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**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS
AND EASEMENTS FOR
SHANNON ESTATES HOMEOWNERS ASSOCIATION, INC.**

**SHANNON ESTATES LOTS 1-55
COMMON AREA "A" (PRIVATE STREETS),
COMMON AREA "B" (RECREATION AREA AND DRAINAGE BASIN),
COMMON AREA "C" (LANDSCAPE AREAS)**

**BY
HSL RIO CANCION APARTMENTS, LLC, AN ARIZONA LIMITED LIABILITY
COMPANY**

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**DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS FOR
SHANNON ESTATES HOMEOWNERS ASSOCIATION INC.**

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LEGAL DESCRIPTION

A PORTION OF SECTION 28, TOWNSHIP 12 S, RANGE 13 E. G&SRM, PIMA COUNTY,
ARIZONA

RECORDED IN BOOK 65 OF MAPS AND PLATS AT PAGE 27 IN THE OFFICE OF
THE RECORDER OF PIMA COUNTY.

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**REPLACEMENT
DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS
AND EASEMENTS FOR
SHANNON ESTATES**

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS is executed to be effective as of the 13th day of August, 200¹⁰9, by Title Security Agency of Arizona, an Arizona corporation, as Trustee under Trust No., 948 and the beneficiary HSL Rio Canción Apartments, LLC, an Arizona Limited Liability Company, and its successors and assigns ("Declarant")

RECITALS:

A. Declarant is the owner of certain real property located in the County of Pima, State of Arizona described on *Exhibit A* attached hereto and incorporated herein by this reference (the "Property") to be developed as a community known as "Shannon Estates" (the "Community").

B. Declarant desires to form an Arizona nonprofit corporation to be known as the "Shannon Estate Homeowners Association, Inc." for the purposes of, among other things, (i) holding title in fee or otherwise controlling all or portions of the Common Areas, in regard to which the Association will be delegated certain powers to construct, administer, operate, repair and maintain the Common Areas and enforce this Declaration; and (ii) establishing, collecting, disbursing and enforcing the Assessments provided for or created herein.

C. Declarant desires and intends that the Property shall be held, sold, leased and/or otherwise conveyed subject to the easements, restrictions, covenants, conditions, servitudes, assessments, liens and reservations in this Declaration, which: (i) are for the purpose of protecting the desirability and attractiveness of the Property; (ii) shall run with all of the real property comprising the Property; (iii) shall be binding on all parties having any right, title or interest in the Property, or any part thereof; and (iv) shall inure to the benefit of said parties and their successors and assigns.

NOW, THEREFORE, Declarant, as the present fee owner of the Property, hereby declares, covenants and agrees as follows:

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ARTICLE 1

DEFINITIONS

As used in this Declaration, the following terms shall have the following meanings:

"Affiliate" of a Person means a Person that controls, is controlled by or is under common control with such other Person.

"Agency" means FHA, VA, Federal National Mortgage Corp., Federal Home Loan Mortgage Corp., or other governmental, quasi-governmental or private agency providing residential loan financing, guarantees or other accommodations.

"Articles" means the Articles of Incorporation of the Association, as amended or restated from time to time, on file with the Arizona Corporation Commission.

"Annual Assessments" means the Assessments levied by the Board pursuant to *Section 8.4*.

"Association" means "Shannon Estates Homeowners Association, Inc.," an Arizona non-profit corporation, and its successors and assigns.

"Association Rules" means the reasonable rules and regulations adopted by the Association pursuant to *Section 6.3*.

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

"Builder" means a Person in the business of, or a person which has an Affiliate in the business of, constructing and selling homes or in the business of acting as a land banker that sells lots to Persons who construct and sell homes, which purchases six or more Lots without Dwelling Units constructed thereon for the purpose of constructing Dwelling Units thereon and selling such Lots and Dwelling Units.

"Bylaws" means the Bylaws of the Association, as amended or restated from time to time.

"Class A Member" has the meaning given to it in *Section 7.2*.

"Class B Member" has the meaning given to it in *Section 7.2*.

"Committee" means the Architectural Review Committee formed pursuant to *Article 4*.

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"Common Areas" means (a) those portions of the Community, together with the buildings, structures and Improvements thereon, which the Association may, from time to time, own in fee or in which it may have an easement interest, for as long as the Association holds fee title or an easement interest; (b) all land within the Community which Declarant, by this Declaration or in any other Recorded instrument, makes available for use by Members of the Association or otherwise designates as Common Areas for purposes of this Declaration; (c) all land or right-of-way easements within the Community which are dedicated to the public or to Pima County or other applicable municipality, but which the County or other governmental agency requires the Association to maintain; (d) any and all private internal streets; and (e) any other areas with respect to which the Association has assumed in writing administrative or maintenance responsibilities. The term shall include the Exclusive Common Area, as defined below, and may include without limitation, recreational facilities, entry features, signage, landscaped medians, rights of way, and walking trails, if any.

"Common Expenses" means the expenses of operating the Association, including all expenses listed in *Section 8.1* or *Section 9.1*.

"County" means Pima County or other municipality within which a portion of the Property may be located now or in the future.

"Community" means the planned community known as "Shannon Estates" to be developed on the Property.

"Declarant" means HSL Rio Cancion Apartments, LLC, an Arizona limited liability company, and each Affiliate thereof including any assignee of Declarant's rights. Declarant may assign its rights by express recorded instrument to a subsequent Owner of all or part of the Property.

"Declaration" means this Declaration of Covenants, Conditions, Restrictions and Easements, as amended or supplemented from time to time as herein permitted.

"Design Guidelines" has the meaning given to it in *Section 4.1*.

"Designated Builder" means a Builder that is designated by the Declarant as a "Designated Builder" in a Supplemental Declaration or in a written notice given by the Declarant to the Association and by such designation receives certain rights as expressly provided in this Declaration.

"Dwelling Unit" means any building, or part thereof, situated upon a Lot and intended for use and occupancy as a residence.

"Exclusive Common Area" means that portion of Common Area that is for the exclusive use of the members of Shannon Estates.

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"FHA" means the Federal Housing Administration.

"First Mortgage" means a deed of trust or mortgage recorded against a Lot which has priority over all other deeds of trust or mortgages recorded against the same Lot.

"Improvement" means any building, wall, structure, landscaping, equipment or other item and any addition, alteration, repair, change or other work regarding any such item, including exterior paint, which in any way alters the exterior appearance of any part of a Lot and is Visible From Neighboring Property.

"Lot" means a lot shown on a Recorded Plat for the Property upon which a Dwelling Unit can be constructed and occupied pursuant to applicable law and shall include lots shown on a Preliminary Plat approved by Pima County for any portion of the Property not yet subject to a Recorded Plat.

"Member" means any Person entitled to a membership in the Association hereunder.

"Membership" means the combination of rights and duties of Members in the Association.

"Occupant" means any Person, other than an Owner, occupying or in possession of a Lot, or any portion thereof or any building or structure thereon, whether as a lessee under a lease or otherwise.

"Owner" (when capitalized) means (and any reference in this Declaration to "own", "owned" or "ownership" when used in reference to a portion of the Property shall be deemed to include) the Record holder of legal title to the fee simple interest in any Lot or, in the case of a Recorded "contract," as that term is defined in A.R.S. § 33-741(2), then the holder, of Record, of the purchaser's or vendee's interest under said contract, but excluding others who hold such title merely as security. If fee simple title to a Lot is vested of Record in a trustee pursuant to A.R.S. § 33-801 *et seq.*, then for purposes of this Declaration legal title shall be deemed to be held by the trustor (or the trustor's successor of Record), and not by the trustee.

