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THIRD AMENDED AND RESTATED  
DECLARATION OF  
COVENANTS, CONDITIONS AND  
RESTRICTIONS  
FOR  
THE PRESIDIO AT THE WILLIAMS CENTRE

42091-0000

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**THIRD AMENDED AND RESTATED  
DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
THE PRESIDIO AT THE WILLIAMS CENTRE**

THIS THIRD AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE PRESIDIO AT THE WILLIAMS CENTRE (this "Declaration") is made this 30 day of March, 2007, by the owners (the "Owners") of the real property described as:

Lots 1 through 153, and Common Areas A, B, and C of The Presidio at Williams Centre, a Pima County subdivision, as shown in the Plat of Record in Book 48 at page 56 of Maps and Plats on record in the Pima County Recorder's Office (the "Properties" or the "Project").

**RECITALS:**

WHEREAS, the Second Amended and Restated Declaration of Covenants, Conditions and Restrictions for The Presidio at The Williams Centre (the "Second Amended and Restated Declaration") was recorded on November 22, 2006, in Docket 12936, Page 1977 *et seq.*; and

WHEREAS, at least two-thirds (2/3) of the votes cast by Members in an election duly held on January 23, 2007, for the purpose of amending the Second Amended and Restated Declaration, approved amendments to Sections 6.17 and 6.18 pertaining to enforcement; and Sections 11.3 pertaining to leasing<sup>1</sup>; and

WHEREAS, this Third Amended and Restated Declaration restates the Second Amended and Restated Declaration, as amended on January 23, 2007, with modifications to this "Recitals" section to clarify the history and purpose of this Third Amended and Restated Declaration.

NOW, THEREFORE, the Owners declare that this Declaration supersedes and replaces the Second Amended and Restated Declaration, which superseded the Original Declaration and all amendments thereto; and that the Properties shall be held, sold and conveyed subject to the following easements, covenants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

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<sup>1</sup>Sections 6.17, 6.18 and 11.3.5 - 11.3.11 are the only Sections that have been amended in this Declaration. All other Sections of this Declaration are identical to the Second Amended and Restated Declaration.

JENNIFER GEMMEL

1 attractiveness of the Properties. These easements, covenants, conditions and restrictions  
2 shall run with the Properties and shall be binding upon all parties having or acquiring any  
3 right, title or interest in the described properties or any part thereof, and shall inure the  
4 benefit of each such party.

5  
6 **ARTICLE I**  
7 **DEFINITIONS**  
8

9 **1.1 “Annual Assessments”** are those assessments, which are levied by the  
10 Association and used to promote the recreation, health, safety and welfare of the Members,  
11 their families and guests, for the improvement of the Common Areas and for all other  
12 purposes set forth in the Articles, Bylaws, this Declaration and all applicable laws.  
13

14 **1.2 “Architectural Review Committee”** refers to the Committee established by  
15 the Board of Directors pursuant to Article VII of this Declaration.  
16

17 **1.3 “Articles”** refers to the Articles of Incorporation of the association and any  
18 amendments, which have been filed in the Office of the Arizona Corporation Commission.  
19

20 **1.4 “Assessment Lien”** means a lien recorded at the direction of the Board of  
21 Directors against any Lot for the non-payment of Assessments, or any other sums due to  
22 the Association, including late fees, interest, fines, attorneys’ fees and any other collection  
23 costs.  
24

25 **1.5 “Association”** means THE PRESIDIO AT THE WILLIAMS CENTRE  
26 HOMEOWNERS ASSOCIATIONS INC., its successors and assigns.  
27

28 **1.6 “Board”** means the Board of Directors of the Association.  
29

30 **1.7 “Bylaws”** refers to the Bylaws of the Association, as may be amended from  
31 time to time.  
32

33 **1.8 “Common Areas”** refers to the real property, whether improved or  
34 unimproved, which is designated as Common Areas on the Plat and owned by the  
35 Association for the common use and enjoyment of the Owners. Common Areas include the  
36 landscaping, pavement, fountains, streets, detention and retention basins, and recreational  
37 areas.  
38

39 **1.9 “Declaration”** refers to this Declaration as amended from time to time.  
40

41 **1.10 “Declarant”** refers to Fidelity National Title Agency, Inc., as trustee under  
42 Trust No. 10745, its successors and assigns.

1           **1.11 “Dwelling Unit”** refers to a building or other structures on a Lot intended as  
2 a residence for a Single Family.  
3

4           **1.12 “Governing Documents”** refers to this Declaration, the Articles of  
5 Incorporation, the Bylaws of the Association and any Rules and Regulations promulgated  
6 by the Board of Directors.  
7

8           **1.13 “Guidelines”** means those rules and regulations adopted, amended and  
9 supplemented by the Architectural Review Committee pursuant to Article VII of this  
10 Declaration.  
11

12           **1.14 “Guest”** refers to a visitor to the property for reasons of business, duty or  
13 pleasure.  
14

15           **1.15 “Household”** see “Single Family.”  
16

17           **1.16 “Lot”** refers to a tract of land bounded by a property line as shown on the Plat  
18 of the subdivision. A Lot does not include the Common Areas.  
19

20           **1.17 “Perimeter Wall(s)”** as used in the Association’s Governing Documents,  
21 refers to the perimeter wall surrounding the entire project  
22

23           **1.18 “Member”** means the Owner of the Lot who is entitled to membership in the  
24 Association, who has the privilege of using and enjoying the Common Areas, and who has  
25 a duty to pay assessments for these privileges, as further set forth in this Declaration.  
26

27           **1.19 “Mortgage”** refers to any mortgage, deed of trust or other security instrument  
28 by which a Lot or any part of a Lot is encumbered.  
29

30           **1.20 “Owner”** means the record owner, whether one or more persons, of the fee  
31 simple title to any Lot which is part of THE PRESIDIO AT THE WILLIAMS CENTRE  
32 including a buyer under contract for the sale of real estate, but excluding persons holding  
33 a interest merely as security for the performance of an obligation.  
34

35           **1.21 “Person”** includes a corporation, company, partnership, firm, association or  
36 society, as well as a natural person.  
37

38           **1.22 “Plat”** refers to the map of record in the Office of the Pima County Recorder  
39 in Book 48 at Page 56 and designated as THE PRESIDIO AT THE WILLIAMS CENTRE,  
40 Lots 1 through 153 and Common Areas A, B and C.  
41

42           **1.23 “Properties” and “Project”** mean the real property described in the Plat.



1           **1.24 “Rules and Regulations”** means those policies and procedures adopted by  
2 the Board of Directors, which govern the conduct and actions of owners, tenants, visitors,  
3 and guests on Lots and the Common Areas not otherwise covered in this Declaration. Rules  
4 and Regulations, when adopted by the Board of Directors, shall have the same force and  
5 effect as the Restrictions set forth in this Declaration.  
6

7           **1.25 “Single Family”** is synonymous with “Household” and refers to a group of  
8 persons related by blood, marriage or legal adoption, or a group of not more than three  
9 unrelated persons who maintain a common household.  
10

11           **1.26 “Visible from Neighboring Lots”** means, with respect to any given object  
12 that such object is or would be visible to a person six feet tall, standing at ground level on  
13 any part of a neighboring property; provided, however, that an object is not considered as  
14 being Visible from neighboring Lots if the object is visible to a person six feet (6’) tall,  
15 standing at ground level on any part of the neighboring Lot only because the object is seen  
16 through a wrought iron fence and would not be visible if the fence were solid, rather than  
17 wrought iron.  
18

19   **ARTICLE II**  
20   **MEMBERSHIP**  
21

22           **2.1** Every person who is an Owner of a Lot is a Member of the Association and  
23 is subject to assessment by the Association. Membership is appurtenant to and may not  
24 be separated from ownership of a lot. Only persons who own Lots shall be Members of the  
25 Association.  
26

27           **2.2** Membership shall not be transferred, pledged, or alienated in any way except  
28 upon the transfer of ownership of any Lot and the Membership shall only be transferred  
29 to the transferee. Any attempt to make a prohibited transfer shall be void. Any transfer of  
30 ownership of a Lot shall operate to automatically transfer the membership in the  
31 Association to the new Owner.  
32

33   **ARTICLE III**  
34   **VOTING RIGHTS**  
35

36           **3.1 Declarant.** Declarant is a Member of the Association for so long as it holds  
37 a Class A or Class B Membership.  
38

