7.16.4. The First Mortgagee, or any other party acquiring title to a mortgaged Unit through foreclosure suit or through any equivalent proceeding arising from the mortgage, such as, but not limited to, the taking of a deed in lieu of foreclosure, will acquire title to the mortgaged Unit free and clear of any lien authorized by or arising out of any of the provisions of the Declaration or Bylaws which secured the payment of any assessment for charges accrued prior to the final conclusion of any such foreclosure suit or equivalent proceeding, including the expiration date of any period of redemption.
- 7.16.5. Mortgagees are entitled to pay taxes or other charges which are in default and which may or have become a charge against any Common Elements owned by the Association, and such mortgagees may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such Common Elements and any first mortgagees making such payment may be owed immediate reimbursement from the Association.
- 7.16.6. Nothing in this Declaration gives an Owner priority over any rights of a mortgagee of a Unit pursuant to the terms of such mortgagee's mortgage in the case of a distribution to an Owner of insurance proceeds or condemnation awards for losses or to a taking of any Unit or any part of the Common Elements owned by the Association. Each mortgagee will be entitled to timely written notice of such loss or taking.

Section 7.17. Working Fund. To insure that the Association has adequate funds to pay the Common Expenses, each Purchaser of a Unit will pay the Association, immediately upon becoming the Owner of the Unit, a sum equal to 25% of the Annual Assessment on the Unit, or such other amount as determined

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from time to time by the Board. Funds paid to the Association pursuant to this Section may be used by the Association for the payment of operating expenses or any other purpose permitted under the Governing Documents. Payments made pursuant to this Section, are non-refundable and will not be considered as an advance payment of any Assessments levied by the Association pursuant to this Declaration.

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Section 7.18. Fines and Penalties.

- 7.18.1. If any Owner, any invitee or Tenant violates the Governing Documents, the Board may levy a fine upon the Owner for each violation, after the Owner has been provided with notice of the violation and an opportunity for a hearing before the Board or any Committee designated by the Board to act as the Hearing Panel. However, for each day that a violation continues after written notice to cease has been mailed to the Owner, is a separate violation and subject to the imposition of a fine in the amount determined by the Board.
- 7.18.2. Collection of Fines. Any fines imposed by the Board will be collected in accordance with the procedures set forth in the Act.

ARTICLE VIII  
ALTERATIONS OF UNITS

Section 8.1. Alteration of a Unit. An Owner may make any improvement or alteration to the Unit which will not impair the structural integrity or mechanical systems or which will not lessen the support of any portion of the condominium. Such improvements or alterations may not commence without the specific written authorization of the AC. The AC has the right to require that an engineer certify that the proposed improvement will not impair the structural integrity of the condominium. In the event that an Owner makes improvements to the Unit, the Owner is responsible for repairing and replacing those Improvements and holds the Association harmless from that maintenance responsibility. Such Owner is required to maintain insurance on any Improvements the Owner installs, even if such improvements involve modifications to the Common Elements adjacent to the Unit.

- 8.1.1. Any Owner making any additions, alterations or improvements to the Unit agrees, that the Owner, the Owner's heirs, personal representatives, successors and assigns, as appropriate, will hold the Association, Declarant and all other Owners harmless and will indemnify them from and against any and all liability or damage to the Condominium and any expenses arising from such damage.
- 8.1.2. The Association has the right to stop any work that is not in compliance with this Section or with any Rules governing improvements by Owners. The Association's right to review and approve plans is intended to be solely for the benefit of the Association. Neither Declarant, the Association nor any of the officers, directors, employees, agents, contractors, consultants or attorneys are liable to any Owner or any other Person for any damages caused by any mistake in judgment, failure to indicate or correct deficiencies in any plans, negligence, or any other misfeasance, malfeasance or nonfeasance in connection with the approval or disapproval of any plans. Any Owner taking title to a Unit, or any agent, contractor, Tenant or guest of the Owner agrees not to seek damages or

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for the repair and replacement of the HVAC system located on the roofs of the Buildings. All costs associated with the HVAC maintenance contract will be a common expense of the Association. Any charges incurred for the repair or replacement of the HVAC system that are not included in the maintenance contract obtained by the Association, will be charged to the Owner whose HVAC system was repaired or replaced as a Reimbursement Assessments. Each Owner is responsible for maintaining, repairing and replacing any portion of the water or sewer line that solely serves that Unit.

- 9.2.3. The Association is responsible for the maintenance, repair and replacement of any private water and sewer lines within the condominium; provided, however, that the Owner is responsible for the maintenance of the sewer and water line that solely serve that Unit.

Section 9.3. Individual Insurance.

- 9.3.1. Each Owner agrees with all other Owners and with the Association that he/she will carry insurance in an amount which is sufficient to fully cover the replacement costs of the Unit and any of the improvements, appliances, furniture, furnishings and fixtures installed in the Unit whether installed by the Owner or any prior Owner or whether originally in his/her Unit. All policies of property insurance carried by each Owner will be without contribution to the policies of property insurance obtained by the Board for the benefit of all of the Owners. For the purposes of this Section "improvements" means any property (excluding personal property readily removable without damage to the Unit) attached to the Unit, including without limitation, carpeting, flooring, wall coverings, paint and paneling.
- 9.3.2. Upon the written request of the Board, the Owner must furnish proof of such insurance to the Association in writing. If the Owner does not purchase adequate insurance, the Association is entitled to insure the improvements in the Unit and to bill the Owner for the costs of such insurance.
- 9.3.3. Each individual Owner agrees that in the event of a partial loss or damage and destruction of the Unit which results in less than total destruction, the Owner will promptly repair or reconstruct the damaged structure in a manner consistent with the original construction.
- 9.3.4. Every policy of insurance obtained by the Owner will provide, if available, for the payment of that Unit's share of the assessments to the Association during the time that the damage for which there are insurance proceeds is being repaired.
- 9.3.5. If reasonably available, the Owner will name the Association as an additional insured on the Owner's policy covering the Unit.
- 9.3.6. If an Owner causes an event to occur which results in a claim being made against any insurance policy maintained by the Association, the Owner is

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responsible for the payment of any deductible portion of the insurance, which amount will be a Reimbursement Assessment.

- Section 9.4. Damages to Another Unit. No Owner can take any action, engage in any conduct, or refuse to take any action that may cause any damage to any other Unit.
- Section 9.5. Water Heaters. Each Owner must periodically inspect the water heater serving that Unit even though the water heater is located in the Limited Common Elements to ensure that it is functioning properly. In the event that the water heater leaks causing any damage to the Unit, the Limited Common Elements, the Common Elements or any other Unit, the Owner of the water heater is responsible for repairing all damage caused by the water, including abating any mold caused by the water.
- Section 9.6. Adverse Conditions. No Owner can permit any condition to exist on his/her Unit which adversely affects the other Units or other Owners, nor may an Owner engage in any conduct which causes the premiums for any insurance that is maintained by the Association to increase.
- Section 9.7. Exterior Repairs. Notwithstanding the fact that the Owner may be required to maintain certain Limited Common Elements that are outside of the physical boundaries of the Unit, the Owner is not permitted to change any exterior color, style, or condition of the Limited Common Elements without the prior approval of the Board.
- Section 9.8. Compliance with Use Restrictions. Each Owner is responsible for complying with all Use Restrictions set forth in this Declaration. If, after written notice from the Association, an Owner fails to comply with the Association's request to conform to such Use Restrictions, the Association may, in its sole discretion, take whatever action is appropriate to bring the Unit into compliance, including entering into the Unit, after reasonable notice to the Owner, and making such corrections. The costs of such action will be a Reimbursement Assessment.
- Section 9.9. Utility Service. Electric power, sewers, and water are available to the Units through private utility companies authorized by the State of Arizona and that neither the Declarant, the Board nor the AC assumes any responsibility for and does not guaranty the quality or quantity of the water and electric power to be furnished to the Unit and will not, in any way, be liable for any shortage of water or electricity.
- Section 9.10. Dereliction of Maintenance by Owners.
- 9.10.1. Each Owner is responsible for paying for all damages caused by the Owner, his/her Tenants, guests, employees, or invitees which are caused to his/her or any other Owner's Unit or to the Common Elements. If any Owner fails to maintain the Unit in a manner satisfactory to the Board, the Board, through its agents and employees, after giving 10 days written

notice to the Owner, is entitled to enter the Unit and to make any necessary repairs, maintenance, rehabilitation or restoration of the Unit, including the exterior of any improvements. The Association will provide the Owner with an invoice for the work performed. In the event the invoice is not paid within 10 days of the date of such invoice, the amount due will become a Reimbursement Assessment.