"Person" means a natural person, corporation, partnership, Limited Liability Company, trustee or any other legal entity.

"Property" means the real property more particularly described on *Exhibit A* attached hereto and incorporated by this reference subject to any adjustments under *Section 14.11*. The Property consists of Lots 1- 55 of Shannon Estates, Pima County, Arizona, recorded in Book 65 of Maps and Plats at Page 27. Upon Recording of this Declaration, the Property is subject to the Recorded Final Plat of Shannon Estates which does not yet have Recorded Plats, but are included within a Preliminary Plat approved by the Pima County.

ARTICLE 3

EASEMENTS AND RIGHTS OF ENJOYMENT IN THE COMMON AREAS

3.1 Easements and Rights of Enjoyment. Each Owner shall have a nonexclusive easement for use and enjoyment in and to the Common Areas, which is appurtenant to and shall pass with the title to each Owner's Lot. All Occupants shall have a nonexclusive, nontransferable temporary license to use and enjoy the Common Areas so long as they remain Occupants. The foregoing grant and rights are subject, among other things, to the following limitations:

(a) The right of the Association to suspend the voting rights and the right to use and enjoy the Common Areas of any Owner or the Owner's Occupant:

- (i) for any period during which an Assessment remains delinquent;
- (ii) for a period not to exceed sixty (60) days for any infraction of this Declaration or the Association Rules; or,
- (iii) for successive 60-day periods if any such delinquency or infraction is not corrected during any preceding suspension period;

(b) The right of the Association to regulate and control use of the Common Areas pursuant to the Association Rules or otherwise in accordance with this Declaration; and,

(c) The right of the Association to dedicate or transfer any part of the Common Areas to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Association in accordance with *Section 10.5*.

3.2 Delegation of Use. Any Owner or Occupant, in accordance with the Association Rules and this Declaration, may delegate his rights of use and enjoyment in the Common Areas to the members of his family or his Occupants, employees, customers or guests subject to the limitations set forth herein and in the Association Rules. Each Owner or Occupant shall cause his family members, tenants, other Occupants, employees, invitees, permittees and guests to comply with this Declaration, the Articles, the Bylaws, and the Association Rules and, to the extent permitted by applicable law, shall be responsible and liable for all violations and losses caused by such family members, tenants, other Occupants, employees, invitees, permittees and guests, notwithstanding the fact that such family members, tenants, other Occupants, employees, invitees, permittees and guests are also fully liable for any violation of each and all of those documents.

3.3 Easement for Common Areas Maintenance. The Association shall have an easement upon, over, under and across all Lots and other property within the Community (except property owned by Declarant) for the purpose of (a) repairing, maintaining and replacing the

Common Areas and all Improvements thereon, and (b) performing all other rights, duties and obligations of the Association under this Declaration.

3.4 Utility Easements. All utility installations including, without limitation, electrical installations, must be placed underground unless the prior written consent is given by the Declarant while there is a Class B Membership, or by the Association after the Class B Membership ceases to exist. All easements located in, on or under a Common Area must be specifically agreed to by Declarant while there is a Class B Membership, or by the Association after the Class B Membership ceases to exist. Until the Class B Membership ceases to exist, Declarant may cause the Association to grant easements and licenses over, under and across the Common Area as reasonably needed for development of the Community.

ARTICLE 4

ARCHITECTURAL CONTROL

4.1 ARCHITECTURAL REVIEW COMMITTEE. Declarant shall establish the Architectural Review Committee ("ARC") to perform the functions of the ARC set forth in this Declaration. The ARC shall adopt procedural rules and regulations for its performance of such duties, including procedures for the preparation, submission and consideration of the application for any approvals required by this declaration. The ARC shall make its decision on an application for approval within sixty (60) days of the submission of such application. If the ARC fails to respond to an application, the application shall be deemed disapproved. The ARC shall consist of such number of regular members and alternate members as Declarant may designate. All such members shall be appointed by Declarant for so long as Declarant owns property within the Community. Thereafter, the members of the ARC shall be appointed by the board. The ARC and/or the board of directors shall promulgate design guidelines (herein, as amended from time to time, "Design Guidelines") to be used by the ARC in rendering its decisions. The ARC shall have all the powers, duties and authority conferred upon it by this Declaration and the Design Guidelines. The decisions of the ARC shall be final on all matters submitted to it pursuant to this Declaration.

4.2 Variances. The ARC may grant variances from the standards set forth in the Design Guidelines if the ARC determines the matter permitted under the requested variance will not have a substantially adverse affect on other Owners, Occupants, or on Tucson National, and is consistent with the high quality of life intended for the Community and the Tucson National Resort and Spa, owned by Tucson National.

4.3 Fee. The ARC may establish a reasonable fee from time to time to defer the costs of the ARC in considering any requests for approvals submitted to the ARC, which fee shall be paid at the time the request for approval is submitted. The ARC may also authorize supplemental fees to cover the cost of retaining consultants and other professional services needed to evaluate properly any matter submitted to the ARC for review.

5.5 Window Coverings. Within thirty (30) days of the initial conveyance of the Lot to an Owner from the Declarant (or by a trustee, for the benefit of the Declarant), Owner or Occupant shall install permanent window coverings. In no event shall the interior or exterior of any windows be covered with reflective material, such as foil, paper, bed sheets or other temporary coverings. In no event shall the exterior window covering be bright colors, prints or other material that may detract from the appearance of the home.

5.6 Garages and Driveways. The garages situated on a Lot shall be used for parking vehicles and storage only, and shall not be used or converted for living or recreational activities. Garage doors shall be kept closed at all times except to the limited extent reasonably necessary to permit the entry or exit of vehicles or persons. The Association shall have the rights provided in **Section 5.21(e)** and **Section 11.3** if an Owner or Owners fails to timely perform maintenance and repairs, but the Association shall have no obligation to perform any work or take any action.

5.7 Improvements and Construction. The design, size, color, location and elevation of any Improvements or landscaping which are Visible From Neighboring Property, and all changes thereto, must be approved by the ARC prior to installation. All Improvements and landscaping constructed or installed by or for Declarant and all changes thereto done by or for Declarant shall be conclusively deemed approved by the ARC. A storage shed, other equipment and other Improvements which is/are Visible From Neighboring Property may not be placed or installed on a Lot unless approved by the ARC and such approval may be withheld in the ARC's sole discretion. Only houses constructed on the Property in accordance with this *Section 5.7* shall be occupied as residences.

5.8 Heating, Ventilating and Air Conditioning Units. No heating, air conditioning or evaporative cooling units or equipment shall be placed, constructed or maintained upon the Property, including, but not limited to, upon the roof or exterior walls of any structure on any part of the Property unless: (a) where such unit or equipment is installed upon the roof of any structure upon the Property, such unit or equipment is fully screened from view from any adjacent Lots by a parapet wall which conforms architecturally with such structure; or (b) in all other cases, such unit or equipment is attractively screened or concealed and is not Visible From Neighboring Property, which means of screening or concealment shall (in either case (a) or (b)) be subject to the regulations and approval of the ARC.