39           **3.2 Voting Classes.** The Association has two classes of voting Members:  
40

41                         **3.2.1 Class A.** Class A Members are all of the Owners except the Declarant  
42 (until the conversion of Declarant’s Class B membership to Class A Membership as

1 provided below). Subject to the authority of the Board to suspend an Owner's voting rights  
2 in accordance with the provisions of this Declaration, as Class A Member has one vote for  
3 each Lot owned. The vote for each Lot shall be exercised as the Owners agree, but in no  
4 event may there be more than one (1) vote cast for any one (1) Lot owned.  
5

6 3.2.2 Class B. The Class B Member is the Declarant. The Class B Member is  
7 entitled to three (3) votes of each Lot it owns until it has sold 90% of the Lots, at which time  
8 it will be entitled to one vote (1) for each Lot it owns. The Class B Membership shall  
9 terminate upon the happening of the first of the following events.  
10

11 3.2.2.1 the date which is one hundred twenty (120) days after the date  
12 that 90% of the Lots have been sold and closed escrow;; or  
13

14 3.2.2.2 the date which seven (7) years after the date this Declaration  
15 is recorded; or  
16

17 3.2.2.3 at such time as Declarant relinquishes its Class B votes by  
18 providing written notice to the Association.  
19

20 **3.3 Right to Vote.** No change in the ownership of a Lot shall be effective for  
21 voting purposes until the Board receives written notice of such change together with  
22 satisfactory evidence of the transfer. The vote for each Member must be cast as a single unit.  
23 Fractional votes are not allowed. In the event that a Lot is owned by more than one (1)  
24 Person and such Owners are unable to agree on how their vote or votes shall be cast, they  
25 shall not be entitled to vote on the matter in question. If any Owner exercises his/her vote  
26 on any matter, it will be conclusively presumed that the Owner is acting with the authority  
27 and consent of the all other Owners of the Lot unless an objection is made to the Board, in  
28 writing, at or prior to the time the vote is cast. If more than one Person votes or attempts  
29 to exercise the vote for a particular Lot, all of those votes shall be void.  
30

31 **3.4 Members' Rights.** Each Member has all of the rights, duties and obligations  
32 set forth in this Declaration, the Articles, the Bylaws and the Association Rules.  
33

34 **3.5 Notice of Violation.** In the event that any Owner, his/her guests, tenants or  
35 family members are in violation of any of the provisions of this Declaration or the  
36 Association Rules, the Association, after providing notice and an opportunity to cure the  
37 violation, has the right to record a "Notice of Violation" with the Pima County Recorder's  
38 Office, stating the name of the Owner, the Lot and the nature of the violation.  
39

40 **3.6 Suspension of Voting Rights.** The Association may suspend the voting  
41 rights of any Member for any period during which any assessment, or other sum (including  
42 any attorneys' fees or other costs incurred by the Association) against a Lot and its Owner

1 is unpaid and delinquent. The Association may also suspend the voting rights of any  
2 Member for a period specified by the Board when in the Board's discretion, such Member  
3 is in violation of these Covenants, the Bylaws and/or the Rules and Regulations of the  
4 Association.

5  
6 **ARTICLE IV**  
7 **PROPERTY RIGHTS**  
8

9 **4.1 Member's Easements of Enjoyment.** Every Owner has a right and easement  
10 of enjoyment in and to the Common Areas and such easement shall be appurtenant to and  
11 is conveyed with the title to each Lot. Such right and easement of enjoyment is subject to  
12 the following provisions:  
13

14 4.1.1 The right of the Association to adopt Bylaws and reasonable Rules and  
15 Regulations governing the use of the Lots and the Common Areas, as well as an Owner's  
16 conduct on the Lots or Common Areas, and governing the payment and collection of  
17 assessments from the Owners and penalties for failure to pay these assessments.  
18

19 4.1.2 The right of the Association to limit the number of guests of Owners  
20 and residents.  
21

22 4.1.3 The right of the Association, in accordance with its Articles and  
23 Bylaws, to borrow money for the purpose of improving and maintaining the Common  
24 Areas and facilities and, if necessary, to mortgage the Property, but the rights of any  
25 mortgagee in the Properties shall be subordinate to the rights of the Owners.  
26

27 4.1.4 The right of the Association to suspend the right of an Owner, his/her  
28 family, or his/her lessees or tenants, to use the Common Areas of any period during which  
29 any assessment against his/her Lot remains unpaid or for any violation of this Declaration  
30 or the Rules and Regulations of the Association.  
31

32 4.1.5 The right of the Association to mortgage the Common Areas or to  
33 dedicate or transfer all or any part of the Common Areas for such purposes and subject to  
34 such conditions as may be agreed to by the Member. No such mortgage, dedication or  
35 transfer shall be effective unless approved by at least two-thirds (2/3) of the Owners (with  
36 one (1) vote per Lot).  
37

38 4.1.6 The right of the Association to enter into such agreements and take any  
39 action, which is reasonably necessary and convenient to accomplish the Associations'  
40 obligations and to operate and maintain the Common Areas.  
41

1           **4.2    Delegation of Use.** Any Owner may delegate his/her right to use the  
2 Common Areas and recreational facilities to the members of his/her family, his/her tenants  
3 or contract purchasers who reside on the Property, provided such delegation is in  
4 accordance with the Association’s Governing Documents. In the event an Owner delegates  
5 his/her right to enjoy the Common Areas to any lessee or tenant, that Owner shall no  
6 longer be entitled to use the Common Areas and recreational facilities.  
7

8           **4.3    Common Areas.** Ownership of the Common Areas is vested in the  
9 Association, subject to easements created in Article V. The Common Areas shall be deeded  
10 to the Association by the Declarant on or before the date the first Lot is conveyed to an  
11 Owner. The Common Areas shall be conveyed to the Association free and clear of liens and  
12 encumbrances. Common Areas are intended to be used as public utility easements,  
13 recreational areas, drainage ways, and are the common use and enjoyment of the Members  
14 of the Association.  
15

16           **4.4    Condemnation.** The term “taking” as used in this Section shall mean either:  
17 (a) condemnation by eminent domain, or (b) sale under threat of condemnation. In the  
18 event of a threatened taking of all or any portion of the Common Areas, the Members  
19 appoint the Board and such other persons as the Board may delegate to represent all of the  
20 Members in connection with the taking. The Board has the sole discretion to accept any  
21 awards any awards being made in connection with the taking and is entitled to make a  
22 voluntary sale to the condemner in lieu of engaging in a condemnation action. Any awards  
23 received from the taking shall be paid to the Association. In the event less than all of the  
24 Common Areas are taken, the Board of Directors, in its sole and absolute discretion, as the  
25 right to replace the Common Areas and any improvements on the Common Areas, or to  
26 place the condemnation award in the Association’s operation or reserve account and use  
27 the funds for any purpose it deems necessary for the benefit of the Association and its  
28 Members. In the event of a total taking, the Board shall retain any award in the general  
29 funds of the Association.  
30

31           **4.5    Destruction of Improvements.** In the event of a partial or total destruction  
32 of any improvements, which are located in the Common Areas, the Association shall  
33 restore and repair such improvements to their former condition as promptly as is  
34 practicable and in a lawful and workmanlike manner. The proceeds of any insurance  
35 policies shall be used for this purpose. In the event any excess insurance proceeds remain  
36 after the repair or replacements are made, the Board shall retain such sums in the general  
37 funds of the Association. If there are not sufficient insurance proceeds to restore and  
38 replace the improvements, the, upon the vote of a majority of the Owners entitled to vote,  
39 the Board of Directors of the Association may impose a special assessment equally against  
40 the Owners of each Lot to provide the necessary funds for restoration and replacement. In  
41 the alternative, such Owners may vote not to replace or restore the improvements but to  
42 retain the insurance proceeds in the Association’s general fund.

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**ARTICLE V**  
**EASEMENTS AND LICENSES**

5.1 **Easement for Encroachments.** Each Lot and the Common Areas are subject to an easement for encroachments created by the original construction of the improvements on any Lot, settling and overhangs, and for any party walls which are part of the original construction. A valid easement for those encroachments and for the maintenance of such shall continue for so long as the encroachments exist. This easement does not cover any improvements constructed by a Lot Owner after the original sale of that Lot by the Declarant.