- 9.10.2. Nothing contained in this Declaration requires the Association to charge for, or to collect, for damage caused by an Owner, the Owner's Tenants, guests, employees, or invitees to any other Owner's personal property, Unit or to the Common Elements. Any party whose property is damaged by any Owner's negligence or willful conduct, cannot require the Association to make such repairs, to charge the offending party or collect such necessary amounts from him/her.

ARTICLE X  
ASSOCIATION'S RESPONSIBILITIES

Section 10.1. Powers of the Association.

- 10.1.1. The Board has all of the powers necessary for the effective operation, maintenance, and governance of the Association, including but not limited to those powers enumerated in A.R.S. §33-1242, as amended from time to time.
- 10.1.2. The Board may exercise any other powers conferred by statute or by the Association's Governing Documents.
- 10.1.3. During the Period of Declarant Control, the Declarant has the right to appoint and remove the members of the Board and the officers of the Association. These individuals do not have to be Owners. Upon the termination of the Period of Declarant Control, the Owners will elect at least three Owners to serve as the Board. All Board members must be Owners. Co-owners of any single Unit cannot simultaneously serve on the Board. The Board elected by the Owners will elect the officers of the Association from among the Board Members in accordance with the Bylaws.
- 10.1.4. The Declarant may voluntarily surrender the right to appoint and remove the members of the Board and the officers of the Association before termination of the Period of Declarant Control. Should that occur, then for the duration of the Period of Declarant Control, the Declarant may require that specified actions of the Association or the Board be approved by the Declarant before they become effective.

Section 10.2. Authority of the Board.

- 10.2.1. The Board will act in all instances on behalf of the Association, except as provided in the Governing Documents or by statute.

- 10.2.2. The Board will not act on behalf of the Association to amend the Declaration, terminate the condominium, elect members to the Board or determine the qualification, powers and duties or terms of office of the members of the Board, except the Board may fill vacancies in its membership until the next annual meeting.
- 10.2.3. The Board will adopt the annual operating budget for the Association, a summary of which will be presented to the Owners at least 30 days before the beginning of each fiscal year and has the authority to amend the budget during each fiscal year. The budget will separately reflect any Common Expenses to be assessed against less than all of the Units
- 10.2.4. The Board has the authority to impose charges for the late payment of assessments and, after notice and an opportunity to be heard, to impose reasonable monetary penalties against any Owner for violations of the Governing Documents by that Owner and by the Owner's Tenants, contractors, agents, guests and invitees. Monetary penalties for infractions of the Governing Documents will be collected as provided for in the Act.

Section 10.3. Specific Responsibilities of the Association. The Association is responsible for the proper and efficient management of the Association and the Common Elements. In addition to these responsibilities, the Association is specifically responsible for the following:

- 10.3.1. Maintaining the Common Elements and Limited Common Elements to the extent that such maintenance is not provided by the Owners. In maintaining the Limited Common Elements, the Association has the right to charge the costs solely against the Owners who have a right to use these Limited Common Elements as Reimbursement Assessments.
- 10.3.2. All Common Elements will be maintained in good condition and repair at all times, but the Board is the sole judge as to the appropriate standard for the maintenance, repair and replacement of all Common Elements. No Owner, Tenant, Occupant or other Person can obstruct or interfere with the Association's maintenance, repair and replacement of the Common Elements.
- 10.3.3. Providing termite control for the Units; provided however, that each Owner has the duty and obligation to promptly report any termite activity in the Unit and each Owner is responsible for treating for any other types of pests.
- 10.3.4. Notwithstanding anything contained in this Section, the Association is not obligated to perform any maintenance or repair work that is performed by any municipality or utility company responsible for the maintenance of any utilities or improvements located in the Common Elements.
- 10.3.5. Providing for such additional services as the Board, from time to time, determines to be in the best interests of the Association.

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- 10.3.6. Paying real estate taxes, assessments and other charges on the Common Elements, if any.
- 10.3.7. Hiring, firing, supervising, and paying employees and independent contractors providing services to the Association;
- 10.3.8. Purchasing all goods, supplies, labor, and services reasonably necessary for the performance of the obligations set forth in this Declaration and providing for the payment for any utility services which serve the Common Elements;
- 10.3.9. Establishing and maintaining reasonable reserves for the maintenance, repair, and replacement of the Common Elements and for unforeseen contingencies;
- 10.3.10. Entering into such agreements and taking such actions as are reasonably necessary and convenient for the accomplishment of the obligations set forth above and the operation and maintenance of the Common Elements.

Section 10.4. Insurance.

- 10.4.1. The Association is responsible for insuring all portions of the Common Elements and improvements which the Association is obligated to maintain, with companies and with such limits as the Association deems appropriate and in accordance with the requirements in A.R.S. §33-1253. With regard to the insurance obtained by the Association:
  - 10.4.1.1. Each Owner will be an insured under the policy with respect to liability arising out of his/her ownership of an undivided interest in the Common Elements or his/her membership in the Association.
  - 10.4.1.2. There will not be any subrogation with respect to the Association, its agents, servants, and employees against Owners and members of their household.
  - 10.4.1.3. No act or omission by any Owner, unless acting within the scope of his/her authority on behalf of the Association, will void the policy or be a condition to recovery on the policy.
  - 10.4.1.4. The coverage under such policies will be primary and will not be brought into contribution or proration with the insurance required to be purchased by Owners or their mortgagees or beneficiaries under deeds of trust.
  - 10.4.1.5. The Board may select deductibles applicable to the insurance coverage to be maintained by the Association pursuant to this Section, to reduce the premiums payable for such insurance. The deductible, if any, on any insurance policy obtained by the

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Association will be a Common Expense, subject to the right of the Board to assess any deductible amount against an Owner if the loss was caused by the negligence or intentional acts of that Owner, which deductible amount will become a Reimbursement Assessment.

10.4.1.6. Any loss covered by property insurance obtained by the Association in accordance with this Section will be adjusted with the Association and the insurance proceeds will be payable to the Association and not to any mortgagee or beneficiary under a deed of trust. The Association will hold any insurance proceeds in trust for the Owners and lienholders as their interests may appear, and the proceeds will be disbursed and applied as provided for in A.R.S. § 33-1253.

10.4.2. The Association is also responsible for maintaining the following additional insurance:

10.4.2.1. Director's and Officer's Liability Insurance;

10.4.2.2. Fidelity Insurance against dishonest acts by directors, managers, officers, employees or volunteers responsible for handling the funds which belong to or are administered by the Association.

10.4.2.3. Worker's compensation insurance for any employees of the Association, or those employees used by licensed contractors hired by the Association.

10.4.3. Limitation on the Association's Obligation to Provide Insurance. The Association is not responsible for providing insurance on any improvements to the Units installed by the Owner or on any of the Owner's personal property.

10.4.4. Non-liability of Association. Notwithstanding the obligation of the Association to obtain insurance coverage as stated in this Declaration, neither the Declarant nor the Association, or their respective officers, directors, employees and agents, are liable to any Owner or any other party if any risks or hazards are not covered by the insurance to be maintained by the Association or if the amount of the insurance is not adequate, and it is the responsibility of each Owner to ascertain the coverage and protection afforded by the Association's insurance and to procure and pay for any additional insurance coverage and protection that the Owner may desire.

Section 10.5. Managing Agent. All powers, duties and rights of the Association or the Board may be delegated to a managing agent under a written management agreement; provided, however, that no such delegation will relieve the Association of its obligations to perform any delegated act. Any agreement for professional management of the Condominium must provide that the

agreement can be terminated by either party without cause upon 60 days' or less written notice or for cause upon 30 days' or less written notice and without the payment of any termination fee or penalty. Any agreement for professional management must be for a term of from one to three years and can only be renewed with the consent of the Board and the management company. The Association is expressly authorized to contract with Declarant or any affiliate of Declarant to provided management services or to perform other duties of the Association or the Board.

**Section 10.6.** Operation of Association. The manner in which the Association carries out its responsibilities will be controlled by the Governing Documents and any applicable Arizona law, including the Act and the Arizona Nonprofit Corporation Act. The payment of assessments to the Association is not contingent on the performance by the Association of any of its obligations.

**Section 10.7.** Transition from Declarant Control.

10.7.1. At the expiration of the Period of Declarant Control or such other time as the Declarant turns over the operation of the Association to the Members, it will deliver all corporate books and accounting records to the Board elected by the Members at the Association's office. At the date that all corporate books and accounting records are delivered to the Board and the Declarant has provided notice to the Members of its intent to relinquish control of the Association, the Members have 45 days within which to notify Declarant, in writing, of any claims or disputes regarding the operations of the Association by the Declarant which arose prior to the expiration of the Period of Declarant Control, including, but not limited to, the maintenance of any Common Elements, the collection of assessments, maintenance of a reserve account, and the performance of any of the Association's obligations under the Governing Documents.