5.9 Solar Collection Panels or Devices. Declarant recognizes the benefits to be gained by permitting the use of solar energy as an alternative source of electrical power for residential use. At the same time, Declarant desires to promote and preserve the attractive appearance of the Property and the Improvements thereon, thereby protecting the value generally of the Property and the various portions thereof, and of the various Owners' respective investments therein. Therefore, subject to prior approval of the plans therefor by the ARC, solar collecting panels and devices may be placed, constructed or maintained upon any Lot within the Property (including upon the roof of any structure upon any Lot), so long as either: (a) such solar collecting panels and devices are placed, constructed and maintained so as not to be Visible From Neighboring Property; or (b) such solar collecting panels and devices are placed, constructed and maintained in such location(s) and with such means of screening or concealment as the ARC may

unenclosed parking areas. The provisions of this *Section 5.12* shall not apply to (a) vehicles of Declarant or its employees, agents, Affiliates, contractors or subcontractors during the course of construction activities or sales activities upon or about the Property, or (b) vehicles used by the Association in repairing, maintaining and replacing the Common Areas and all Improvements thereon, and in performing all other rights, duties and obligations of the Association under this Declaration.

Notwithstanding any provision in this Declaration, the Association shall not prohibit a resident from parking a motor vehicle with a gross vehicle weight of twenty thousand pounds or less upon a designated visitor parking area in the Community, if the vehicle is required, for public safety and emergency purposes in accordance with A.R.S. §33-1809, to be available at the residence as a condition of employment, and either (a) the resident is employed by a public service corporation to regulated by the Corporation Commission, and required to be prepared to deploy for emergency repair of natural gas pipelines and related infrastructure, or (b) the vehicle is owned or operated by the public service corporation and bears and official emblem or designation, or (c) the resident is employed by a public safety agency (including police or fire), or a private fire or ambulance service and the vehicle has a gross vehicle weight rating of 10,000 pounds or less and bears an bears and official emblem or designation.

5.13 Fences, Interferences and Obstructions. No fence, wall, hedge, shrub or other plant which obstructs sight lines at elevations between two (2) feet and six (6) feet above adjacent public or private streets shall be permitted on any corner Lot within the triangular area formed by the streets and a straight line connecting those property lines at points twenty-five (25) feet from the intersection of those property lines (or, in the case of a rounded Lot corner, from the intersection of those property lines as extended). No tree shall be permitted to remain within such area unless the foliage line is maintained a sufficient height to prevent obstruction of such sight lines.

5.14 Leasing; Obligations of Tenants and Other Occupants. All tenants shall be subject to the terms and conditions of this Declaration, the Articles, the Bylaws and the Association Rules. Each Owner shall cause his, her or its tenants or other Occupants to comply with this Declaration, the Articles, the Bylaws and the Association Rules and, to the extent permitted by applicable law, shall be responsible and liable for all violations and losses caused by such tenants or Occupants, notwithstanding the fact that such tenants or Occupants are also fully liable for any violation of each and all of those documents. No Owner may lease less than his, her or its entire Lot. No Lot may be leased for a period of less than thirty (30) days. The provisions of this *Section 5.14* shall not apply to Declarant's use of Lots owned by (or leased to) Declarant as a model home or for marketing purposes.

5.15 Landscaping and Maintenance; Reconstruction. Within ninety (90) days of acquiring an improved Lot, each Owner (other than Declarant) shall landscape (if not already landscaped) such Lot, including the front yard, side yard and rear yard. Each Owner shall maintain the landscaping on such Owner's Lot and shall keep the land free of debris and weeds at all times and promptly repair portions of the landscaping which have been damaged. Landscaping plans shall be approved by the Committee prior to installation and landscaping to be

installed in compliance with applicable Design Guidelines and the approved plans. Each Owner shall maintain the aforementioned landscaping and exterior of the Owner's Dwelling Unit in a neat, clean and attractive condition consistent in appearance with other properly maintained, improved Lots within the Community.

5.16 Signs. No signs of whatever nature shall be placed on any Lot which are Visible From Neighboring Property except (a) signs required by legal proceedings; (b) a maximum of two (2) street address identification signs for each individual residence, each with a maximum face area of 72 square inches or less; (c) "for sale" and "for lease" signs no larger than five (5) square feet; (d) a maximum of one (1) security identification sign for each individual residence located no more than two (2) feet from the Dwelling Unit; and (e) signs used by Declarant to advertise the Property during the construction and sales period. The ARC retains the right to control other and style of any signage that is allowed within the Community.

5.17 Prohibited Uses. No use which is offensive by reason of odor, fumes, dust, smoke, noise, glare, heat, sound, vibration, radiation or pollution, or which constitutes a nuisance or unreasonable source of annoyance, or which is hazardous by reason of risk of fire or explosion, or which is injurious to the reputation of any Owner shall be permitted on any Lot. No use which is in violation of the laws (after taking into account the application of any validly granted or adopted variance, exception or special use ordinance or regulation) of the United States, the State of Arizona, the Pima County or any other governmental entity having jurisdiction over the Property shall be conducted on any Lot. The provisions of this *Section 5.17* shall not apply to any activity of Declarant or its employees, agents, Affiliates, contractors or subcontractors during the course of construction activities or sales activities upon or about the Property.

5.18 Dust Control. After the sale of a Lot by Declarant, the areas on each Lot that are not improved with buildings ("Clear Areas") shall be landscaped as provided in *Section 5.15*. After a sale of the lot by Declarant, until such landscaping is installed, the Clear Areas shall be maintained in a neat and attractive condition; free of weeds and debris and the Owner thereof shall take necessary and appropriate measures to prevent and control the emanation of dust and dirt from the Clear Areas, which may include the use of hardscape, ground cover, or the sealing of the ground surface. After landscaping has been installed, each Owner shall continue to maintain its Lot in a manner that minimizes the possibility of dust being transmitted into the air and over adjacent properties. Nothing in this *Section 5.18* shall be interpreted to require Declarant to landscape a Lot before a sale of such Lot by Declarant.

5.19 Nuisances. No rubbish or debris of any kind shall be placed or permitted to accumulate upon any portion of the Property for any unreasonable time, and no odors shall be permitted to arise therefrom, so as to render the Property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other portion of the Property in the vicinity thereof or to its Owners or Occupants. No loud, noxious or offensive activity shall be carried on or permitted on any Lot, nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to Persons or property in the vicinity of such Lot, or which shall interfere with the quiet enjoyment of each of the Owners and Occupants. The Board shall have the right,

5.20 Drainage. No Owner or Occupant shall interfere with the drainage established for his Lot, the Property or any other property adjacent to his Lot.

5.21 Party Walls. Except as provided in *Section 11.2*, the rights and duties of Owners of contiguous Lots that have shared walls or fences ("Party Walls") shall be as follows:

- (a) Each Owner shall have an equal right to use the Party Walls to the extent such use does not interfere with the other Owner's use and enjoyment thereof;
- (b) If a Party Wall is damaged or destroyed through the act or omission of an Owner or the Owner's Occupants, agents, guests or family (whether or not such act is negligent or otherwise culpable), such Owner shall be obligated to rebuild and repair the Party Wall at the Owner's sole expense (provided that this shall not bar such Owner from recovering, or seeking to recover, all or any part of such expense from any Insurer, Occupant, agent, guest or other Person who otherwise may be liable to such Owner);
- (c) If any portion of a Party Wall is damaged or destroyed other than by the act of an adjoining Owner or the Owner's Occupants, agents, guests or family, or deteriorates from ordinary wear and tear, it shall be the joint obligation of all Owners whose Lots adjoin such portion of the Party Wall to immediately rebuild and repair it, and the expense shall be ratably divided among such Owners based on the amount of linear footage of their respective Lots located along such portion of the Party Wall;
- (d) If a dispute occurs between Owners regarding a Party Wall or the sharing of the cost thereof, such Owners shall submit the dispute to the Committee, whose decision shall be binding unless appealed to the Board, in which event the Board's decision shall be binding and final. Notwithstanding any such decision, no Owner is prohibited from seeking indemnity from the party causing the damage;
- (e) The Association shall have the right, but not the obligation, to perform any work which an Owner or Owner(s) fails to do in a timely manner. The Owner(s) responsible for such work shall upon demand pay all costs incurred by the Association together with interest at twelve percent (12%) per annum and an administrative fee at ten percent (10%) of the amount incurred by the Association.