5.2 **Easement Over Common Areas.** A blanket easement is created upon, across, over and under all of the Common Areas 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, gas, telephones and electricity. Any conveyance or encumbrance of any of the Common Areas shall be subject to an Owner's easement for ingress or egress to his/her Lot.

5.3 **Drainage Easement.** A drainage easement is created upon, across, over and under each Lot for the benefit of all other Lots.

5.4 **Joint Use Easements.** Certain Lots within the project, and reflected with Keynote #2 on the Plat share a Common Driveway, a portion of which is located on the individual Lot served by such Common Driveway. Each Owner of a Lot on which a portion of the Common Driveway is located shall have an easement for ingress and egress over that portion of the Common Driveway which is located on the other Lots served by this Common Driveway. For example, a Common Driveway is located on Lots 69, 70, 71 and 72. Each Owner of one of those lots has an easement for ingress and egress over the Common Driveway a portion of which is located on the other Lots.

5.5 **Utility Easements.** The Association has an easement over any Lot on which a utility easement is located (as reflected on the Plat) for the purpose of performing any of its obligations required by the Association's Governing Documents.

5.6 **Declarant's Easements.**

5.6.1 The Declarant has an easement on and over the Common Areas to construct all improvements which the Declarant may deem necessary and to use the Common Areas and any Lots owned by the Declarant for construction purposes, including the storage of tools, machinery, equipment, building materials, and supplies.

1 5.6.2 The Declarant has the right and an easement to maintain sales or  
2 leasing offices, management offices and models throughout the Project, to maintain one or  
3 more advertising signs on the Common Areas and on the Lots owned by the Declarant  
4 while it is selling the Lots.  
5

6 **ARTICLE VI**  
7 **ASSESSMENTS**  
8

9 **6.1 Creation of the Lien and Personal Obligation to Pay Assessments.** Each  
10 Owner, but not including the Declarant, upon the recordation of a deed to any Lot, whether  
11 or not it is stated in the deed, covenants and agrees to pay the Association: (1) Annual  
12 Assessments or charges, (2) Reimbursement Assessments and (3) Special Assessments.  
13 These assessments shall be established and collected as provided in this Article. All  
14 assessments, together with interest, late fees, costs, and reasonable attorneys' fees, shall be  
15 charged against the Lot and shall be a continuing lien upon the Lot. Delinquent  
16 assessments, together with interest, late fees, costs, and reasonable attorneys' fees, shall also  
17 be the personal obligation of the person who was the Owner of the Lot at the time when the  
18 assessment was levied. The personal obligation for delinquent assessments shall not pass  
19 to an Owner's successors in title unless assumed by them.  
20

21 **6.2 Purpose of Annual Assessments.** The Annual Assessments levied by the  
22 Association shall be used to promote the health, safety and welfare of the Members and  
23 their guests; for the improvement and maintenance of the Common Areas, including the  
24 recreational facilities, for the payment of all expenses and charges which are the  
25 responsibility of the Association; and for all other purposes set forth in the Association's  
26 Governing Documents.  
27

28 **6.3 Annual Assessments.**  
29

30 **6.3.1 Annual Assessment.** Based upon the needs of the Association to  
31 maintain and improve the property, the Board of Directors shall have full authority and  
32 absolute discretion to increase the Annual Assessment by a maximum of ten (10) percent.  
33 An increase of more than ten (10) percent must be approved by a vote of a majority of the  
34 Members who are voting in person or by proxy at a meeting duly called for this purpose.  
35

36 **6.3.2 Notification to Owners of Annual Assessments.** The Board shall  
37 provide notice to the Owners of any change to the amount of the Annual Assessments at  
38 least thirty-day (30) days prior to January 1 of each year. The Board of Directors may  
39 determine that the Annual Assessment is payable in equal monthly installments, or on any  
40 other periodic basis.  
41

1           **6.4     Special Assessments.** Special Assessments may be levied by the Board of  
2 Directors, in addition to the Annual Assessments, for (1) construction capital  
3 improvements; (2) correction an inadequacy in the current operating account; (3) defraying,  
4 in whole ore in part, the cost of any construction, reconstruction, unexpected repair or  
5 replacement of improvements in the Common Areas; or (4) paying for such other matters  
6 as the Board may deem appropriate for the Properties. Special Assessments shall be  
7 approved by the vote of a majority of the Members who are voting in person or by proxy  
8 at a meeting duly called for this purpose.  
9

10           **6.5     Uniform Rate of Assessment.**  
11

12           6.5.1 Except as otherwise provided in this Declaration, all Assessments must  
13 be set at a uniform rate for all Lots and may be collected on a monthly or quarterly basis  
14 as the Board may determine.  
15

16           6.5.2 For so long as the Declarant is a Class B Member, it shall not be  
17 obligated to pay assessments on any Lots which it owns. The Declarant shall be obligated  
18 to pay to the Association any sums, which are necessary to fund any deficit in the operation  
19 account. The deficit shall be determined on a monthly basis by applying the assessments  
20 collected from the Members to the operating expense of the Association. The Declarant  
21 shall pay to the Association an amount equal to the balance of the monthly expenses, which  
22 cannot be paid because of insufficient funds in the operating account.  
23

24           **6.6     Due Dates for Annual Assessments.** Each Owner shall begin making  
25 his/her payment of the Annual Assessments on the first day of the month following the  
26 conveyance of a Lot to that Owner. This amount shall be adjusted according to the number  
27 of months remaining in the calendar year.  
28

29           **6.7     Reimbursement Assessments.** The Association shall levy a Reimbursement  
30 Assessment against any Owner if a failure to comply with the Association's Governing  
31 Documents has (1) necessitated an expenditure of money by the Association to bring the  
32 Owner or his/her Lot into compliance; or (2) resulted in the imposition of a fine or penalty.  
33 A Reimbursement Assessment shall not be levied by the Association until notice and an  
34 opportunity for a hearing has been given to the Owner. Reimbursement Assessments may  
35 be enforced in the same manner as Annual Assessments.  
36

37           **6.8     Effect of Nonpayment of Assessments; Remedies of the Association.** In  
38 addition to all other remedies provided by law, the Association, or its authorized  
39 representative, may enforce the obligations of any Owner to pay the Assessments in any  
40 manner provided by law or by either or both of the following procedures:  
41

1           6.8.1 By Suit. The Association may file a suit at law against any Owner who  
2 is personally obligated to pay delinquent assessments. Any judgment obtained in the  
3 Association’s favor shall include the amount of the delinquent assessments, any additional  
4 charges incurred by the Association, and any other amounts as the court may award,  
5 including reasonable attorney’s fees and court costs. A proceeding to recover a judgment  
6 for unpaid assessments may be maintained without the necessity of foreclosing or waiving  
7 the Association’s lien.

8  
9           6.8.2 By Lien. To perfect its lien, the Association, or its authorized  
10 representative, shall execute and record a Notice of Lien in the Office of the Pima County  
11 Recorder. The lien shall be in favor of the Association and shall be for the benefit of all the  
12 Owners. The Association may commence and maintain proceedings to foreclose its lien in  
13 the same manner as the foreclosure of mortgages. The lien for assessments is prior and  
14 superior to all other liens, except (1) all taxes, bonds, assessments and other levies which,  
15 by law, would be superior thereto; and (2) the lien of any first mortgage or deed of trust.