10.7.2. In the event that any claims or disputes have not been presented to the Declarant, in writing, as set forth in this Section such claims and disputes against the Declarant will be deemed as forever waived, relinquished and abandoned.

**Section 10.8.** Disclaimer of Representations. No representations or warranties of any kind, express or implied, have been given or made by Declarant, its agents, consultants or employees in connection with any portion of the Condominium, parking on site, the physical condition of the condominium, zoning, compliance with applicable laws, fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, taxes or regulation, except as specifically and expressly set forth in this Declaration, or in the Arizona Department of Real Estate Public Report for the Condominium issued to Declarant, or in any written contract with a purchaser executed by Declarant. DECLARANT MAKES NO WARRANTIES, EXPRESS OR IMPLIED, ABOUT THE EXISTING OR FUTURE SOIL OR ENVIRONMENTAL CONDITIONS ON OR ADJACENT TO THE CONDOMINIUM,

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INCLUDING POSSIBLE PRESENT OR FUTURE POLLUTION OF THE AIR, WATER OR SOIL FROM ANY SOURCES, INCLUDING BUT NOT LIMITED TO, POWER LINES, RADON GAS OR UNDERGROUND MIGRATION OR SEEPAGE OF HAZARDOUS SUBSTANCES OR OTHER POLLUTANTS. DECLARANT EXPRESSLY DISCLAIMS ANY LIABILITY FOR ANY TYPE OF DAMAGE, WHETHER DIRECT, INDIRECT OR CONSEQUENTIAL, THAT THE CONDOMINIUM OR THE OWNERS AND OCCUPANTS, TENANTS, GUESTS AND INVITEES MAY SUFFER BECAUSE OF ANY EXISTING OR FUTURE ENVIRONMENTAL OR OTHER CONDITION IN OR ADJACENT TO THE CONDOMINIUM.

Section 10.9. Disputes. In the event of any dispute or disagreement between any Owners concerning the interpretation or application of the Association's Governing Documents, the Board's determination will be final and binding on each and every Owner. If a majority of the Board is unable to reach a decision concerning any matter which has been submitted to it for a determination, then the matter will be submitted for resolution to the attorney for the Association, whose decision will be binding on all of the Members of the Association.

ARTICLE XI  
CONDEMNATION

Section 11.1. In the event that a Unit, Units, the Common Elements, or any portion thereof is acquired by eminent domain, the provisions of the Act govern and control.

Section 11.2. If any government or agency initiates proceedings to take any portion of the Condominium by eminent domain, the Association represents all of the Owners in any related proceedings, negotiations, settlements, or agreements and each unit owner appoints the Association as his/her attorney-in-fact for this purpose.

Section 11.3. The proceeds from a settlement are payable to the owners' association, or to the insurance trustee, for the benefit of the unit owners and their mortgage holders.

Section 11.4. To the extent not inconsistent with this Section, if any government or agency initiates proceedings to take any portion of the Condominium by eminent domain having a value (including loss of value to the balance of the Common Elements and improvements), as reasonably determined by the Board, in excess of \$100,000.00, the Board must give prompt notice, including a description of the part of or interest in the Common Elements sought to be condemned, to all First Mortgagees of the Units, all Members, and to the Declarant. The Board has the full power and authority to defend those proceedings, and to represent the Owners in any negotiations, settlements, and agreements with a condemning authority attempting to acquire the Common Elements, but the Association cannot enter into any such proceedings, settlement, or agreements, pursuant to which the

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Common Elements or any part of such Common Elements is relinquished, without giving all First Mortgagees, all Owners, and Declarant at least 15 days' prior written notice.

Section 11.5. In the event, following such proceedings, all or any part of the Common Elements is taken by condemnation, the award given for such taking, must payable to the Association for the benefit of the Owners and their Mortgagees and must be applied by the Board to the repair and restoration of the Condominium. If the full amount of the award is not expended to repair and restore the Common Elements, the Association must disburse the net proceeds of the award in proportion to each Owners' interest in the Common Elements, except that any portion of the award attributable to the acquisition of a Limited Common Element will be equally divided among the Owners to which the Limited Common Element was allocated at the time of the acquisition. Prior to distributing funds to the Owners, the Association must first pay out of the Owner's share, the amount of any unpaid liens or encumbrances on the Unit in the order of the priority of such liens or encumbrances. No provision of this Declaration or of any other document relating to the Condominium gives an Owner or any other party priority over the rights of a First Mortgagee pursuant to a First Mortgage in the case of a distribution to an Owner of insurance proceeds or condemnation award for losses to or taking of Units or Common Elements or any combination thereof.

ARTICLE XII  
DISPUTE RESOLUTION

Section 12.1. Consensus for Association Action.

- 12.1.1. The Association may not commence a legal proceeding, or seek any other type of relief, whether judicial or quasi-judicial, or file any action without the approval of at least 2/3rds of the votes of the Members entitled to vote and who are voting in person or by absentee ballot at a duly called meeting of the Association. This Article does not apply to (1) actions or proceedings brought by the Association to enforce the Governing Documents (including, without limitation, the foreclosure of liens); (2) the imposition and collection of assessments or fines/penalties; (3) proceedings involving challenges to ad valorem taxation; or (4) counterclaims brought by the Association in proceedings instituted against it. This Section 12.1.1. does not apply to any Claims in which the Declarant is a party as those types of Claims must be approved by the Owners in accordance with Section 12.14.
- 12.1.2. Prior to the Association or any Member commencing any proceeding to which Declarant is a party, including but not limited to an alleged defects in any portion of the Condominium, Declarant has the right to be heard by the Members, or any particular Member, and to access, inspect, correct the condition of, or redesign any portion of any Improvement as to which a defect is alleged, or otherwise correct the alleged disputed item.

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Section 12.2. Alternative Method for Resolving Disputes. Declarant, its officers, directors, employees and agents; the Association, its officers, directors and committee members; all Persons subject to this Declaration, including all Members of the Association and any Person not otherwise subject to this Declaration but who agrees in writing to submit to this Article XII (all of which are collectively referred to as a "Bound Parties") agree to encourage the amicable resolution of disputes, without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees to submit those claims, grievances or disputes described in Section 12.3. ("Claim") to the procedures set forth within this Article XII.

Section 12.3. Claims.

12.3.1. Unless specifically exempted below, all Claims between any of the Bound Parties regardless of how the Claim may have arisen or on what it might be based including but not limited to, claims (a) arising out of or relating to the interpretation, application or enforcement of the Governing Documents or the rights, obligations and duties of any Bound Party under the Governing Documents, (b) arising out of or related in any way to the planning, design, engineering, grading, construction or development of the Unit, the Common Elements, the Limited Common Elements, or any other part of the Property, including, without limitation, any claim or cause of action that the Unit, the Common Elements or Limited Common Elements are defective or that any contractors, employees, members, subcontractors, architects, engineers, consultants or similar parties who previously were involved in the planning, design, engineering, grading, construction or development thereof were negligent; and (c) against the Declarant or any employee, agent, director, member or officer of Declarant arising out of or in any way related to improvements in the Condominium made by Declarant or its contractors or agents or the management or operation of the Association, including, without limitation, any claim for negligence, fraud, intentional misconduct or breach of fiduciary duty relating to the design or construction of Improvements; or (d) based upon any statements, representations, promises, warranties, or other communications made by or on behalf of any Bound Party, are subject to the provisions of this Article XII.

12.3.2. Notwithstanding the above, unless all parties otherwise agree, the following are not Claims and are not subject to the provisions of this Article XII:

12.3.2.1. any suit by the Association against any Owner to enforce an Owner's obligation to pay Assessments;

12.3.2.2. any suit by the Association or Declarant to obtain a temporary restraining order or injunction (or equivalent emergency equitable relief) and such other ancillary relief as a court may deem necessary in order to maintain the status quo and preserve the Association's ability to act under and enforce the provisions of the Governing Documents;

- 12.3.2.3. any suit between or among Owners, which does not include the Declarant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent from the Governing Documents;
- 12.3.2.4. any suit in which any indispensable party is not a Bound Party;
- 12.3.2.5. the rights of any First Mortgagee or Institutional Guarantor;
- 12.3.2.6. an employment matter between the Association and any employee of the Association;
- 12.3.2.7. Any action arising out of any separate written contract between Unit Owners, between the Declarant and any Owner, or between Declarant that would constitute a cause of action under the laws of the State of Arizona regardless of the existence of the Governing Documents.