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approval by Declarant) during the period of development, construction, sales and marketing on the Property, of any model homes and sales offices and parking incidental thereto, construction trailers, landscaping or signs deemed necessary or convenient by Declarant and each Designated Builder (subject to the approval of Declarant), in their sole discretion, to the development, construction, sale and marketing of property within the Property. Any actions taken by a Designated Builder pursuant to this Section shall require the prior approval of Declarant, which shall not be unreasonably withheld.

5.23 Miscellaneous. The Board, in its good-faith discretion, may grant such waivers of the restrictions contained in this *Article 5* as it shall deem appropriate, so long as the use permitted by such waiver shall not result in an unsafe, unsanitary or aesthetically displeasing condition and shall not result, in the Board's discretion, in a substantial departure from the common plan of development contemplated by this Declaration. In addition, the Property shall continue at all times to be subject to applicable zoning laws and ordinances; provided, however, that where the provisions of this Declaration are more restrictive than such laws or ordinances, the provisions of this Declaration shall control.

ARTICLE 6

ORGANIZATION OF ASSOCIATION

6.1 Formation of Association. The Association shall be a nonprofit Arizona corporation charged with the duties and vested with the powers prescribed by law and as set forth in the Articles, the Bylaws and this Declaration. Neither the Articles nor the Bylaws shall be amended or interpreted so as to be inconsistent with this Declaration.

6.2 Board of Directors and Officers. The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and Bylaws. The Board may appoint various committees at its discretion. The Board may also appoint or engage a manager and/or other staff members to be responsible for the day-to-day operation of the Association. The Board shall determine the compensation to be paid to each such employee.

6.3 Association Rules. By a majority vote of the Board, the Association may, from time to time and subject to the provisions of this Declaration, adopt, amend and repeal the Association Rules. The Association Rules may restrict and govern the use of the Common Areas, provided that the Association Rules shall not discriminate among Owners and Occupants except to reflect their different rights and obligations as provided herein, and shall not be inconsistent with this Declaration, the Articles or the Bylaws. Upon adoption, the Association Rules shall have the same force and effect as if they were set forth herein. A copy of the Association Rules, as adopted or amended, shall be available for inspection at the office of the Association.

6.4 Personal Liability. No Board member, officer, committee member, employee or representative of the Association, nor the Association, shall be personally liable to any Owner, or

to any other Person, including the Association, for any damages, losses, costs, fees (including reasonable attorneys' fees), or any prejudice suffered or claimed on account of any of their acts, omissions, errors or negligence, unless such person has engaged in willful or intentional misconduct.

ARTICLE 7

MEMBERSHIPS AND VOTING

7.1 Membership. Every Owner, including Declarant, automatically shall be a Member of the Association with voting rights as provided in this Declaration for so long as such ownership continues. A Person's Membership in the Association shall close and terminate immediately when such Person is no longer an Owner. Each Owner's membership in the Association shall be appurtenant to, and may not be separated from ownership of, the Lot to which the membership is attributable. In the event any Lot is owned by two or more Persons, whether by joint tenancy, tenancy in common, community property or otherwise, each such Person shall be considered a Member but the membership as to such Lot shall be joint, and such Persons shall jointly designate to the Association in writing one of their number who shall have the power to vote said membership; provided, however, that if any one of such Persons casts a vote or votes representing a Lot without objection from any other Person sharing ownership of such Lot, that Person will thereafter be conclusively presumed to be acting with the authority and consent of all other Persons sharing ownership of such Lot unless and until objection thereto is made to the Board, in writing, at or prior to the time the vote or votes are cast. Neither Membership in the corporation nor a Member's share, right, title or interest in and to the funds and assets of the corporation can be transferred, assigned or hypothecated except as an appurtenance to the Member's ownership of a Lot. Membership may be evidenced by an official list of Owners, which list shall be kept by the Secretary of the Association and as provided by applicable law.

7.2 Votes. The Association shall have two classes of voting Members. Class A Members shall be all Owners, except Declarant and each Designated Builder while the Class B Membership is in effect. A Class A Member shall have one (1) vote for each Lot owned by such Member. The Class B Members shall be Declarant and each Designated Builder. The Class B Members shall have three (3) votes for each Lot owned by Declarant and each Designated Builder. No change in the ownership of a Lot shall be effective for voting purposes until the Board receives satisfactory evidence thereof. Fractional votes shall not be allowed. The Class B Membership shall automatically cease and be converted to a Class A Membership upon the happening of the first of the following events:

(a) Within one hundred and twenty (120) days of the date that seventy-five percent (75%) of the Lots have been conveyed to a Person other than Declarant or a Designated Builder;

(b) the date which is twenty (20) years after the date this Declaration is Recorded; or

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ARTICLE 8

8.1 Creation of Assessment Right; Covenants to Pay. In order to provide funds to enable the Association to meet its obligations and to create and maintain appropriate reserves, there is hereby created a right of assessment exercisable on behalf of the Association by the Board. Assessments (herein "Assessments") shall be for Common Expenses and shall be allocated equally among all Lots. Each Owner, by acceptance of his, her or its deed with respect to a Lot, is deemed to covenant and agree to pay the Assessments with respect to such Owner's Lot. Each Owner failing to pay an Assessment within fifteen (15) days of the date that the Assessment is due shall also pay a late charge as set by the Board from time to time. The initial late charge shall be the greater of fifteen dollars (\$15.00) per month or ten percent of the unpaid Assessment. The fifteen-day delinquency period and late charges shall be subject to any limitations imposed by A.R.S. §33-1803 or other law as amended from time to time. The Owner shall also pay all costs and reasonable attorneys' fees incurred by the Association in seeking to collect such Assessments and other amounts. The Assessments with respect to a Lot, together with interest, costs and reasonable attorneys' fees as provided in this *Section 8.1*, shall also be the personal obligation of the Person who was the Owner of such Lot at the time such Assessments arose with respect to such Lot; provided, however, that the personal obligation for delinquent Assessments shall not pass to a successor in title of such Owner unless expressly assumed by such successor. No Owner shall be relieved of the obligation to pay any of the Assessments by abandoning or not using his, her or its Lot or the Common Areas, or by leasing or otherwise transferring occupancy rights with respect to his, her or its Lot. However, upon transfer by an Owner of fee title to such Owner's Lot, such transferring Owner shall not be liable for any Assessments thereafter levied against such Lot. The obligation to pay Assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of Assessments or set-off shall be claimed or allowed by reason of the alleged failure of the Association or Board to take some action or perform some function required to be taken or performed by the Association or Board under this Declaration, the Articles or the Bylaws.