16  
17           **6.9 Additional Charges**. In addition to any other amounts due or any other relief  
18 or remedy obtained against an Owner who is delinquent in the payment of any  
19 assessments, each Owner agrees to pay such additional costs, fees, charges and  
20 expenditures (“Additional Charges”) as the Association may incur in the process of  
21 collecting funds from any Owner. All additional charges shall be included in any judgment  
22 in any suit to collect delinquent assessments or may be levied against a Lot as a  
23 reimbursement assessment. Additional charges shall include, but not be limited to, the  
24 following:

25  
26           6.9.1 Attorneys’ Fees. Reasonable attorneys’ fees and costs incurred in the  
27 event an attorney is employed to collect any assessment or sum due, including the  
28 placement of the lien, or the filing of a suit or otherwise;

29  
30           6.9.2 Late Charges. A late charge, in an amount to be determined by the  
31 Board, to compensate the Association for additional collection costs incurred in the event  
32 any assessment or other sum is not paid when due; provided, however, that such late  
33 charge shall not exceed ten percent (10%) of the delinquent assessment or fifteen and  
34 No/100 Dollars (\$15.00) per month, whichever is greater;

35  
36           6.9.3 Costs of Suit. Costs of suit and court costs incurred as are allowed by  
37 the Court;

38  
39           6.9.4 Interest. Interest on all sums imposed in accordance with this Article  
40 including the delinquent assessment, reasonable costs of collection, reasonable attorneys’  
41 fees and late charges, at an annual percentage rate to be established by the Board,  
42 commencing thirty (30) days after the assessment becomes due; and



1           6.9.5 Other. Any such other additional costs that the Association may incur  
2 in the process of collecting delinquent assessments or sums.  
3

4           **6.10 Application of Payments**. All payment received by the Association shall be  
5 applied first to collection cost and attorneys' fees, then to the late charges, then to interest  
6 and then to delinquent assessments.  
7

8           **6.11 Release of Lien**. Upon payment of delinquent assessments and any other  
9 charges imposed by the Association, including attorney's fees, the Association shall record  
10 a release of any recorded lien.  
11

12           **6.12 Statement of Assessment Lien**. Within ten (10) days of a request from an  
13 Owner, or the Owner's agent, the Association shall furnish that Owner with a written  
14 certificate signed by an officer or authorized agent of the Association stating the amount  
15 of any assessment and any additional charges secured by the lien upon his/her Lot. A  
16 charge, not to exceed \$50.00, may be levied by the Board for the issuance of such certificate.  
17

18           **6.13 No Exemption of Owner**. No Owner is exempt from liability for the payment  
19 of assessments because he/she does not use or enjoy the Common Areas, or has abandoned  
20 his/her Lot, or for any other reason, including any allegation that the Board of Directors  
21 is not performing its obligations under the Association's Governing Documents.  
22

23           **6.14 Subordination of the Lien to Mortgages**. The lien for assessments is  
24 subordinate to the lien of any first mortgage or deed of trust. Sale or transfer of any Lot  
25 does not affect the assessment lien. However, the sale or transfer of any Lot pursuant to a  
26 mortgage foreclosure, or any proceeding in lieu thereof, extinguishes the lien for such  
27 assessments but only as to those payments which became due prior to such sale or transfer.  
28 No sale transfer of any Lot shall relieve the Lot from liability for any assessments which  
29 become due after the sale or transfer, or from the lien for assessments.  
30

31           **6.15 Mortgage Protection and Additional Assessment as Common Expense**.  
32 Notwithstanding and prevailing over any other provision of the Association's Governing  
33 Documents, the following provision shall apply to and benefit each holder of a first  
34 mortgage upon a Lot (called the first mortgagee):  
35

36           6.15.1 The first mortgagee shall not be personally liable for the payment of  
37 any assessment, nor for the observation or performance of any covenant, restriction,  
38 regulation, rule, article or bylaw, except for those matters which are enforceable by  
39 injunctive or other equitable actions, and which do not require the payment of money.  
40

41           6.15.2 During the tendency of any proceeding to foreclose the first  
42 mortgage, including any period of redemption, the mortgagee (or receiver appointed in

1 such action) may, but is not required to, exercise any or all of the rights and privileges of  
2 the Owner of the mortgaged Lot, including by not limited to the exclusion of the Owner's  
3 exercise of such right and privileges.  
4

5 6.15.3 At such time as the first mortgagee becomes the record Owner of a  
6 Lot, it shall be subject to all of the terms and conditions of this Declaration, including but  
7 not limited to the obligation to pay for all assessments and charges accruing thereafter, in  
8 the same manner as any Owner.  
9

10 6.15.4 The first mortgagee, or any other part acquiring title to a mortgaged  
11 Lot through foreclosure suit or through an equivalent proceeding arising from said first  
12 mortgage, such as, but not limited to, the taking of a deed in lieu of foreclosure, shall  
13 acquire title to the mortgaged Lot free and clear of any lien authorized by or arising out of  
14 any of the provisions of the Declaration or Bylaws which secured the payment of any  
15 assessment for charges accrued prior to the final conclusion of any such foreclosure suit or  
16 equivalent proceeding, including the expiration date of any period of redemption.  
17

18 6.15.5 First mortgagees are entitled to pay taxes or other charges which are  
19 in default and which may or have become a charge against any Common Areas owned by  
20 the Association, and such first mortgagees may pay overdue premiums on hazard  
21 insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for  
22 such Common Areas and any first mortgagees making such payment may be owed  
23 immediate reimbursement from the Association.  
24

25 6.15.6 Nothing in this Declaration shall in any manner be deemed to give  
26 an Owner, or any other party, priority over any rights of a first mortgagee of a Lot pursuant  
27 to the terms of such first mortgagee's mortgage in the case of a distribution to an Owner  
28 of insurance proceeds or condemnation awards for losses or to a taking of any Lot or any  
29 part of the Common Areas owned by the Association. Each first mortgagee shall be entitled  
30 to timely written notice of such loss or taking.  
31

## 32 **6.16 Reserves.**

33

34 16.16.1 To insure that the Association has adequate funds to pay the  
35 Common Expenses, each Purchaser of a Lot shall pay the Association, immediately upon  
36 becoming the Owner of the Lot, a sum equal to one-sixth (1/16<sup>th</sup>) of the Annual Assessment  
37 on the Lot. Funds paid to the Association pursuant to this Section may be used by the  
38 Association for the payment of operating expenses or any other purpose permitted under  
39 the Governing Documents. Payments made pursuant to this Section shall be nonrefundable  
40 and shall not be considered as an advance payment of any Assessments levied by the  
41 Association pursuant to this Declaration.  
42

1           16.16.2 The reserves which are collected as part of the Annual Assessments  
2 shall be deposited by the Association in a separate bank account to be held in trust for the  
3 purposes for which they are collected. Such reserves shall be deemed a contribution to the  
4 capital account of the Association by the Owners and once paid, no Owner shall be entitled  
5 to any reimbursement of those funds. The Board is only responsible for providing for such  
6 reserves as the Board in good faith deems reasonable, and no Member of the Board is liable  
7 to any Owner or to the Association if the amount in the reserve account proves to be  
8 inadequate.  
9

10 

2007 Amendment from prior CC&Rs: §6.17 and §6.18 are amended:
---

11  
12           **6.17 Imposition of Penalties for Non-Compliance with Governing Documents.**

13 If any Owner, or his or her family, licensee, invitee, tenant or lessee, violates the  
14 Association's Governing Documents, the Board may levy a monetary penalty of not more  
15 than One Hundred Fifty and No/100 Dollars (\$150.00) upon the Owner of the Lot for each  
16 violation and/or may suspend the right of such Owner, or his or her family, licensee,  
17 invitee, tenant or lessee, to use the Common Areas, under such conditions as the Board may  
18 specify. The Board shall establish a procedure by which it imposes such penalties,  
19 including the right to a hearing if requested by an Owner. Any monetary penalty imposed  
20 by the Board which is not paid within fifteen (15) days after its due date shall incur a late  
21 charge in an amount not to exceed the greater of fifteen dollars (\$15.00) or ten percent (10%)  
22 of the amount of the unpaid penalty. Any penalty and late charge not timely paid may  
23 be collected by the filing of a civil suit, in which the Association shall be entitled to also  
24 recover its reasonable attorney fees and costs incurred. Any resulting judgment shall be  
25 recorded in the office of the County Recorder and remain of record until paid in full.  
26

27           **6.18 Enforcement Procedures.**

28  
29           6.18.1 Demand. Written demand to cease and desist from an alleged  
30 violation shall be served upon the Owner either by personal delivery to the Owner, or any  
31 one of them, or by mail (postage prepaid and addressed to the street address of the lot in  
32 question or any other mailing address previously designated in writing by the Owner)  
33 specifying: (a) the nature of the alleged violation; (b) (i) if the violation is continuing, the  
34 action required to abate the violation and a time period, of not less than ten (10) days  
35 (unless the violation constitutes a health or safety hazard), during which the violation may  
36 be abated without penalty, or (ii), if the violation is not continuing and is the first such  
37 violation within the past 365 days, a statement that any further violation of the same rule  
38 may result in the imposition of sanctions after notice and hearing; (c) the proposed time and  
39 place for any hearing which time shall be not less that ten (10) business days from the  
40 giving of notice; and (d) the proposed sanction to be imposed.  
41