Section 12.4. Consent to use ADR on Other Matters. With the consent of all Parties any of the above matters identified in this Section may be submitted to the alternative dispute resolution procedures set forth herein.

Section 12.5. Procedures. The procedures for resolution of Claims are as follows:

- 12.5.1. Notice. Any Bound Party having a Claim ("Claimant") against any one or more Bound Party ("Respondent") must notify each Respondent in writing of the Claim (the "Claim Notice"), stating plainly and concisely:
  - 12.5.1.1. The nature of the Claim, including date, time, location, persons involved, and Respondent's role in the Claim;
  - 12.5.1.2. The basis of the Claim (i.e., the provisions of the Governing Documents or other authority out of which the Claim arises);
  - 12.5.1.3. The resolution or relief sought by Claimant against Respondent; and
  - 12.5.1.4. The agreement of Claimant to meet personally with Respondent at a mutually agreeable time and place to discuss ways to resolve the Claim.
  - 12.5.1.5. The Claim Notice is binding on the Claimant and may be subsequently amended only to add a new Claim that did not exist or was not discoverable upon reasonable inspection at the time that the Claim Notice was served by Claimant. The submission of a new Claim after the initiation of the mediation process under Section 12.5.3, below will result in the initiation of an entirely new mediation process as to the new Claim.

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12.5.2. Conciliation and Negotiation.

12.5.2.1. Each Claimant and Respondent (collectively, the "Claim Parties" and singularly, a "Claim Party") must make reasonable efforts to meet personally and agree to confer for the purpose of resolving the Claim by good faith and confidential negotiations.

12.5.2.2. Upon receipt of a written request from any of the Claim Parties, accompanied by a copy of the Claim Notice, the Board may appoint a representative to assist the Claim Parties in resolving the dispute by negotiation if, in its discretion, the Board believes its efforts will be beneficial to the Claim Parties or to the welfare of the Condominium.

12.5.3. Mediation.

12.5.3.1. If the Claim Parties do not resolve the Claim through negotiation within 30 days of the date of the Claim Notice (or within any other period as may be agreed upon by the Claim Parties) ("Termination of Negotiations"), Claimant has 30 additional days within which to submit the Claim to mediation by an independent mediation service designated by the Association or, in absence of a mediation service designated by the Association or in the case of a reasonable objection by Claimant, any dispute resolution center or other independent agency providing similar services in Pima County, Arizona upon which the Claim Parties may mutually agree.

12.5.3.2. If Claimant does not submit on a timely basis the Claim to mediation within 30 days after Termination of Negotiations, Claimant will be deemed to have waived the Claim, and Respondent will be released and discharged from any and all liability to Claimant arising out of the Claim; however, Claimant's failure to submit the Claim for mediation will not release or discharge Respondent from any liability to any Person that is not a Claim Party to the foregoing proceedings.

12.5.3.3. Within 15 days of the selection of the mediator, each of the Claim Parties will provide the mediator and each other with a brief memorandum setting forth its position with regard to the issues to be resolved. The mediator will have the right to schedule a pre-mediation conference, and all Claim Parties must attend unless otherwise agreed. The mediation will commence within 30 days after the memoranda have been submitted to the mediator and will conclude within 15 days after mediation has commenced unless the Claim Parties mutually agree to extend the mediation period. The mediation will be held in Pima County

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or any other place that is mutually acceptable to the Claim Parties.

12.5.3.4. The mediator has discretion to conduct the mediation in the manner in which the mediator believes is most appropriate for reaching a settlement of the Claim. The mediator is authorized to conduct joint and separate meetings with the Claim Parties and to make oral and written recommendations for settlement. Whenever necessary, the mediator also may obtain expert advice concerning technical aspects of the dispute, so long as the Claim Parties agree to obtain and assume the expenses of obtaining the expert advice. The mediator does not have the authority to impose a settlement.

12.5.3.5. The expenses of witnesses will be paid by the Claim Party producing the witnesses. All other expenses of the mediation, including, but not limited to, the fees and costs charged by the mediator and the expenses of any witnesses or the cost of any proof or expert advice produced at the direct request of the mediator, will be borne equally by the Claim Parties unless agreed to otherwise. Each Claim Party will bear its own attorney fees and costs in connection with the mediation.

12.5.3.6. If the Claim Parties do not settle the Claim within 60 days after submission of the matter to the mediation process, or within any period of time as determined reasonable or appropriate by the mediator and the Claim Parties, the mediator will issue a notice or termination of the mediation proceedings ("Termination of Mediation Notice"). The Termination of Mediation Notice must set forth that the Claim Parties met, the fact that the mediation resulted in an impasse, and the date that the mediation was terminated. At the option of the Claim Parties, the Termination of Mediation Notice may establish, as to matters or items that have been agreed to by the Claim Parties, any undisputed factual findings or agreed resolutions.

12.5.3.7. Within 10 days after the mediator's issuance of the Termination of Mediation Notice, each of the Claim Parties must make a written offer of settlement in an effort to resolve the Claim, the Claimant will make a final written settlement demand ("Settlement Demand") to the Respondent, and the Respondent will make a final written settlement offer ("Settlement Offer") to the Claimant. If the Claimant fails to make a Settlement Demand, Claimant's original Claim Notice will constitute the Settlement Demand. If the Respondent fails to make a Settlement Offer, Respondent will be deemed to have made a "zero", "take nothing", or "do nothing" Settlement Offer.

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12.5.3.8. All mediation discussions are privileged and confidential in the same manner as described in A.R.S. §12-2238. Persons other than the parties, the representatives and the mediator may attend mediation sessions only with the permission of both parties and the consent of the mediator. Confidential information disclosed to a mediator by the parties or by witnesses in the course of the mediator while serving in such capacity is confidential. Stenographic recording of the mediation process is not permitted.

12.5.4. Arbitration. If mediation is not successful in resolving any Claim, the Claim will be resolved by binding arbitration in accordance with the Commercial Arbitration Rules of the "American Arbitration Association" ("AAA") as modified or as otherwise provided in this Section. The parties will cooperate in good faith to attempt to cause all necessary and appropriate parties to be included in the arbitration proceeding. Subject to the limitations imposed in this Section, the arbitrator has the authority to try all issues, whether of fact or law.

12.5.4.1. The proceedings will be heard in Pima County.

12.5.4.2. A single arbitrator will be selected in accordance with the rules of the AAA from panels maintained by AAA with experience in relevant real estate matters or construction. The arbitrator cannot have any relationship to the parties or interest in the Condominium. The parties to the dispute will attempt to mutually agree on the arbitrator within 10 days after service of the initial complaint on all named defendants. If the parties do not agree on an arbitrator within this 10-day period, AAA will select an arbitrator.

12.5.4.3. The arbitrator will set the earliest convenient date to start the proceedings and will conduct the proceeding without undue delay.

12.5.4.4. The arbitrator may require one or more pre-hearing conferences.

12.5.4.5. The parties are only entitled to limited discovery, consisting of the exchange between the parties of only the following matters; (i) witness lists; (ii) expert witness designations; (iii) expert witness reports; (iv) exhibits; (v) reports of testing or inspections of the property subject to the dispute, including but not limited to, destructive or invasive testing; and (vi) trial briefs. The parties will also be entitled to conduct further tests and inspections. Any other discovery may be allowed by the arbitrator upon a showing of good cause or based on the mutual agreement of the parties. The arbitrator will oversee discovery and may enforce all discovery orders in the same manner as any trial court judge.

12.5.4.6. The arbitrator does not have the power to award punitive or consequential damages. As further provided below, the right to punitive and consequential damages is waived by the parties. The arbitrator has the power to grant all other legal and equitable remedies and award compensatory damages in the proceeding.

12.5.4.7. The arbitrator has the power to hear and dispose of motions, including motions to dismiss, motions for judgment on the pleadings and summary judgment motions, in the same manner as a trial court judge, except the arbitrator also has the power to summarily adjudicate issues of fact or law including the availability of remedies, whether or not the issue adjudicated could dispose of an entire cause of action or defense.

12.5.4.8. The arbitrator's award may be enforced as provided to in the Uniform Arbitration Act, A.R.S. § 12-1501, et seq., or such similar law governing enforcement of awards in a trial court as is applicable in the jurisdiction in which the arbitration is held.

Section 12.6.