8.2 Lien for Assessments; Remedies; Foreclosure. There is hereby created and established a lien in favor of the Association against each Lot which shall secure payment of all present and future Assessments assessed or levied against such Lot or the Owner thereof (together with any other amounts levied against such Lot or the Owner thereof pursuant to the Declaration or the Articles, the Bylaws or the Association Rules). Such lien shall be prior and superior to all other liens affecting the Lot in question, except: (a) taxes, bonds, assessments and other levies which, by law, are superior thereto; and (b) the lien or charge of any First Mortgage. Recording of this Declaration constitutes record notice and perfection of the liens established hereby, and further Recordation of any claim of a lien for Assessments or other amounts hereunder shall not be required, whether to establish or perfect such lien or to fix the priority thereof, or otherwise (although the Board shall have the option to Record written notices of claims of lien in such circumstances as the Board may deem appropriate). The Board may invoke any or all of the sanctions provided for herein, or any other reasonable sanction, to compel payment of any Assessment or installment thereof, not paid when due (a "Delinquent Amount"). Such sanctions include, but are not limited to, the following:

(a) **Interest and Late Fees.** The Board may impose late fees and interest in such amounts as it determines are appropriate from time to time, subject to any limitations stated in the Declaration or imposed by law;

(b) **Suspension of Rights.** The Board may suspend for the entire period during which a Delinquent Amount remains unpaid the obligated Owner's voting rights and rights to use and enjoy the Common Areas;

(c) **Collection of Delinquent Amount.** The Board may institute an action at law to recover a money judgment or any other proceeding to recover the Delinquent Amount, rent, interest and attorneys' fees without foreclosing or waiving the lien securing same;

(d) **Recording of Notice.** The Board may record a notice of lien covering the Delinquent Amount plus interest and accrued collection costs as provided in the Declaration. The Board may establish a fixed fee to reimburse the Association or its representative for the cost of recording the notice, processing the delinquency and recording a notice of satisfaction of the lien; and

(e) **Foreclosure of Lien.** The Board may foreclose the Recorded lien against the Lot in accordance with then prevailing Arizona law relating to the foreclosure of realty mortgages (including any right to recover any deficiency). The sale or transfer of any Lot pursuant to a mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of the Assessments as to payments which became due prior to such sale or transfer, but shall not relieve such Lot from liability for any Assessments becoming due after such sale or transfer, or from the lien thereof. The Association shall have the power to bid for any Lot at any sale to foreclose the Association's lien on the Lot, and to acquire and hold, lease, mortgage and convey the same. During the period the Lot is owned by the Association, no right to vote shall be exercised with respect to that

Lot and no Assessment shall be assessed or levied on or with respect to that Lot; provided, however, that the Association's acquisition and ownership of a Lot under such circumstances shall not be deemed to convert the same into Common Areas.

8.3 Dates Assessments Commence; Declarant's and Designated Builders' Obligations. Assessments shall be payable with respect to a Lot commencing with the earlier of: (a) initial conveyance of such Lot to a purchaser (other than a Designated Builder) by Declarant or by a Designated Builder (or by a trustee, for the benefit of Declarant or a Designated Builder); or (b) termination of the Class B Membership. Assessments with respect to a Lot shall be prorated as of the date of commencement. Declarant and each Designated Builder shall not be obligated to pay any Assessments with respect to Lots owned by Declarant and each Designated Builder until the Class B Membership is terminated. Until the Class B Membership is terminated, Declarant and each Designated Builder shall pay or contribute to the Association cash, goods or services (as Declarant may elect) as may be necessary to make up any shortfalls in the budget of the Association resulting from such Person's exemption from Assessments (but in no event shall Declarant be required to make such payments or contributions in excess of the Assessments Declarant would be required to pay, in the absence of this sentence, with respect to Lots owned by Declarant and in no event shall any Designated Builder be required to make such payments or contributions in excess of the Assessments such Designated Builder would be required to pay in the absence of this sentence, with respect to Lots owned by such Designated Builder). Shortfalls shall be allocated between Declarant and each Designated Builder prorata based on the relative number of Lots owned at either the beginning of the period for which the shortfall occurred or at the time the shortfall is determined and notice is given, as selected by Declarant. Any Person who becomes an Owner of a Lot shall pay the Annual Assessment applicable to such Owner's Lot as such becomes due, and shall pay any Special Assessment levied on or after the date the Person becomes an Owner. The previous Owner of such Lot shall remain liable for all unpaid and delinquent Assessments levied against the Owner of the Lot prior to such transfer of ownership.

8.4 Computation of Assessments; Annual Budget. The Board shall adopt a budget for each fiscal year of the Association, which budget shall serve as the basis for determining the annual Assessments (herein the "Annual Assessments") for the applicable fiscal year (subject to the limitations of *Section 8.6*). Annual Assessments shall be payable annually or in installments as set by the Board. Within a reasonable period following the meeting of the Board at which it adopts the budget for the year in question, the Board shall deliver or mail to each Owner a copy of the budget and a statement of the amount of the Annual Assessments to be levied against such Owner's Lot for that year. The failure to send or to receive such a statement shall not relieve any Owner of his obligation to pay such an Assessment on or before the due date. All Assessments shall be payable to the Association. In the event the Board fails to adopt a budget for any fiscal year prior to commencement of such fiscal year or fails to determine the Annual Assessments for any year, then until and unless such budget is adopted or the determination is made (as applicable), the budget (and the amount of the Assessments provided for therein) for the year immediately preceding shall remain in effect. Except as provided in *Section 8.6*, neither the budget nor any Annual Assessment levied pursuant thereto shall be required to be approved by the Owners. The Board may increase the Annual Assessments to meet the Association's

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expenses which exceed the amounts previously budgeted, if the Board determines that such Assessments become necessary or desirable during the fiscal year.

8.5 Due Dates. Assessments shall be due and payable as determined by the Board. Assessments shall be deemed "paid" when actually received by the Association or by its designated manager or agent (but if any Assessments are paid by check and the bank or other institution upon which such check is drawn thereafter dishonors and refuses to pay such check, those Assessments shall not be deemed "paid" and shall remain due and payable with interest accruing from the date such Assessments were originally due).

8.6 Maximum Annual Assessment. The Annual Assessments provided for herein shall not at any time exceed the "Maximum Annual Assessment," as determined in accordance with this *Section 8.6*. For the fiscal year ending December 31, 2008, the Maximum Annual Assessment shall be One Thousand Two Hundred Dollars (\$1200.00) per year, with Four Hundred Dollars (\$400.00) due each quarter for each Lot. Thereafter, except as provided below, unless a greater increase is approved by a vote of two-thirds (2/3) of the votes of each class of Members represented in person or by proxy at a meeting of Members called for such purpose, the Maximum Annual Assessment for any fiscal year shall be equal to the Maximum Annual Assessment for the immediately preceding fiscal year increased at a rate equal to the greater of: (a) the percentage increase for the applicable fiscal year over the immediately preceding fiscal year in the Consumer Price Index -- All Urban Consumers -- All Items (1982-1984 Average = 100 Base) published by the Bureau of Labor Statistics of the U.S. Department of Labor (or its successor); or (b) twenty percent (20%). Further, notwithstanding the foregoing, the Board may, without the approval of the Members, increase the Maximum Annual Assessment for any fiscal year by an amount sufficient to permit the Board to meet any increases over the preceding fiscal year in: (i) premiums for any insurance coverage required by this Declaration to be maintained by the Association; and (ii) charges for utility services necessary to the Association's performance of its obligations under this Declaration, notwithstanding the fact that the resulting increase in the Maximum Annual Assessment is greater than otherwise permitted under the third sentence of this *Section 8.6*. Increases in Annual Assessments shall be subject to any limitations imposed by A.R.S. §33-1803 or other law as such may be amended from time to time.

8.7 Special Assessments. In addition to levying Annual Assessments, the Board may levy a Special Assessment, but only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital Improvement owned by the Association or for defraying other extraordinary expenses, provided, however, that such Special Assessment must be approved by at least two-thirds (2/3rds) of the votes of each class of Members voting in Person or by proxy at a meeting of the Association duly called for such purpose. Special Assessments shall be assessed uniformly among the Owners. Special Assessments shall not be subject to the Maximum Annual Assessment limitations set forth in *Section 8.6*.