1               6.18.2 Continuing Violations. Each day a violation continues after the date  
2 by which the Owner may abate the violation without penalty shall constitute a separate  
3 violation subject to the imposition of the penalty.  
4

5               6.18.3. Hearing. The hearing shall be held pursuant to this notice. At the  
6 hearing, the Owner shall be entitled to be heard and may produce any statement, evidence,  
7 or witnesses on his or her behalf. Prior to the effectiveness of any sanction hereunder, proof  
8 of notice and the invitation to be heard shall be placed in the minutes of the meeting. Such  
9 proof shall be deemed adequate if a copy of the notice together with a statement of the date  
10 and manner of delivery is entered into the minutes.  
11

12               6.18.4 Exemption for Penalties for Non-Payment of Assessments. The Board  
13 shall have the right to impose penalties for non-payment of Assessments, as set forth in this  
14 Declaration, without complying with the provisions of Sections 6.17 or 6.18 of this  
15 Declaration.  
16

17                               **ARTICLE VII**  
18                               **ARCHITECTURAL REVIEW COMMITTEE**

19  
20               **7.1 Landscaping Restrictions.**

21  
22               7.1.1 General Requirements. Except as expressly provided for in this  
23 Declaration or as approved by the Architectural Review Committee, landscaping on the  
24 Lots shall comply with the provisions of the Guidelines.  
25

26               7.2.2 Approval by the Architectural Review Committee. No exterior trees,  
27 bushes, shrubs, plants or other landscaping shall be planted or placed upon any Lot except  
28 as originally installed by the Declarant unless such landscaping is in compliance with plans  
29 and specifications which have been submitted to and approved by the Architectural  
30 Review Committee in accordance with the Guidelines.  
31

32               7.3.3 Restrictions Applicable to All Lots. All Lots, except that portion of  
33 the Lot which is enclosed by a wall around the rear yard, shall be landscaped in a manner  
34 and using plants and soil which have been approved by the Architectural Review  
35 Committee.  
36

37               **7.2 Power and Duties.** The Architectural Review Committee has all of the  
38 powers, authority and duties conferred upon it by the Association’s Governing Documents.  
39 It is the duty of the Architectural Review Committee to consider an act upon all proposals  
40 or plans submitted to it, to adopt the Guidelines subject to written approval of the Board,  
41 to perform any other duties delegated to it by the Board, and to carry out all other duties  
42 imposed upon it by this Declaration and/or any Rules adopted by the Board.

1           **7.3    Organization of the Architectural Review Committee.** The Architectural  
2 Review Committee shall be organized as follows:

3  
4           7.3.1    Committee Composition. The Architectural Review Committee shall  
5 consist of three (3) regular Members elected at an annual meeting of the Members. Elections  
6 for the Architectural Review Committee shall be conducted similar to the election of the  
7 Board of Directors as set forth in the Governing Documents. A Member of the Architectural  
8 Review Committee shall be a Member of the Association.

9  
10          7.3.2    Alternate Members. In the event any Member of the Architectural  
11 Review Committee is absent or unable to serve on this Committee, the remaining regular  
12 Members, even though less than a quorum, may designate an alternate Member to act as  
13 a substitute for the regular Member of the Architectural Review Committee so long as any  
14 one or more regular Members remain absent or disabled.

15  
16          7.3.3    Term of Office. Unless a Member of the Architectural Review  
17 Committee has resigned or been removed, his/her term on the Committee shall be for a  
18 period of two (2) years, or until the appointment of his/her respective successor. Any new  
19 Member appointed to replace a Member who has resigned or has been removed shall serve  
20 until the next annual meeting, at which time the Association's members shall vote on the  
21 Member to fill the unexpired term. Members of the Architectural Review Committee who  
22 have resigned, been removed or whose terms have expired may be reappointed.

23  
24          7.3.4    Appointment and Removal. Any Member of the Architectural  
25 Review Committee may be removed from the Architectural Review Committee by the vote  
26 of a majority of the Members of the Association. The vote to remove a Member of the  
27 Architectural Review Committee shall be taken at a special meeting called for that purpose.  
28 Members may vote in person or by proxy. Prior to the vote on the removal of any Member  
29 of the Architectural Review Committee, the Member of the Architectural Review  
30 Committee shall be provided with a list of the charges against him/her and shall be  
31 provided the opportunity to address the members at the special meeting, prior to the vote  
32 being taken. In the event of the death, resignation or removal of a Member of the  
33 Architectural Review Committee, the successor Member of the Architectural Review  
34 Committee shall be selected by the Board and shall serve until the next annual meeting, at  
35 which time the Members shall vote on the Member to fill the unexpired term.

36  
37          7.3.5    Resignations. Any regular or alternate Member of the Architectural  
38 Review Committee may at any time, resign from the Architectural Review Committee by  
39 giving written notice to the Board.  
40

1           7.3.6 Vacancies. The Board shall fill any vacancies on the Architectural  
2 Review Committee. A vacancy on the Architectural Review Committee occurs upon the  
3 death, resignation or removal of any regular or alternate Member.  
4

5           **7.4 Meetings and Compensation of the Architectural Review Committee.** The  
6 Architectural Review Committee shall meet, when necessary, to perform its duties. The  
7 vote or written consent of a majority of the regular Members (including any substitute  
8 regular Member serving pursuant to Section 7.3.2) shall constitute the act of the  
9 Architectural Review Committee. The Architectural Review Committee shall keep and  
10 maintain a written record of all actions, which it takes. Although Members of the  
11 Architectural Review Committee shall not be entitle to compensation for their services,  
12 consultants hired by the Architectural Review Committee, as authorized by the Board, may  
13 be entitled to compensation at the discretion of the Board.  
14

15           **7.5 Guidelines.** Subject to the written approval of the Board, the Architectural  
16 Review Committee shall adopt, and may form time to time amend, supplement and repeal,  
17 the Guidelines. The Guidelines shall interpret, implement, and supplement this  
18 Declaration, and shall set forth procedures for the review of modifications to  
19 improvements, construction, and installation of improvements on any Lot, and the  
20 standards for development within the Property. The Guidelines shall have the same force  
21 and effect as the Association Rules.  
22

23           **7.6 Obligation to Obtain Approval.** Except as other wise expressly provided in  
24 this Declaration or the Guidelines, the following actions require the prior written approval  
25 by the Architectural Review Committee of plans and specifications prepared and submitted  
26 to the Architectural Review Committee in accordance with the provisions of this  
27 Declaration and the Guidelines:  
28

29           7.6.1 The installation of improvements, alteration, repairs, excavation,  
30 grading, landscaping or other work which in any way alters the exterior appearance of any  
31 Lot from its improved state existing on the date the Lot is conveyed by the Declarant; and,  
32

33           7.6.2 The construction, installation, modification or addition of or to any  
34 building, fence, exterior wall, driveway or other structure, improvement or grading on any  
35 Lot at any time;  
36

37           7.6.3 No material changes or deviations in or from the plans and  
38 specifications for any work to be done on any Lot, once approved by the Architectural  
39 Review Committee, shall be permitted unless the change or deviation is approved by the  
40 Architectural Review Committee.  
41

1           **7.7 Standard of Review.** In reviewing the requests for the installation, addition,  
2 alteration, repair, change or replacement of any improvement, the Architectural Review  
3 Committee shall consider whether the proposed Improvement will be consistent with the  
4 requirements of this Declaration and the Guidelines and any other factors, which the  
5 Architectural Review Committee deems appropriate. The architectural style of the  
6 development shall not, in any way, be altered, modified or changed by the Architectural  
7 Review Committee and all plans and specifications for any alterations, changes or  
8 modifications shall be consistent with the "Santa Fe/Old Pueblo" scheme of development.  
9

10           **7.8 Waiver.** Approval by the Architectural Review Committee of any plans,  
11 drawings or specifications for any work done or proposed, or for any other matter  
12 requiring approval of the Architectural Review Committee, shall not be deemed to  
13 constitute a waiver of any right to withhold approval of any similar plan, drawing,  
14 specification or matter subsequently submitted for approval.  
15

16           **7.9 Liability.** Neither the Declarant, the Association, the Board or the  
17 Architectural Review Committee (or any Member thereof) shall be liable to the Association,  
18 any Owner or any other party for any damage, loss or prejudice suffered or claimed on  
19 account of:  
20

21                   7.9.1 The approval or disapproval of any plans, drawings or specifications,  
22 whether or not defective;  
23