Waivers. By accepting a deed or by acquiring any ownership interest in any Unit, the Owners, for themselves, their heirs, personal representatives, successors, transferees and assigns and the Association agree to have any dispute as to a Claim resolved according to the provisions of this Section and waive the right to pursue any dispute as to a Claim in any manner other than as provided in this Section. The Association, each Unit Owner and Declarant acknowledge that by agreeing to resolve all disputes as provided in this Section, they are giving up their respective rights to have such disputes tried before a jury, a judge or an administrative body or tribunal. The Association, each Owner and Declarant further waive their respective rights to an award of punitive and consequential damages relating to a dispute as to a Claim. By accepting a deed or by acquiring any ownership interest in any portion of the Condominium, each Owner has voluntarily acknowledged that he/she is giving up any rights such Owner may possess to punitive and consequential damages or the right to a trial before a jury relating to a dispute as to a Claim.

Section 12.7.

Notice to Unit Owners. Prior to obtaining the consent of the Owners in accordance with Section 12.14, the Association must provide written notice to all Owners that states, at a minimum: (1) a description of the nature of the Claim, (2) a description of the attempts of Declarant to correct the Claim and the opportunities provided to Declarant to correct such Claim, (3) a certification from an engineer licensed in the State of Arizona that such Claim is valid along with a description of the scope of work necessary to cure such Claim and a resume of such engineer, (4) the estimated cost to repair such Claim, (5) the name and professional background of the attorney proposed to be retained by the Association to pursue the Claim against Declarant and a description of the relationship

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between such attorney and member(s) of the Board (if any), (6) a description of the fee arrangement between such attorney and the Association, (7) the estimated attorney fees and expert fees and costs necessary to pursue the Claim against Declarant and the source of the funds which will be used to pay such fees and expenses, (8) the estimated time necessary to conclude the action against Declarant, (9) an affirmative statement from the Board that the action is in the best interests of the Association and its Members and (10) a statement from the Board that there are no fees paid to the Board or Management Parties as a result of the referral to any attorney or licensed professional. The foregoing notice and disclosure requirements are in addition to any requirements in A.R.S. §33-2002.

**Section 12.8.** Notification to Purchasers. If the Association commences a Claim, all Owners must notify prospective purchasers of the Claim and must provide such prospective purchasers with a copy of the notice received from the Association in accordance with Section 12.7.

**Section 12.9.** Litigation/Attorney Fees. All Exempt Claims must be filed either in the Pima County Superior Court or in the United States District Court for the District of Arizona, Tucson Division (or in the case of actions to collect assessments or fines the amount of which do not exceed the jurisdictional limits, in the Pima County Justice Court). These Courts have the exclusive jurisdiction to resolve such Exempt Claims. In compliance with A.R.S. §12-1364, in any contested dwelling action involving the Unit or the Condominium, the court will award the successful party reasonable attorney fees, reasonable expert witness fees and taxable costs. If the Settlement Offer, including any best and final offer, is rejected and the judgment finally obtained is less than or less favorable to the Claimant than the Settlement Offer, the Respondent is deemed to be the successful party from the date of the offer or best and final offer. If the judgment finally obtained is more favorable to the Claimant than the Respondent's Settlement Offer or best and final offer, the Claimant is deemed to be the successful party from the date of the offer or best and final offer. This Section does not alter, prohibit or restrict present or future contracts or statutes that may provide for attorney fees.

**Section 12.10.** Right to Enter, Inspect, Repair and/or Replace. Within a reasonable time after the receipt by a Bound Party of a Claim Notice against that party (the "Respondent"), the Respondent and its agents, contractors, employees, subcontractors, architects, engineers, consultants and similar parties, have the right, upon reasonable notice to Claimant and during normal business hours, to enter onto or into, as applicable, the Unit, the Common Elements and Limited Common Elements, for the purposes of inspecting and/or conducting testing to determine the validity of the Claim and, if deemed necessary by the Respondent, to correct, repair and/or replace the alleged deficiency in the planning, design, engineering, grading, construction or development of the residence, the Common Elements or Limited Common Elements, which is the basis of the Claim (the "Alleged Defect"). In

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conducting such inspection, testing, repairs and/or replacement, the Respondent is entitled to take any actions as it deems reasonable and necessary under the circumstances. Nothing set forth in this Article can be construed to impose any obligation on the Respondent to inspect, test, repair, or replace any item or Alleged Defect for which the Respondent is not otherwise obligated under applicable law or any warranty provided by the Declarant in connection with the sale of the Unit. The right of the Respondent and its employees, agents, contractors and consultants to enter, inspect, test, repair and/or replace reserved is irrevocable and may not be waived or otherwise terminated except by a writing, in recordable form, executed and recorded by the Respondent. In no event will any statutes of limitations be tolled during the period in which the Respondent conducts any inspection or testing of any Alleged Defects. The rights in this Section 12.10 are in addition to any rights contained in A.R.S. § 12-1363. TO THE EXTENT OR IN THE EVENT AN OWNER PROHIBITS THE DECLARANT OR ANY AGENTS, CONTRACTORS, EMPLOYEES, SUBCONTRACTORS, ARCHITECTS, ENGINEERS, CONSULTANTS OR SIMILAR PARTIES, UNDER THE DIRECTION OF DECLARANT FROM EXERCISING ANY RIGHTS GRANTED BY THIS ARTICLE, ANY CLAIM FOR DAMAGES RELATING TO SUCH MATTER THAT SUCH PARTIES DESIRED TO INSPECT REPAIR OR REPLACE, WILL BE DEEMED AS WAIVED IN FULL.

- Section 12.11. Statute of Limitations. If litigation proceedings are not initiated against the Respondent within the time provided above, the Claim will forever be barred. All other applicable statutes of limitation and other limitation periods are waived. Nothing in this Section will be considered to toll, stay or extend any applicable statute of limitation.
- Section 12.12. Unit Owner's Consent to Construction Activities. By accepting a deed to a Unit, each Person consents to Declarant's construction activities, including future potential construction activities, if any, for future construction/renovation, and agrees not to protest such activities or claim such activities are a nuisance or unduly disturb occupancy at the Condominiums.
- Section 12.13. Use of Funds. In the event a Claimant initiates any legal action, cause of action or proceeding including, but not limited to, arbitration, mediation or any other alternative dispute resolution against Declarant alleging damages for a Claim, any judgment or award in connection therewith will first be used to correct and/or repair such alleged Claim or to reimburse the Claimant for any costs actually incurred by such Claimant in correcting and/or repairing the alleged Claim. Any excess funds remaining after repair of such alleged Claim must be placed into the Association's reserve fund.
- Section 12.14. Approval of Litigation. The Association cannot take any legal action or commence any proceeding including, but not limited to arbitration, mediation or any other alternative dispute resolution involving a Claim, or incur legal expenses, including without limitation, attorney fees, in

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connection with any Claim without the written approval of the Owners of 75% of the Units, excluding the votes of any Owner who would be a defendant in such proceedings. The Association must pay for any such legal action or proceeding with monies that are specifically collected from Owners for such purposes and may not borrow money or use reserve funds or other monies collected for specific Association obligations other than for legal fees. Such funds must be maintained in a separate account specifically designated solely for such purposes.

Section 12.15. Conflicts. In the event of any conflict between this Article XII and any other provision of the Governing Documents, this Article XII controls.

Section 12.16. Amendment of this Article XII and the Procedures for Resolution of Claims. Without the express prior written consent of Declarant, neither this Article, nor any procedures for the resolution of Claims which might be contained in the Bylaws may only be amended upon the approval of 100% of the Owners, 100% of the First Mortgagees and with the consent of the Declarant if the Declarant owns any Unit in the Condominium.

ARTICLE XIII  
USE RESTRICTIONS

Section 13.1. Animals. No animals of any kind can be kept in a Unit.

Section 13.2. Antennas and Exterior Additions. Subject to the Telecommunications Act of 1996, no exterior antennas or other devices for the transmission or reception of television or radio signals, including satellite dishes, will be erected or maintained on the Common Elements. Such devices are only permitted on any exclusive use Limited Common Elements. No exterior devices including solar energy devices, can be constructed or installed in the Common Elements or Limited Common Elements.

Section 13.3. Combining Units. Subject to reasonable Rules established by the Board, if an Owner owns two or more Units, as set forth below, those Units may be combined into one Unit, and the Common Elements between those Units will become part of the Unit, so long as the structural integrity of the building is not affected and if the finish of the remaining Common Elements is restored to a condition substantially comparable to that of the Common Elements before the Units were combined.