8.8 Working Capital Fund. To insure that the Association shall have adequate funds to meet its expenses or to purchase necessary equipment or services, each Person, with the exception of Declarant and each Designated Builder who as a result of a purchase obtains title to

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8.11 Discharge of Liens. The Board may cause the Association or any Owner or Occupant (by Assessment) to discharge any mechanics' or materialmen's liens or other encumbrances which in the opinion of the Board may constitute a lien against the Common Areas. When less than all of the Owners are responsible for any such lien or encumbrance, those Owners that are responsible shall be jointly and severally liable for the amount necessary to discharge the same, and for all costs and expenses, including but not limited to attorneys' fees, incurred in connection with such lien or encumbrance.

USE OF ASSOCIATION FUNDS

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Owners and the Occupants. The Funds may be used, among other things, to insure, acquire, construct, alter, clean, maintain, supervise, provide and operate, in any manner whatsoever, any and all land, properties, Improvements, services, Community's, programs, studies and systems within the Property and the Common Areas as may be necessary, desirable or beneficial to the general common interests of the Owners and Occupants. In connection with the foregoing, the Funds may be used for the administration, office expenses, salaries and other personnel costs of the Association. The Association may in its discretion collect and maintain Funds to be held in reserve for any of the uses referred to in this *Section 9.1*.

9.2 Borrowing Power. The Association may borrow money in such amounts, at such rates, upon such terms and security, and for such periods of time as the Board deems necessary or appropriate, and may utilize Funds to repay any such loans.

9.3 Association's Rights in Spending Funds From Year to Year. The Association shall not be obligated to spend in any year all Funds received by it in such year, and the Board may carry forward as surplus or hold in reserve (for general purposes or for specified future expenditures) any balances remaining. The Association shall not be obligated to reduce the amount of the Annual Assessments in any succeeding year if a surplus or reserves exist from a prior year or years.

ARTICLE 10

RIGHTS AND POWERS OF ASSOCIATION

10.1 Rights, Powers and Duties of the Association. In addition to the rights and powers of the Association set forth in this Declaration, the Association shall have such rights and powers as are set forth in the Articles and Bylaws, together with such rights, powers and duties as are granted by law or as may be reasonably necessary in order to effect all of the objectives and purposes of the Association as set forth herein. A copy of the Articles and Bylaws shall be available for inspection at the office of the Association during reasonable business hours.

10.2 Association's Rights of Enforcement. The Association, as the agent and representative of the Owners, shall have the right, but not the obligation, to enforce the provisions of this Declaration. Further, Declarant and any other Owner, so long as Declarant and such other Owner owns property within the Community, shall have the right and authority, but not the obligation, to enforce the provisions of this Declaration; provided that, any Owner, other than Declarant, desiring to enforce any provision of this Declaration shall first request that the Association enforce such provision, and if the Association fails to act upon such Owner's request within a reasonable time, then such Owner may pursue enforcement of the provisions on its own.

10.3 Contracts with Others. Subject to the restrictions and limitations contained herein, or in the Articles, the Bylaws, and the laws of the State of Arizona, the Association may enter into contracts or other transactions with other parties, including Declarant or its affiliated companies. Such contracts or other transactions shall not be void or voidable because one or more directors or officers of the Association are employed by, have a financial interest in or are

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otherwise affiliated with such other parties, including Declarant or its Affiliates (even if such officer(s) or director(s) is present and/or votes at the meeting of the Board or committee which authorizes the contract or transaction), if (a) the fact of such interest has been previously disclosed or made known to the other members of the Board or the committee acting upon such contract or transaction, and (b) the transaction or contract is fair and reasonable. Notwithstanding the foregoing, any management contract entered into by the Association must be terminable, without penalty, by the Association for cause at any time and without cause upon reasonable notice.

10.4 Procedure for Change of Use of Common Areas. Upon adoption of a resolution by the Board stating that the then current use of a specified part of the Common Areas is no longer in the best interests of the Owners and Occupants, and the approval of such resolution by not less than two-thirds (2/3rds) of the votes of all Members entitled to vote and voting in person or by proxy at a meeting duly called for such purpose, the Board shall have the power and right to change the use thereof (and in connection therewith to take whatever actions are required to accommodate the new use), provided such new use: (a) also shall be for the common benefit of the Owners and Occupants; and (b) shall be consistent with any Recorded deed and zoning regulations.

10.5 Procedure for Transfers of Common Areas. The Association shall not dedicate or otherwise convey title to the Common Areas, or mortgage or otherwise encumber Common Areas except upon: (i) the adoption of a resolution by the Board stating that the transaction would be in the best interests of the Owners and Occupants, (ii) the approval of such resolution by Owners of at least sixty-seven percent (67%) of the Lots (excluding Declarant and Designated Builders) and by Declarant; and (iii) approval of the proposed action by VA or FHA, if required under *Section 14.10*. Notwithstanding anything to the contrary herein contained, if ingress or egress to any Lot is through Common Area to be dedicated, conveyed or encumbered, such dedication, conveyance or encumbrance shall be subject to an easement for ingress and egress benefiting such Lot.

ARTICLE 11

MAINTENANCE

11.1 Common Areas and Public Rights-of-Way.

11.1.1 Areas of Association Responsibility. The Association, or its duly designated representative, shall maintain manage and control all common Areas and shall keep the Common Areas in good, clean, attractive and sanitary condition, order and repair, pursuant to the terms and conditions hereof. The Association's costs of doing so shall be Common Expenses of the Association. Such responsibilities shall include, without limitation: (a) maintenance, repair and replacement of all landscaping situated upon the Common Areas, which includes all Common Areas as Designated on the recorded Final Plat; (b) maintenance, repair and replacement of landscaping in or upon public rights-of-way immediately adjacent to the Common

Areas; and (c) operation, maintenance, repair and liability for all drainage structures and detention/retention basins.

11.1.2 Delegation of Responsibilities. The Board shall have the sole discretion to determine whether the Association or an individual Owner should be responsible for maintenance of certain Common Areas or public rights-of-way considering cost, uniformity of appearance, location and other relevant factors.

11.1.3 Standard of Care; Disclaimer of Liability. The Association shall use a reasonably high standard of care in providing for the repair, management and maintenance of the Common Areas so that the Community will reflect a high degree of pride of ownership. The Board, however, shall be the sole judge as to the appropriate level of maintenance of all Common Areas by the Association. Notwithstanding any duty the Association may have to maintain and repair the Common Areas, the Association and Declarant shall not be liable for any injury or damage caused by a latent condition or by any Member, Owner, Occupant or other Person. Neither the Association nor Declarant shall be liable to any Person for any claim, injury or damage arising from the use of the Common Areas, which shall be used at the risk of the user. Declarant has no duty or obligation to maintain, operate, manage or repair the Common Areas.

11.2 Walls and Fences between Lots and Common Areas. All walls are to be constructed and located inside of the boundary line of a Lot, and the Owner or Owners of such Lot shall be responsible for the maintenance, repair, painting and replacement of such wall. In the case of destruction of such wall or structural damage, such Owner(s) shall replace or repair such wall and the Association shall not be responsible therefor. Unless originally constructed by or for Declarant or otherwise approved in writing by the Board or the ARC, a wall may not be located on the Common Areas unless it is part of the Common Areas.