24                   7.9.2 The construction of performance of any work, whether or not  
25 pursuant to approved plans, drawings and specifications;  
26

27           **7.10 Appeal to Board.** Except as provided in this Section, any Owner who is  
28 aggrieved by a decision of the Architectural Review Committee may appeal the decision  
29 to the Board in accordance with the procedures established in the Guidelines. The Board  
30 of Directors shall review the decision of the Architectural Review Committee and either  
31 approve it, reject it, or modify it. The decision of the Board shall be final and binding and  
32 shall modify the Architectural Review Committee decision to the extent specified by the  
33 Board.  
34

35           **7.11 Fee.** The Board may establish a reasonable processing fee to defer the costs of  
36 the Architectural Review Committee in considering any requests for approvals submitted  
37 to the Architectural Review Committee or for appeals to the Board, which fee shall be paid  
38 at the time the request for approval or review is submitted. Such fee shall be paid by the  
39 Owner on the terms and within the time established by the Board. Any fee not paid when  
40 required may become a lien against the Lot and collected in the same manner as  
41 assessments.  
42





1           **8.5    No Conditions Adversely Affecting Other Lot Owners** No Owner may  
2 allow any condition to exist on his/her Lot, which adversely affects the other Lots or other  
3 Owners, nor may an Owner engage in any conduct, which causes the premiums for any  
4 insurance, which is provided by the Association to increase.  
5

6           **8.6    Maintenance/Repairs Within Front Courtyards and Within Rear Yard**  
7 **Perimeter Walls.** Each Owner is responsible for all exterior maintenance or repairs of the  
8 Dwelling Unit, the fences walls (except for the perimeter wall, which shall be the  
9 responsibility of the Association), trees, shrubs, grass, walks and other portions of the Lot  
10 which are included within the courtyards in front of the Dwelling Unit and within the  
11 perimeter walls located in the rear of the units.  
12

13           **8.7    Owner's Compliance with Use Restrictions.** Each Owner is responsible for  
14 assuring that all construction, alterations, modifications or additions to building, walls,  
15 fences, driveways or other structures on the Lot conform to the Use Restrictions set forth  
16 in this Declaration. If, after written notice from the Association, an Owner fails to comply  
17 with the Association's request to conform to such Use Restrictions, the Association may,  
18 at its sole discretion, take whatever action is appropriate to bring the Lot into compliance,  
19 and charge the cost of such work to the Owner, which shall be collected in the same manner  
20 as the collection of assessments.  
21

22           **8.8    Utility Service.** Electric power, sewers, and water will be available to the Lots  
23 through private utility companies authorized by the State of Arizona. Neither the  
24 Declarant, the Board of Directors or the Architectural Review Committee assumes any  
25 responsibility for and does not guaranty the quality of quantity of the water and electric  
26 power to be furnished to the Lot and shall no, in any way, be liable for any shortage of  
27 water of electricity.  
28

29           **8.9    Dereliction of Maintenance by Owners.**  
30

31           8.9.1    Each Owner is responsible for the payment of all damages caused by  
32 the Owner, his guest, family, lessees, pets or employees to his or any other Owner's  
33 property or to the Common Areas. If any Owner fails to maintain the Lot in a manner  
34 satisfactory to the Association, the Association, through its agents and employees, after  
35 giving ten (10) days written notice to the Owner, is entitled to enter on the Lot and to make  
36 any necessary repairs, maintenance, rehabilitation or restoration of the Lot, including the  
37 exterior of any Dwelling Unit as necessary. The Association shall provide the Owner with  
38 an invoice for the work performed. In the event such invoice is not paid within the (10)  
39 days of the date of such invoice, the Association may collect the amount due in the same  
40 manner as the collection of assessments.  
41

1           8.9.2     Nothing contained in this Declaration requires the Association to  
2 charge for, or to collect, assessments for damage caused by an Owner, his guest family,  
3 lessees, pets or employees to any other Owner’s property or to the Common Areas. Any  
4 party whose property is damaged by another owner’s negligence or willful conduct, may  
5 not require the Association to make such repairs, to charge the offending party of collect  
6 such necessary amount for him/her.

7  
8           **8.10 No Access Easement for Gates in Perimeter Wall.** Because there is a one-foot  
9 no access easement around the project, no owner may install any gate or opening in the  
10 perimeter wall, which surrounds The Presidio. This no access easement precludes  
11 vehicular access along the perimeter of The Presidio.  
12

13   **ARTICLE IX**  
14   **ASSOCIATION’S RESPONSIBILITIES**  
15

16           **9.1 Association's Responsibilities.** The Association is responsible for the proper  
17 and efficient management of the Association, the Common Areas, and any detention or  
18 retention basins as shown on the recorded Plat.  
19

20           **9.2 Specific Responsibilities of the Association.** In addition to any other  
21 responsibilities, which the Association may have, it is specifically responsible for the  
22 following:  
23

24                       9.2.1     Maintaining and replacing the landscaping in the common areas; and  
25 maintaining, repairing and replacing, as determined to be necessary in the Board of  
26 Directors’ sole discretion: the private streets, an controlled access gates, and all other  
27 portions of the Common Areas, including the recreational facilities, and including any areas  
28 which are reflected on the plat as being the responsibility of the Association, including the  
29 areas within the private landscape easements shown on the Plat which are outside of the  
30 perimeter walls surrounding the rear of the Lots. The Association is not responsible for  
31 maintaining the individual Lots, unless specifically provided for in this Declaration;  
32

33                       9.2.2     Maintaining all of the sidewalks which are adjacent to the private  
34 streets within the Project as well as those sidewalks abut the front the public streets outside  
35 of the perimeter wall of The Presidio; and maintaining that portion of the private driveways  
36 on the Lots from the private streets to the outside of the entry gate to the front door of the  
37 Dwelling Unit;  
38

39                       9.2.3     Providing for such additional maintenance as the Board of Directors,  
40 from time to time, determines to be in the best interests of the Association;  
41

1           9.2.4    Providing for trash removal, if the Board of Directors determines that  
2 it is in the best interests of the Members for it to obtain the service of a common trash  
3 collection service;

4  
5           9.2.5    Paying real estate taxes, assessments and other charges on those  
6 portions of the Common Areas owned by the Association;

7  
8           9.2.6    Insuring all improvements which the Association is obligated to  
9 maintain, with companies and with such limits as the Association deems appropriate;

10  
11           9.2.7    Hiring, firing, supervising, and paying employee and independent  
12 contractors, including, but not limited to, landscapers, plumber, masons, carpenters, pool  
13 maintenance workers, attorneys, accountants, architects, and contractors to carry out the  
14 Association's obligations;

15  
16           9.2.8    Maintaining liability insurance to protect the Members and the Board  
17 of Directors of the Association from any liability from occurrences or happenings on or  
18 about those portions of the Common Areas maintained by the Association, as well as those  
19 portions of the sidewalks outside the perimeter wall surrounding The Presidio, which are  
20 the responsibility of the Association to maintain. The insurance maintained by the  
21 Association shall also include Director's and Officer's Liability Insurance;

22  
23           9.2.9    Maintaining worker's compensation insurance for the employees of  
24 the Association, or requiring the use of licensed contractors if require by law.