13.3.1. The Units that may be combined are as follows:

| Unit #'s | To be Combined With Units |
|----------|---------------------------|
| 101      | 102                       |
| 103      | 104                       |
| 105      | 106                       |

| Unit #'s | To be Combined With Units    |
|----------|------------------------------|
| 107      | 108                          |
| 109      | 110                          |
| 107      | 109                          |
| 108      | 110                          |
| 107      | 108, 109, 110 & 111          |
| 111      | 112                          |
| 201      | 202                          |
| 203      | 204                          |
| 205      | 206                          |
| 207      | 208                          |
| 207      | 209                          |
| 208      | 210                          |
| 209      | 210                          |
| 207      | 208, 209, 210 & 211          |
| 211      | 212                          |
| 301      | 302                          |
| 301      | 302, 303, 304 & 305          |
| 303      | 304                          |
| 306      | 307                          |
| 309      | 310                          |
| 309      | 311                          |
| 310      | 312                          |
| 306      | 307, 308, 309 & 310          |
| 309      | 310, 311, 312, 313, 314, 315 |
| 314      | 315                          |
| 311      | 312, 313, 314 & 315          |

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- 13.3.2. Prior to combining any Units, the Owner must obtain the written approval of the Board by submitting plans to the Board indicating the method by which the Units will be combined and a certification by an engineer that the combination of the Units will not impair the structural integrity of the building. The Board will review the plans and provide the owner with a written approval or disapproval within 60 days of the date of receipt of the plans.
- 13.3.3. Upon the termination of the common ownership of these adjacent Units, if the intervening wall or floor was altered or removed pursuant to the provisions of this Section, each of the Owners of such Units is obligated to restore such intervening wall or floor to substantially the same condition as it existed before such alteration or removal.
- 13.3.4. In accordance with the requirements of the Act, any relocation of the boundaries between or among adjoining Units must be reflected by an amendment to the Declaration. The Owners of the Units must prepare an amendment to the Declaration, including the plat, that identifies the units involved, specifies the altered boundaries of the Units and their dimensions and includes the Units' identifying numbers. If the Owners of the adjoining Units have specified a reallocation between their Units of the allocated interests, the amendment will state the proposed reallocation in a reasonable manner. The amendment must be executed by the Owners of those Units, must contain words of conveyance between or among such Owners and, before recording the amendment, must be submitted to the board. Unless the board determines within 30 days that the proposed amendment is unreasonable, which determination must be in writing and specifically state the reasons for disapproval, the Association must execute its approval and record the amendment.
- 13.3.5. Any Owner desiring to combine two or more Units must obtain a permit from the City of Tucson, or the applicable governmental agency responsible for issuing building permits, prior to performing any structural, plumbing, mechanical or electrical work to any Units.

Section 13.4. Common Elements.

- 13.4.1. No Owner may place any plants or other vegetation in the Common Elements.
- 13.4.2. All Common Elements will be managed in compliance with all governmental regulations.
- 13.4.3. No Owner may construct any improvements or install any decorative items in the Common Elements. Decorative items may be installed in the Limited Common Elements subject to the approval of the AC or in accordance with the Rules.

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- 13.4.4. As the air conditioning systems serving the Unit are located on the roofs of the Buildings which are part of the Common Elements, only licensed HVAC contractors are permitted to work on the systems.
- Section 13.5. Declarant Approval Required. After the expiration of the Period of Declarant Control and for so long as the Declarant owns any Unit, any action which requires the approval of the Board may only be taken if the action is also approved by the Declarant.
- Section 13.6. Decorating. Each Owner, at the Owner's own expense, must furnish and decorate the Owner's own Unit, including painting, wallpapering, paneling, floor coverings, draperies, window shades, curtains, lamps, and other furniture and interior decorating. No Owner may decorate any portions of the Common Elements. Each Owner is entitled to the exclusive use of the interior unfinished surfaces of the walls, floors and ceilings in its Unit and each Owner has the right to decorate these surfaces as the Owner determines at the Owner's sole expense. Each Owner must maintain the interior surfaces in good condition, and the use, maintenance and decoration are subject to regulation by the Board. Decorating the Common Elements and any redecorating of the Unit to the extent made necessary by any damage caused by maintenance, repair or restoration work by the Association on the Common Elements will be done by the Association and paid for as part of the Common Expenses.
- Section 13.7. Dividing Units. With the permission of the Board, any Unit may be divided into two or more Units. In the event that a Unit is divided, then the voting rights, imposition of assessments and ownership of the Common Elements will be based upon the total square footage of the new Units that were created, divided by the total square footage of all of the Units in the condominium. If a Unit is divided, the Board has the right to determine the Limited Common Elements attributable to the newly created Units.
- Section 13.8. Drainage. No person can do anything in the Unit, Limited Common Elements or the Common Elements which interferes with the established drainage pattern over the Common Elements. All drainage must conform, in all respects, to any governmental regulations. "Established drainage" is defined as the drainage which existed at the time of the original construction of the office buildings that were converted to Units, or which is shown on any grading plan approved by the governmental agency having authority over the Property at the time it was originally graded.
- Section 13.9. Leases
- 13.9.1. "Leasing" for purposes of this Declaration, is defined as regular occupancy of a Unit by any person other than the Owner for which the Owner, or agent of the Owner receives any consideration or benefit, including, but not limited to, a fee, service, gratuity, or other type of benefit. As used in this Section, the terms "rent" and "lease" are synonymous.

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to the Association, acting through the Board, the power and authority to enforce the Lease against the Tenant for breaches resulting from the violation of the Governing Documents, including the power and authority to evict the Tenant on behalf and for the benefit of the Owner. If the Association files an eviction action against the Tenant, any costs, including reasonable attorney fees and court costs, incurred by the Association will be assessed against the Owner as Reimbursement Assessments.

- c. The Association is a third-party beneficiary of the terms of each Lease between an Owner and a Tenant. In the event that any Tenant violates any provision of the Governing Documents, the Association has the right to demand that the owner take legal action to permanently remove the Tenant from the Unit.

Section 13.10. Noise. No Owner will engage in any activity or permit any activity to occur in any Unit or the Common Elements which results in any unusual, loud or obtrusive noise or sound.

Section 13.11. Uses. It is intended that the Units will be used for business, administrative or professional office use, financial services, medical offices and services (except that Secondary uses to major medical service and outpatient medical services are not permitted), for research and product development and such other permitted uses in the City of Tucson, Arizona, C-1 Zoning designation, except that the following uses are not permitted:

13.11.1. Animal Service, Automotive Service and Repair, Entertainment, Food Service, Sale of Spirituous Liquor, whether in connection with Food Service Use or not, Secondary Uses to Major Medical Service and outpatient Medical Service, Heavy Equipment Manufacturing, Hazardous Material Storage, Laundry Facilities, Trade Service and Repair, Secondary Uses to Travelers' Accommodation and Lodging,, Alcoholic Beverage Service and Entertainment, Construction Service, Funeral Service, Transportation Service, Air Carrier, Travelers' Accommodations, Adult Day Care, Billboards, Trade Service and Repair, including the repair and replacement of upholstery and the repair of burglar alarms and motor vehicle stereos, and Artisan Residence.

13.11.2. Communications are permitted, provided, however that towers and antennas used in conjunction with such business activity will not be permitted without the approval of the Declarant and/or the Board and the Declarant and/or the Board has the right to disapprove of such towers and antennas, if in their sole discretion they determine that it would not be in keeping or compatible with the other uses of the Units.

Section 13.12. Right of Inspection. Upon notice to the Owner and during reasonable hours, any Member of the Board, or any authorized agent of the Board, has the right to enter into and inspect the Unit, to ascertain whether or not the

provisions of the Governing Documents have been or are being complied with, and such persons will not be deemed guilty to trespass by reason of such entry.

Section 13.13. Rubbish, Garbage, Wood Storage, Unsightly Articles or Nuisances.