11.3 Maintenance and Repair. Every Owner and Occupant shall perform promptly all maintenance and repair work required by this Declaration, the Association Rules, the Design Guidelines and the Bylaws. If (a) any portion of any Lot is maintained so as to present a nuisance, or substantially detracts from or affects the appearance or quality of any neighboring Lot or other area, or is used in a manner which violates this Declaration, or (b) the Owner of any Lot or the Occupant of such Owner's Lot, by willful or negligent act or omission, damages any Common Area, or (c) the Owner of any Lot or the Occupant of such Owner's Lot fails to perform such Owner's obligations under this Declaration, the Association Rules, the Design Guidelines, the Articles and the Bylaws, the Association, by Board resolution, may make a finding to such effect, specifying the particular condition(s) that exist, and thereafter give notice to the Owner of such Lot that unless specified corrective action is taken within a specified time period the Association, at such Owner's expense, may take whatever action is appropriate to compel compliance including, without limitation, appropriate legal action. If at the expiration of the specified time period the requisite corrective action has not been taken by the Owner, the Association shall have the right, but not the obligation, at its sole discretion, to cause corrective action to be taken and/or to commence appropriate legal action. The cost thereof, including court costs and attorneys' fees, including an administrative charge equal to ten percent (10%) of the amount incurred by the Association, together with all damages resulting from such Owner's or

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(COMMON AREAS)

13.1 Eminent Domain. The term "Taking" as used in this *Section 13.1* shall mean condemnation by eminent domain or sale under threat of condemnation. In the event of a threatened Taking of all or any portion of the Common Areas, the Owners hereby appoint the Board and such persons as the Board may designate to represent all of the Owners in connection with the Taking. The Board shall act, in its sole discretion, with respect to any awards made or to be made in connection with the Taking and shall be entitled to make a voluntary sale to the condemnor in lieu of engaging in a condemnation action. Any awards received on account of the Taking shall be paid to the Association and shall constitute Funds of the Association.

13.2 Association's Authority to Purchase Insurance. The Association shall purchase and maintain such property damage and liability insurance upon the Common Areas and such other insurance as the Board, in its absolute discretion, may determine. The Association shall be the named insured in all policies providing such insurance. Neither the Association nor the Board, nor any Member of the Board or officer or agent of the Association, shall be liable to any Person for failure of the Association to secure and maintain any such insurance coverage where such insurance coverage is not available in the State of Arizona at a reasonable cost and on other reasonable terms and conditions. Notwithstanding the foregoing, the Association shall obtain and maintain at all times, at the Association's expense, directors' and officers' liability insurance covering all officers and directors of the Association, as well as all regular and alternate members of the Committee, in amounts and on terms adequate to permit the Association to meet its obligations to indemnify such persons pursuant to the Articles and Bylaws.

13.3 Individual Responsibility; Disclaimer of Liability. It shall be the responsibility of each Owner or Occupant to provide insurance for himself on his real or personal property interests on or within the Property, including, but not limited to, additions and Improvements thereto, furnishings and personal property thereon, and for his personal liability. No Person shall maintain any insurance which would limit or reduce in any manner the insurance proceeds payable under the insurance maintained by the Association in the event of damage to the Improvements or fixtures on the Common Areas. The Association, any Board member and Declarant shall not be liable to any Person or mortgagee if any risks or hazards are not covered by the insurance obtained by the Association or if the amount of such insurance is not adequate.

13.4 Insurance Claims. The Association is hereby irrevocably appointed and authorized by the Owners to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims, and to do all other acts reasonably necessary to accomplish any of the foregoing. The Board has full and complete power to act for the Association in this regard and may, at its discretion, appoint an authorized representative or committee, or enter into an insurance trust agreement wherein the trustee shall have authority, to negotiate losses under any policy purchased by the Association. All proceeds from insurance acquired by the Association shall be payable to the Association. Any proceeds resulting from damage to the Common Areas shall be used to repair the damage unless otherwise

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approved by a majority of the votes of each class of Members at a meeting called for such purpose. Any proceeds remaining upon repair of such damage may be retained by the Association as reserves or to reduce future Assessments.

ARTICLE 14

ADDITIONAL TERMS

14.1 Enforcement. The Association shall have the standing and power to enforce the provisions of this Declaration, the Articles, the Bylaws and the Association Rules and to obtain injunctive relief and damages, and its costs in doing so, including, but not limited to, reasonable attorneys' fees, together with interest thereon from the date the costs are expended at the rate of twelve percent (12%) per annum, shall constitute a lien on all Lots owned by the Owner or Owners against whom the action is taken (or against whose Occupants the action is taken), which lien shall have the priority and may be enforced in the manner described in *Section 8.2*. In addition, any Owner or Owners shall have the standing and power to enforce the provisions of this Declaration, the Articles and the Bylaws, and the prevailing party or parties in any action by an Owner or Owners to enforce any such provisions shall be entitled to recover from the other party or parties its or their costs in such action (including reasonable attorneys' fees), together with interest thereon at the rate equal of twelve percent (12%) per annum, and shall further be entitled to have all such costs (including such interest) included in any judgment awarded to the prevailing party or parties in such action. Failure by the Association or by any Owner to take any such enforcement action shall in no event be deemed a waiver of the right to do so thereafter. While Declarant has no reason to believe that any of the restrictive covenants contained in this Declaration are or may be invalid or unenforceable for any reason or to any extent, Declarant makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenant. Any Owner or other Person acquiring title or an interest in a Lot in reliance on one or more of such restrictive covenants shall assume all risks of the validity and enforceability thereof and by accepting a deed to the Lot agrees to hold Declarant harmless therefrom.

14.2 Notice of Violation. The Association shall have the right, but not the obligation, to Record a written notice of a violation by any Owner or Occupant of any restriction or provision of this Declaration, the Articles, the Bylaws or the Association Rules. Recordation of a notice of violation shall serve as a notice to the Owner and Occupant, and to any subsequent purchaser of the Lot, that there is such a violation. Notwithstanding the foregoing, failure by the Association to Record a notice of violation shall not constitute a waiver of any existing violation or evidence that no violation exists.

14.3 No Partition. No Person acquiring any interest in the Property or any part thereof shall have a right to, nor shall any person seek, any judicial partition of the Common Areas, nor shall any Owner sell, convey, transfer, assign, hypothecate or otherwise alienate all or any of

such Owner's interest in the Common Areas or any funds or other assets of the Association except in connection with the sale, conveyance or hypothecation of such Owner's Lot (and only appurtenant thereto).

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

14.5 Severability. If any provision of this Declaration or any application thereof shall be invalid or unenforceable, the remainder of this Declaration and any other application of such provision shall not be affected thereby.

14.6 Rule Against Perpetuities. If any of the interests, privileges, covenants or rights created by this Declaration shall be unlawful, void or voidable for violation of the Rule against Perpetuities or any related rule, then such provision shall continue until twenty-one (21) years after the death of the survivor of the descendants of the President of the United States living on the date this Declaration is Recorded.

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

14.8 Gender and Number. Wherever the context of this Declaration so requires, words used in the masculine, feminine or neuter genders, or the singular or plural number, shall each include the others.

14.9 Captions; References to Articles or Sections. All captions, titles or headings of all *Articles* and *Sections* are for the purpose of reference and convenience only and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof or to be used in determining the intent or context thereof. References to an *Article* or a *Section* without further attribution shall be deemed to refer to an article or a section, as the case may be, of this Declaration.