25  
26           9.2.10   Purchasing all goods, supplies, labor, and services reasonably  
27 necessary for the performance of the obligations set forth in this Declaration;

28  
29           9.2.11   Enforcing the provisions of this Declaration;

30  
31           9.2.12   Establishing and maintaining reasonable reserves for the  
32 maintenance, repair, and replacement of the improvements for which the Association is  
33 responsible and for unforeseen contingencies;

34  
35           9.2.13   Providing for the payment for all utilities which service the Common  
36 Areas and facilities;

37  
38           9.2.14   Entering into such agreements and taking such actions as are  
39 reasonably necessary and convenient for the accomplishment of the obligations set forth  
40 about and the operation and maintenance of the Common Areas; and  
41

1           9.2.15 Establishing, from time to time, committees to assist it in the  
2 performance of its duties.  
3

4           **9.3    Detention and Retention Basins.**  
5

6           9.3.1 The Association shall be responsible for the operation and  
7 maintenance of the detention and retention basins as shown on the Plat, including  
8 providing insurance, insuring the Association from liability for any injuries or damages  
9 suffered as a result of such detention and retention basins.  
10

11           9.3.2 The Association shall, on an annual basis and at its expense, have an  
12 Arizona Registered Professional Civil Engineer, prepare a certified inspection report for the  
13 drainage and detention/retention facilities and maintaining such inspection report in the  
14 books and records of the Association to be available for review by the City of Tucson, upon  
15 written request. This inspection report shall contain the following:  
16

17                   9.3.2.1 Either a statement that no maintenance work is needed at  
18 the time of the report, or a list of repairs and work which needs to be done to correct any  
19 deficiencies or potential problems, and/or to restore the drainage and detention/retention  
20 basins to the condition they were in at the time they were originally constructed. After the  
21 Association performs the work set forth in the annual inspection report, the Arizona  
22 Registered Professional Civil Engineer shall certify that the recommended work has been  
23 successfully completed.  
24

25                   9.3.2.2 A statement which indicates that either the watershed  
26 conditions have not changed since the last annual inspection report, or that certain specific  
27 changes have occurred which alter or eliminate such of the design features and affect the  
28 level of services of the drainage and detention/retention systems. In the event that the  
29 annual inspection report indicates that changes in the watershed have occurred since the  
30 last inspection report, the Association shall notify the City of Tucson Engineer of those  
31 changes which no longer satisfy the requirements of the Floodplain Regulations which are  
32 contained in the Tucson Zoning Code.  
33

34           9.3.3 The City of Tucson, upon written notice to the Association, has the  
35 right to periodically inspect the drainage and detention/retention facilities and to verify  
36 that all scheduled and unscheduled maintenance activities are adequately being performed  
37 by the Association. In the event that the City of Tucson determines that the Association is  
38 not properly operation and maintaining the drainage and detention/retention basins and  
39 facilities, it has the right to perform such necessary maintenance and to charge the cost  
40 thereof to the Association, which shall be responsible for reimbursing the City of Tucson  
41 for any such expenditures.  
42

1           **9.4     Sidewalk and Other Maintenance.**  
2

3           9.4.1     The Association is responsible for maintaining the sidewalks, which  
4 are located outside of the perimeter wall. Although these sidewalks have been dedicated  
5 to the City of Tucson, Section 25.12 of the Tucson City Code requires the Association to  
6 keep these public sidewalks abutting The Presidio in good order and repair. The  
7 Association shall be liable to the City for all losses to the City or recoveries from the City  
8 for damages to persons or property of other if caused by the failure of the Association to  
9 repair and keep in good order and reasonably safe condition all such sidewalks. The  
10 Association shall obtain any necessary insurance to cover any liability arising out of this  
11 section.  
12

13           9.4.2     The Association is responsible for keeping the space between the  
14 property line adjacent to the public street and the curb line of the street free from rank grass  
15 and weeds.  
16

17           **9.5     Operation of Swimming Pool.** Because the heating equipment for the  
18 swimming pool (not the spa) is insufficient to heat the swimming pool for all twelve  
19 months of the year, the Board of Directors has the sole discretion to determine which three  
20 to four months of the year it will be in operation, unless the Members of the Association  
21 approve a special assessment under Section 6.4 of this Declaration, to be used exclusively  
22 to upgrade the equipment.  
23

24           **9.6     Operation of Association.** The manner in which the Association carries out  
25 its responsibilities shall be controlled by the Association's Governing Documents. The  
26 payment of assessments to the Association shall not be contingent on the performance by  
27 the Association of any of its obligations.  
28

29           **9.7     Standard of Care.** The Association shall use a reasonably high standard of  
30 care in providing for the repair, management, and maintenance of the property.  
31

32   **ARTICLE X**  
33   **INSURANCE**  
34

35           **10.1    Common Area Insurance.** The Association shall obtain and maintain in force  
36 the following policies of insurance applicable solely to the Common Areas:  
37

38           10.1.1    Property insurance on all the Common Areas including fire and  
39 extended coverage insurance in an amount sufficient to replace any improvements  
40 constructed on the Common Areas. This policy of insurance shall not insure the individual  
41 Dwelling Units unless the Board of Directors, in its absolute discretion, determines that it  
42 is in the Association's best interest for it to obtain and maintain a blanket policy of

1 insurance insuring the Common Areas and the individual Dwelling Units. In the event that  
2 any damage is caused to the Common Area by the negligent or willful acts of any Owner,  
3 and there are insurance proceeds to cover such damage that Owner shall be responsible for  
4 the payment of any insurance deductible applicable to that loss.  
5

6 10.1.2 Liability insurance insuring the Association, Board of Directors,  
7 officers, agents, and employees of the Association against death, bodily injury and property  
8 damage arising out of or in connection with the use, ownership, or maintenance of the  
9 Common Areas in an amount determined by the Board of Directors, but not less than One  
10 Million Dollars (\$1,000,000.00) per injury, including death, to a single person, One Million  
11 Dollars (\$1,000,000.00) per injury, including death, arising out of a single occurrence, and  
12 One Hundred Thousand Dollars (\$100,000.00) property damage arising from the activities  
13 of the Association.  
14

15 10.1.3 All such insurance shall be written in the name of the Association.  
16

17 10.1.4 The insurance coverage obtained and maintained by the Association  
18 shall not be brought into contribution with insurance purchased by individual Owners or  
19 their mortgagees.  
20

21 10.1.5 The Association shall obtain Officer's and Director's Liability  
22 Insurance, in amounts and on terms deemed in the best interest of the Association and shall  
23 insure that such insurance covers all agents of the Association  
24

25 10.1.6 The Association shall maintain sufficient worker's compensation  
26 insurance to the extent necessary to comply with any applicable law.  
27

28 10.1.7 The Association shall provide fidelity insurance covering officers,  
29 directors, employees, and other persons handling the Association funds.  
30

31 10.1.8 The Board shall obtain such other insurance, which it determines is  
32 necessary or expedient to carry out the Association's functions as set forth in this  
33 Declaration.  
34

## 35 **10.2 Individual Insurance.**

36

37 10.2.1 Each Owner agrees with all other Owners and with the Association  
38 that he/she shall carry insurance in an amount, which is sufficient to fully cover the  
39 replacement of any improvements on the Lot. Upon the written request of the Association,  
40 the Owner shall furnish proof of such insurance to the Association in writing. If the Owner  
41 does not purchase adequate insurance, the Association is entitle to insure the  
42 improvements on the Lot and bill the Owner for the cost of such insurance.

1           10.2.2 Each individual Owner agrees that in the event of a partial loss or  
2 damage and destruction to the Dwelling Unit, which results in less than total destruction,  
3 the Owner shall proceed promptly to repair or reconstruct the damaged structure in a  
4 manner consistent with the original construction.  
5

6           10.2.3 Every policy of insurance obtained by the Owner shall provide, if  
7 available, for the payment of that Lot's share of the assessments to the Association during  
8 the time that the damage for which there are insurance proceeds being repaired.  
9

10                                       **ARTICLE XI**  
11                                       **USE RESTRICTIONS**  
12

13           **11.1 Residential Use.** All Lots shall be used for single-family residential purposes  
14 only, and no other structures except single-family residences shall be placed or maintained  
15 thereon. No group homes in which unrelated persons reside shall be permitted.  
16

17           **11.2 Business Activities.** No trade or business may be conducted in or from any  
18 Dwelling Unit, except that an Owner or occupant residing in any Dwelling Unit may  
19 conduct business activities so long as (a) the existence or operation of the business activity  
20 is not apparent or detectable by sight, sound or smell from outside the Dwelling Unit; (b)  
21 the business activity conforms to all zoning requirements for the Properties; (c) the business  
22 activity does not involve any person conducting such business who does not reside on the  
23 Properties or door-to- solicitation of residents of the Properties; (d) the existence or  
24 operation of the business does not increase that dwelling's use of the Common Areas  
25 facilities over that standard for a single family dwelling; (e) the existence or operation of  
26 the business does not require customers or delivery trucks to visit the residence; and (f) the  
27 business activity does not constitute a nuisance, or a hazardous or offensive use, or cause  
28 the owners to violate any other provisions of this Declaration, or threaten the security or  
29 safety of other residents of the Proper ties, as may be determined in the sole discretion of  
30 the Board.  
31

32           **11.3 Leases.**

33  
34           11.3.1 An Owner may lease his/her Lot for single-family residential  
35 purposes only.  
36

37           11.3.2 All provisions of the Declaration and of any Rules and Regulation  
38 promulgated by the Association which governs the conduct of Owners and which provide  
39 for sanctions against Owners shall also apply to all occupants of any Dwelling Unit. The  
40 Owner shall provide the tenant with copies of the Association's governing documents. In  
41 the event the Owner fails to do so, the Association shall provide copies to the tenant and  
42 charge the Owner for the cost of doing so.