- 13.13.1. No nuisances are permitted in the Condominium. No Person can engage in any activity that annoys any Owner or Occupant or which interferes with a Person's peaceful use of the Property.
- 13.13.2. The term "nuisance" does not include any activities of Declarant which are reasonably necessary to the marketing and sales of the Units.
- 13.13.3. No Owner may cause any fire hazards to exist. No unlawful use of the Unit is permitted. Each Occupant must obey all laws, ordinances, and regulations of all governmental bodies having jurisdiction over the Property, but the Association is not required to enforce compliance with governmental laws and regulations.
- 13.13.4. No Unit can be used in whole or part for the storage of rubbish or garbage or wood of any character whatsoever nor for the storage of anything which will cause such Unit to appear in any unclean or untidy condition or that will be otherwise obnoxious. No storage of any material is permitted outside the walls of a Unit. No unsightly articles can be visible from adjoining Units or from the Common Elements.
- 13.13.5. No Owner or Occupant may dispose of, transport, or store "hazardous materials" in the Unit or elsewhere in the Condominium other than small amounts of ordinary household non-combustible cleaning agents maintained in the Unit. No Owner or Occupant may dispose of any hazardous materials, including, without limitation, motor oil, hydrocarbons, or other petroleum products, in the Condominium.
- 13.13.6. The electric wiring in the Condominium cannot be overloaded. No Owner can operate machines, office equipment or appliances in such a manner that will unreasonably disturb, in the judgment of the Board, others. No Owner can overload the floors on the second and third floor of any Building.
- 13.13.7. The Board has the sole discretion to determine if any activity by an Owner, Occupant, Tenant, agent, employee, or invitee is in violation of this Section. The Board can defer taking action to abate a nuisance to the Owner or Occupant of any Unit who is bothered by the activity.
- 13.13.8. Window air conditioning or coolers are prohibited.

Section 13.14. Rules and Regulations. The Board may adopt, amend and repeal Rules and Regulations pertaining to (1) the management, operation and use of the Units and Common Elements; (2) minimum standards of maintenance of the Units; (3) any other subject within the jurisdiction of the Association;

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(4) the conduct and actions of Owners, employees, Tenants, guests, invitees or visitors in the Units and Common Elements when such conduct affects the other Owners or the value, desirability, and aesthetics of the Condominium; and (5) traffic and parking restrictions.

**Section 13.15.** Sales of Units. Each Owner will promptly notify the Board of any sale or transfer of his/her Unit and will provide the Board with the name and address of the grantee or transferee and any other information which is reasonably required by the Association. The Association may charge a transfer fee to any subsequent Owner.

**Section 13.16.** Signs. No sign of any kind will be displayed anywhere on the Condominium unless such sign has been approved by the Board except:

13.16.1. Signs which may be required by legal proceedings, or which are permitted under the Act;

13.16.2. One sign advertising the Owner's Unit for sale, provided such sign is placed in a window, is not larger than eighteen by twenty-four inches. Such sign may contain an industry standard size sign rider, which cannot exceed six by twenty-four inches. For sale signs must be removed within one week after the offer of sale of the Unit has been accepted and all contingencies have been removed;

13.16.3. Any signs used by the Declarant for the leasing, sale and marketing of the Units.

**Section 13.17.** Vehicle Parking and/or Storage.

13.17.1. Parking Spaces. The Association may assign parking spaces for the use of the Owner and the Owner's employees, guests and invitees. Guests and invitees may only park their vehicles in the unassigned Parking Spaces. No Parking Space may be used for storage or for any purpose other than for parking operable vehicles.

13.17.2. Parking. Each Owner and Occupant must park their vehicles in the Owner's designated Parking Spaces. No Owner, Occupant, Tenant, guest or invitee may park in any Parking Space assigned to another Unit.

13.17.3. Recreational Vehicles. Parking or storage of recreational vehicles (including, but not limited to, trailers, campers, motor homes, mobile homes, van conversions and boats) is prohibited in all portions of the Condominium.

13.17.4. Parking Regulations. The Board may adopt parking regulations, including, but not limited to, parking regulations which restrict the number of vehicles which may be parked in the parking areas.

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13.17.5. Repairs of Vehicles. Except for emergency vehicle repairs, no automobile or other motor vehicle will be constructed, reconstructed or repaired on any portion of the Condominium, and no inoperable vehicle [including an unlicensed vehicle] may be stored or parked in the parking areas in the Common Elements.

13.17.6. Towing. The Board has the right to have any vehicle, including, but not limited to recreational vehicles, automobiles, motorcycles, etc., which is parked in violation of the Governing Documents towed away at the sole cost and expense of the Owner of the vehicle. Any expenses incurred by the Association in connection with the towing of any vehicle will be paid to the Association by the Owner, within ten days from the date of demand by the Association and if not paid, will become a Reimbursement Assessment.

Section 13.18. Window Coverings. No reflective materials, including, aluminum foil, reflective screens or glass, mirrors or similar items, can be placed upon the outside or inside of any window of a Unit without the prior written approval of the Board. No enclosures, drapes, blinds, shades, screens or other items affecting the exterior appearance of a Unit or any Limited Common Elements allocated to a Unit can be installed in any Unit or Limited Common Element without the prior written approval of the Board, unless they replace items which have been previously approved by the Board.

ARTICLE XIV  
DISCLOSURES AND OWNER ACKNOWLEDGMENTS

Section 14.1. Disclosures and Owner Acknowledgments.

14.1.1. By accepting a deed to a Unit, each Owner is deemed to agree and accept the following: (1) that in all likelihood, Units contain some variations and deviations from the original plans and specifications including, but not limited to, minor variations as to the location of the walls of a Unit; (2) that there may be minor deviations in the Common Elements, Limited Common Elements, and in a Unit from Declarant's model Units located within the Condominium and from illustrations and designs shown in promotional materials; (3) that floor plans, maps, landscaping and elevation renderings included within promotional brochures and Condominium information are based upon an architect's rendering, which may not coincide with a survey done by a licensed surveyor, may not have been drawn to scale, and any square footage or dimensions shown in such materials are only approximations; (4) that the as-built location of utility lines, utility improvements (such as, but not limited to, junction boxes, transformers or pedestals) and sewer taps, may vary from locations shown on site layout plans; (5) that the character and uses of property surrounding and in the vicinity of the Condominium may change; (6) that there may be construction activity (including, but not limited to, noise and the transportation of labor, material and equipment) on site that may cause varying degrees of increased traffic, dust, noise, and other inconveniences to the Owners and Occupants; and (7) in any multi-story office building,



is any water damage or intrusion into Owner's Unit, Owner will take immediate action to prevent conditions which cause mold or mildew to develop and will notify Declarant and the Association immediately if the Owner believes that the problem comes from a third party source or is likely to impact on another party.

ARTICLE XV  
GENERAL PROVISIONS

Section 15.1. Enforcement.

15.1.1. The Association may enforce the Governing Documents in any manner provided for in such Governing Documents or by law or in equity, including, but not limited to:

15.1.1.1. Imposing reasonable monetary penalties after notice and an opportunity to be heard is given to the Owner or other violator. The Owner is responsible for the payment of any penalty which is imposed against a Tenant or Occupant of the Owner's Unit or by any guest or invitee of the Owner, Tenant or Occupant;

15.1.1.2. After notice and an opportunity for a hearing, suspending any services provided by the Association to an Owner or the Owner's Unit if the Owner is more than 15 days delinquent in paying any assessment or other charge owed to the Association. This includes terminating water service until satisfactory arrangements for the payment of such sums has been made with the Board;

15.1.1.3. Exercising self-help or taking action to abate any violation of the Governing Documents in a non-emergency situation;

15.1.1.4. Requiring an Owner, at the Owner's expense, to remove any personal property placed in the Unit if in violation of any of the Use Restrictions if that property is Visible; or requiring the Owner, at the Owner's expense to remove any structure or Improvement installed by the Owner either in the Unit, when Visible from Adjoining Units or the Common Elements or if located in the Common Elements. After Notice and a time within which the Owner must perform, if the Owner fails to take action, the Board or its designee has the right to remove the structure or other improvement in violation and restore the Unit or Common Elements to substantially the same condition as previously existed and any such action will not be deemed a trespass. The costs of doing so will become a Reimbursement Assessment;

15.1.1.5. Without liability to the Association or any Person, prohibiting any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of this

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Declaration or the Design Guidelines from continuing or performing any further activities in the Properties;

15.1.1.6. Filing a suit at law or in equity to enjoin a violation of the Governing Documents, to compel compliance with the Governing Documents, to recover fines or money damages or to obtain such other relief as to which the Association may be entitled.

15.1.2. Notice of Violation. An Owner who breaches the Governing Documents, or permits a breach by any Person over whom the Owner exercises either direct or indirect control, will be given written notice of the violation, sent by first class mail to the Owner's address in the records of the Association, advising that the breach must be cured within 10 days from the date the notice is mailed. The Owner has 10 business days thereafter to respond to the Notice of Violation. If the breach is not remedied in the manner provided for in the notice, the Board has the right to record a Notice of Violation in the office of the Pima County Recorder. The notice must be executed and acknowledged by an officer or any agent of the Association (including the attorney for the Association) and must contain substantially the following information: (i) the name of the Owner; (ii) the legal description of the Unit against which the notice is being recorded; (iii) a brief description of the nature of the violation; (iv) a statement that the notice is being recorded by the Association pursuant to this Declaration; and (v) a statement of the specific steps which must be taken by the Owner to cure the violation. A Notice of Compliance will be recorded when the Owner has cured the breach. The Notice of Violation, if recorded, may constitute an exception to the title to the Unit and as notice to the Owner and to any subsequent purchaser of the Unit that there is a violation of the provisions of the Governing Documents. Such Notice of Violation may affect an Owner's ability to convey marketable title to the Unit. Nothing in this Section 16.1.2 limits any other remedy available in law or equity for breach of these covenants.