14.10 Approvals Required. For as long as there is a Class B Member and if VA or FHA certification is desired by Declarant, the following actions will require the prior approval of the VA or FHA, unless such agencies have waived such requirements or unless the last sentence of this *Section 14.10* applies: (i) annexation of additional properties into the Community (unless such annexation is in accordance with a plan of annexation or expansion previously approved by such agencies); (ii) mergers and consolidations; (iii) mortgaging or otherwise encumbering Common Area; (iv) dedication or other transfer of Common Areas; (v) dissolution of the corporation; and (vi) amendment of provisions in the Articles, this Declaration or the Bylaws to the extent required to be approved by the FHA or VA pursuant to their rules and regulations.

operator(s) of any such golf course or related facilities and any and all sponsors and promoters of any tournament or other activity on or involving any such golf course or related facilities, for, from and against any liability, claims or expenses, including attorneys' fees and court costs, arising from such property damage or personal injury. Each Owner further covenants that the Association, the Declarant and the owner of any such golf course shall have the right, in the nature of an easement, to subject all or any portion of the Property to nuisances incidental to the maintenance, operation or use of any such golf course, and to the carrying out of such golf course-related activities, including, without limitation, tournament play.

15.5 Operation of the Golf Course. Each owner acknowledges that the operation and maintenance of any golf course within, near or adjacent to the Property may require that maintenance personnel and other workers will perform work relating to the operation and maintenance of such golf course as early as 4:00 a.m. and as late as 9:00 p.m. on a daily basis, and, in certain circumstances (including, without limitation, during tournaments), at any time(s) of the day and night. Such work may involve the use of motorized mowers, blowers, chain saws, trimmers, tractors and the like typically used for golf course maintenance. In connection therewith, each Owner and Resident agrees that the Declarant, and the owner or owners of all or any portion of such golf course, and the employees, agents and contractors of the Declarant and such owners, shall not be responsible or accountable for and shall be held harmless from, any claims, causes of action, loss or liability arising in connection with or associated with any noise or inconvenience normally associated with such operation and maintenance activities.

15.6 Other Golf Course Related Agreements. No Owner or Occupant, and no guest, invitee, employee, agent or contractor of any Owner or Occupant, shall at any time enter upon any golf course (or related facilities) within, adjacent to or near the Project for any purpose (other than to engage in golf play or as a spectator or guest of the golf course, in each and every case subject to all rules and regulations of such golf course including, without limitation, all requirements relating to membership, fees, reservation of tee times and the like), and each Owner and Occupant shall keep his, her or its pets and other animals off any golf course (and out of any related facilities) at all times. No Owner shall (or permit his, her or its Occupants, guests, invitees, employees, agents or contractors to) interfere in any way with play on the golf course (whether in the form of physical interference, noise, harassment of players or spectators, or otherwise). Each Owner (for such Owner and its Occupants, guest and invitees) recognizes, agrees and accepts that: (a) operation of a golf course and related facilities will often involve parties and other gatherings (whether or not related to golf, and including without limitation weddings and other social functions) at or on the golf course and related facilities, tournaments, loud music, use of public address systems and the like, occasional supplemental lighting and other similar or dissimilar activities throughout the day, from early in the morning until late at night; (b) by their very nature, golf courses present certain potentially hazardous conditions, which may include, without limitation, lakes or other bodies of water and man-made or naturally-occurring topological features such as washes, gullies, canyons, uneven surfaces and the like; (c) irrigation of landscaping on a golf course or related facilities may result in water spraying, drifting or blowing onto adjacent or nearby Lots or Parcels; and (d) neither such Owner nor its Occupants, guests and invitees shall make any claim against the Declarant, the Association, any sponsor, promoter or organizer of any tournament or other event, or the owner or operator of any

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golf course within, adjacent to or near the Project (or any affiliate, agent, employee or representative of any of the foregoing) in connection with the matters described or referenced in (a), (b) and (c) above, whether in the nature of a claim for damages relating to personal injury or property damage, or otherwise.

ARTICLE 16

ENFORCEMENT BY TUCSON NATIONAL

16.1 Tucson National Resort and Spa (Tucson National) is not a party to, but is an intended beneficiary of, this Declaration. As such, Tucson National shall have no liability for the actions of the Declarant, the Association, the Board, the Architectural Committee, or any of their employees, agents, or contractors. By its signature below, Tucson National grants the "Tucson National Approval," as that term is defined in paragraph 1 of that certain Declaration of Covenants, Conditions and Restrictions, dated January 2, 2006, and recorded January 24, 2006, in Docket 12726, page 4114, *et seq.*, Official Records of Pima County Arizona (the "Original CC&Rs"). Tucson National agrees that this Declaration constitutes the "Replacement CC&Rs" contemplated by the Original CC&Rs and upon recordation hereof the Original CC&Rs are terminated and of no further force or effect. Tucson National has approved the Design Guidelines in effect as of the date hereof. Any revision, amendment, modification, or repeal of the Design Guidelines, or Article 4 hereof, shall require the written approval of Tucson National. Tucson National shall have an independent right to enforce the Design Guidelines and any other provision of this Declaration. If any action or proceeding is brought by Tucson National to enforce the Design Guidelines or the other provisions of this Declaration, Tucson National, if it is the prevailing party in such action, shall be entitled to an award of its courts costs and reasonable attorneys' fees. In the event of any inconsistency or conflict between the terms of this Article 16 and any other provision of the Declaration, the terms of this Article 16 shall control.

ARTICLE 17

APPROVAL BY TNR&S

17.1 By its signature below, TNR&S Acquisition, Inc., an Arizona corporation ("TNR&S") hereby approves this Declaration pursuant to the terms of that certain Declaration of Covenants, Conditions and Restrictions Tucson National Resort & Spa Site A and Site B, recorded at Docket 12726, page 4114, records of the Pima County Recorder (the "Original Declaration"). This Declaration replaces and supersedes the Original Declaration which automatically terminates pursuant to the terms of the Original Declaration.

[SIGNATURES PAGE FOLLOWS]

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IN WITNESS WHEREOF, Declarant has caused this Declaration to be duly executed.

HSL Rio Cancion Apartments, LLC
an Arizona limited liability company

By HSL Properties, Inc.
an Arizona Corporation, Manager

By [Signature]
Its: EVP
Date: 7/14/09

Approved and Accepted by

TNR&S Acquisition, Inc.
an Arizona corporation, aka Tucson National Resort & Spa

BY: [Signature]
ITS: Vice President
DATE: July 19, 2009

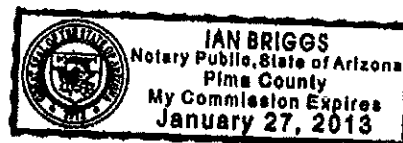
STATE OF ARIZONA)
) ss.
County of Pima)

The foregoing instrument was acknowledged before me on this 14 day of July, 2009, by OMAR MIRELES, the EVP of HSL Properties, Inc., an Arizona corporation, in its capacity as the manager of HSL Rio Cancion Apartments, LLC, an Arizona limited liability company, for and on behalf of the company.

[Signature]
Notary Public

My Commission Expires:

01.27.2013
STATE OF ARIZONA)



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EXHIBIT A
LEGAL DESCRIPTION

SHANNON ESTATES

LOT 1-52 and

COMMON AREA "A" (PRIVATE STREETS AND PUBLIC UTILITY EASEMENT)

COMMON AREA "B" (RECREATION AREA & DRAINAGE BASIN)

COMMON AREA "C" (LANDSCAPE AREAS)

PIMA COUNTY, ARIZONA

RECORDED IN BOOK 65 OF MAPS, PAGE 27.

138720006

By: TITLE SECURITY AGENCY OF ARIZONA, an
Arizona corporation, as Trustee under Trust No. 948
And not in it's corporate capacity

STATE OF ARIZONA)
)ss
COUNTY OF Pima)

IN WITNESS WHEREOF, I have hereunto set my hand and official seal

[Handwritten signature]