15.1.3. Board's Discretion in Taking Action. The Association is not obligated to take any enforcement action if the Board determines, in its sole discretion, that because of the strength of the Association's finances, possible defenses, the time and expense of litigation or other enforcement action, the likelihood of a result favorable to the Association, or other facts deemed relevant by the Board, enforcement action would not be appropriate or in the best interests of the Association.

15.1.4. Cumulative Rights. All rights and remedies of the Association under the Governing Documents or at law or in equity are cumulative, and the exercise of one right or remedy will not waive the Association's right to exercise another right or remedy. The failure of the Association or an Owner to take enforcement action with respect to a violation of the Governing Documents will not constitute or be deemed a waiver of the right of the Association or any Owner to enforce the Governing Documents in the future.

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15.1.5. No Delays or Omissions. No delay or omission on the part of the Association or any Member in exercising its right to enforce any provision of the Governing Documents is a waiver or breach of such provisions of the Governing Documents or an acquiescence in any breach of these Governing Documents and no right of action will accrue against the Board, the Association, the Declarant or any Member for their neglect or refusal to exercise such right of enforcement.

15.1.6. No Invalidation of Mortgage. A breach of the foregoing provisions, conditions, restrictions or covenants will not defeat or render invalid the lien of any mortgage or deed of trust made in good faith for value as to any portion of the Properties. Such provisions, conditions, restrictions and covenants will be enforceable against any portion of the Properties acquired by any person through foreclosure for any breach occurring after such acquisition.

Section 15.2. Owners' Rights to Enforce. In addition to any rights which the Association has to enforce the Governing Documents, each Owner has the right to bring any action against any other Owner, in law or equity, to abate any violation of the Governing Documents.

Section 15.3. Attorney Fees. If any action or proceeding is brought any person to enforce the provisions of the Governing Documents or for an interpretation of the Declaration, whether it involves a judicial or administrative claim, the successful party is entitled to judgment for all costs and expenses incurred, attorney fees, litigation expenses and any other sums expended in the pursuit thereof.

Section 15.4. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order will not affect any others which will remain in full force and effect.

Section 15.5. Amendment.

15.5.1. This Declaration may be amended upon the approval of the Owners of 67% of the Units with or without a meeting; provided however, that during the Period of Declarant Control, the Declarant must give its written approval to any amendment to this Declaration. Any amendment to this Declaration must be in writing signed by the President and Secretary of the Association attesting that the requisite number of Owners has approved the amendment. All amendments become effective when recorded in the Pima County Recorder's Office.

15.5.2. The Declarant may amend this Declaration or the Plat, without obtaining the approval of any Owner, to conform this Declaration or the Plat to the requirement or guidelines of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or any federal, state or local governmental agency whose approval of the Condominium, the Plat or the

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Governing Documents is required by law or requested by the Declarant or the Board.

- 15.5.3. During the Period of Declarant Control, the Declarant reserves the right to amend this Declaration so long as the amendment is for the benefit of the Owners and the Condominium, as determined in the sole discretion of the Declarant. If the Declarant determines that any amendment is necessary or advisable, then no other consent is required and Declarant's determination that such an amendment is proper is binding on all Owners. Declarant's right to amend the Declaration is in addition to its right to amend the Declaration as an Owner of 67% of the Units.
- 15.5.4. Except to the extent provided for herein, no amendment will create or increase special Declarant rights, increase the number of Units or change the boundaries of any Unit, the allocated interests of a Unit or the uses to which any Unit is restricted, unless there is unanimous consent of all of the Owners.
- 15.5.5. No amendment may terminate or decrease any unexpired development right, special Declarant right or period of Declarant control unless the Declarant approves.
- 15.5.6. Declarant has the right to amend this Declaration if VA or FHA approved this Condominium for lending purposes and either agency requires such amendments.
- Section 15.6. Term. The provisions of this Declaration will run with the land and continue and remain in full force and effect at all times and against all persons.
- Section 15.7. Termination of Condominium. The Condominium may be terminated only in the manner provided for in the Condominium Act.
- Section 15.8. Records. The Association will maintain true and correct books and accounting records at its sole cost and expense in accordance with generally accepted accounting principles. Such books and accounting records, together with copies of the Governing Documents, are available for inspection by all Owners, upon a written request from the Owner that states the proper purpose for the review and provides a detailed list of the records sought to be reviewed. This does not include any records that are not subject to disclosure under the Act. The Association may charge a reasonable fee to cover the costs of copying such records, not to exceed 15¢ per page.
- Section 15.9. Survival of Liability. The termination of membership in the Association does not relieve or release any former Owner from any liability or obligation incurred under, or in any way connected with, the Association during the period of such ownership or impair any rights or remedies that the Association may have against such former Owner arising out of, or in any

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way connected with, such ownership and the covenants and obligations incident to such ownership.

- Section 15.10. Compliance. All covenants, conditions, provisions and restrictions contained in this Declaration or any subsequent amendments to this Declaration are subject to any and all applicable federal, state and local governmental rules and regulations.
- Section 15.11. Interpretation. Except for judicial construction, the Association has 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 of the Governing Documents will be final, conclusive and binding on all Owners.
- Section 15.12. Binding Effect. By accepting a deed or acquiring any ownership interest in any Unit, each person or entity, for himself, or itself, his heirs, personal representatives, successors, transferee and assigns, bind him/herself and his/her heirs, personal representatives, successors, transferee and assigns to all of the provisions, restrictions, covenants, conditions, rules and regulations which have been imposed by this Declaration and any amendments thereto. In addition, each such person doing so acknowledges that this Declaration sets forth a general scheme of the Condominium and evidences his/her intent that all restrictions, conditions, covenants, and rules and regulations contained herein or promulgated hereafter by the Association will run with the land and be binding upon all subsequent and future Owners, grantees, purchasers, assignees and transferee thereof. Furthermore, each such person fully understands and acknowledges that this Declaration will be mutually beneficial, prohibitive and enforceable by the various subsequent and future Owners.
- Section 15.13. Liability of Declarant, the Association, its Board, Officers and Committees. To the fullest extent permitted by law, neither the Declarant, Board, nor any committee members of the Association, nor any officers, directors or committees of the Declarant or the Association are liable to any Owner or to the Association for any damage, loss or prejudice arising out of any decision, course of action, act, inaction, omission, error, negligence, or the like, made in good faith and which such Declarant, Board, Officers or committee members reasonably believed to be within the scope of their duties.
- Section 15.14. Declarant's Disclaimer of Representations. While Declarant has no reason to believe that any of the provisions 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 provisions of this Declaration. Any Owner acquiring a Unit in reliance on one or more of the provisions in this Declaration assumes all risks of the validity and enforceability of this Declaration and by acquiring the Unit agrees to hold Declarant harmless from any liability.

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Section 15.15. Indemnification. The Association will indemnify to the fullest extent allowed by law every officer, director and committee member, against any and all expenses, including attorney fees, reasonably incurred by or imposed upon, any officer, director or committee member, in connection with any action, suit or other proceeding (including settlement of any suit or proceeding if approved by the then Board) to which he or she may be a party by reason of being or having been an officer or director. The Association will, as a common expense, maintain adequate general liability and Officer's and Director's Liability Insurance to cover this obligation.

IN WITNESS WHEREOF, the Declarant executes this Declaration on the 10<sup>th</sup> day of OCTOBER, 2008.

Declarant: HSL DORADO PLACE OFFICE, LLC, an Arizona Limited Liability Company

By: \_\_\_\_\_  
It's: EVP

State of Arizona )  
County of Pima ) ss:  
)

This instrument was subscribed and sworn before me on this 10<sup>th</sup> day of October, 2008 by OMAR MIRELES, the EVP of HSL DORADO PLACE OFFICE, LLC, Declarant.

Marlys Meacham  
Notary Public

My commission expires: May 2, 2012



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Exhibit "A"  
Allocated Interests in the Common Elements

Type 1 Units: 3.246%

Type 2 Units: 1.622%

Type 3 Units: .880%

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