1                   11.3.3 All leases and subleases shall be in writing and shall specifically  
2 provide

3  
4                   11.3.3.1 That such lease must specifically state that said lease is  
5 subject in all respects to the provisions of the Association's Governing Documents, and that  
6 the Lessee agrees to be jointly and severally liable, with the Owner, to the Association for  
7 any violation by such Lessee of any provision of said Documents, and that the Association  
8 is named as a third party beneficiary for such purposes of enforcing the Association's  
9 Governing Documents against the Lessee.

10  
11                   11.3.3.2 That such lease must specifically state that in the event of  
12 a failure of the Lessee to comply with a provision or provisions of the Association's  
13 Governing Documents, the Association may proceed directly against either or both the  
14 Lessee and Owner, jointly or severally, for any Lessee violation of said Governing  
15 Documents.

16  
17                   11.3.4 Information to be Provided to the Association. In the event an Owner  
18 leases his/her Lot, the Owner shall give the Association, in writing, the name of the lessee  
19 and such other information as the Board may reasonably require. No lease of an Owner's  
20 Dwelling Unit by such Owner can convey to a Lessee the right of occupancy of such  
21 Dwelling Unit unless a copy of the fully executed lease, containing provisions in  
22 compliance with Sections 11.3.3.1. and 11.3.3.2., is provided to the Association, and the  
23 Association has certified that the requirements of this Declaration have been met, at least  
24 seven (7) days before date of occupancy set forth in said lease.

25  
26 

2007 Amendment from prior CC&Rs: §11.3.5 is amended and re-numbered as 11.3.10. 27 Section 11.3.5 - 11.3.9 are new:
--

28  
29                   11.3.5 Limitation on Right to Lease. An Owner of a Dwelling Unit in The  
30 Presidio may lease a Dwelling Unit in The Presidio, but only if all of the following are true  
31 as of the date that the Dwelling Unit is first leased:

32  
33                   (a) said Owner has previously occupied his/her Dwelling Unit for  
34 a continuous twelve (12) month period of time, and

35  
36                   (b) said Owner is leasing no more than one (1) Dwelling Unit in The  
37 Presidio, and

38  
39                   (c) the leasing of said Dwelling Unit does not cause the percentage  
40 of Dwelling Units being leased in The Presidio to exceed twenty percent (20%).  
41



1           11.3.6 Applicability. Section 11.3.5 shall apply to all existing Owners, on  
2 the effective date of the provision and to all Owners who acquire a Dwelling Unit after the  
3 effective date of the provision, except that sub-sections 11.3.5(a) and 11.3.5(b) shall not  
4 apply to any existing Owner, on the effective date of the provision, with respect to  
5 Dwelling Units already being leased on that date.  
6

7           11.3.7 Hardship Exception. The Board may grant a waiver of the  
8 requirements of section 11.3.5 for a finite period of time of up to two (2) years upon a  
9 showing of good cause and financial hardship. Any such exception granted by the Board  
10 must be reduced to writing, state the reasons for the Board’s action, the length of time for  
11 which the exception is valid, and must be available for viewing by any Member of the  
12 Association.  
13

14           11.3.8 Waiting List. Should an Owner be unable to lease his/her Dwelling  
15 Unit because of the restriction contained in sub-section 11.3.5(c), then, at that time, the  
16 Board shall maintain a waiting list on a first-come, first-served basis. Should the percentage  
17 of leased Dwelling Units in The Presidio thereafter decline to such an extent that an  
18 additional Owner could lease his/her Dwelling Unit, then the right to lease that next  
19 additional Dwelling Unit shall be allocated on a first-come, first-served basis, as determined  
20 by the priority established by the waiting list.  
21

22           11.3.9 Definitions. As used in sections 11.3.5 through 11.3.10, (a) the term  
23 “lease”, when used as a verb, includes “rent” and, when used as a noun, includes “rental  
24 agreement” and (b) the word “lessee” includes “tenant”.  
25

26           11.3.10 Enforceability. Any lease which violates any provision of sections  
27 11.3.1 through 11.3.9 shall be deemed null and void at the option of the Association.  
28

29           **11.4 Sales of Lots.** Each Owner shall promptly notify the Board of Directors of  
30 any sale or transfer of his/her Lot and shall provide the Board with the name and address  
31 of the grantee or transferee and any other information which is reasonably required by the  
32 Association. The Association may charge a reasonable transfer fee to any subsequent  
33 Owner.  
34

35           **11.5 No Temporary Building or Trailers.** No temporary house, house trailer,  
36 motor home, tent, garage, camper or truck with camper shell, boat or out-building of any  
37 kind shall be placed or erected upon any part of the Properties for use as living quarters.  
38

39           **11.6 Heating and Cooling Units.** No heating or cooling apparatus shall be added  
40 to any Lot which is Visible from Neighboring Properties or from the Common Areas,  
41 without the prior written approval of the Architectural Review Committee and the Board  
42 of Directors.

1           **11.7 Signs.** No sign of any kind shall be displayed at the entrance gates or  
2 elsewhere on the Properties if Visible from Neighboring Properties, unless such sign has  
3 been approved the Board except:  
4

5           11.7.1 Signs which may be required by legal proceedings;  
6

7           11.7.2 One (1) sign advertising the Owner’s Lot for sale or lease, provided  
8 such sign does not exceed five (5) square feet in size, is placed only on the Lot and is  
9 removed within two (2) weeks after the offer of sale or lease of the Lot has been accepted  
10 and all contingencies have been removed;  
11

12           11.7.3 Temporary signs indicating an “Open House” for those Properties  
13 offered for sale may be placed at appropriate locations in the area to properly direct  
14 interested parties to the subject property, but only during those hours in which such  
15 property is open for inspection.  
16

17           11.7.4 Any sign used by the Declarant in the sale and marketing of the Lots  
18 in the subdivision, provided that the signs are approved by the Architectural Review  
19 Committee.  
20

21           **11.8 Rubbish, Garbage and Wood Storage.** No Lot shall be used in whole or part  
22 for the storage of rubbish, garbage or wood of any character whatsoever nor for the storage  
23 of anything which will cause such Lot to appear in any unclean or untidy condition or that  
24 will be otherwise obnoxious. No obnoxious or offensive activity shall be carried on upon  
25 any Lot, nor shall anything be done, placed or stored thereon which may become an  
26 annoyance or nuisance to the neighborhood or occasion any noise, or odor which will or  
27 might disturb the peace, quiet, comfort, or serenity of the occupants of surrounding  
28 properties. No storage of any material is permitted outside the walls of a Dwelling Unit.  
29 Wood storage is allowed only so long as wood piles are fully screened from neighboring  
30 Lots, Dwelling Units, or Common Areas.  
31

32           **11.9 Animals.** Each Owner of a Lot may keep two generally recognized house  
33 pets on the Lot, provided that they are not kept, bred or maintained for any commercial  
34 purpose. All animals must be kept under leash or controlled at all times so that they will  
35 not interfere with any Owner’s use and enjoyment of the Common Areas, and it shall be  
36 the responsibility of all pet Owners to clean up after their pets. At night all pets must be  
37 kept in the Owner’s Dwelling Unit, or patio area. No animal shall be allowed to become a  
38 nuisance. The Board in its sole and absolute discretion, has the right to determine whether,  
39 for the purpose of the Section, a particular animal is generally recognized house or yard pet  
40 or whether any pet is a nuisance.  
41

1           **11.10 Unsightly Articles.** No unsightly articles shall be permitted which are visible  
2 from adjoining Lots or from the street or public way. The Board shall have the sole  
3 discretion to determine if any activity by an Owner, his family, invitees or lessees is in  
4 violation of the Section.  
5

6           **11.11 Noise.** No Owner shall engage in any activity or permit any activity to occur  
7 on any Lot or the Common Areas, which results in any unusual, loud or obtrusive noise or  
8 sound.  
9

10           **11.12 Shrubs, Trees and Grasses.**

11  
12           11.12.1 General Restrictions. No shrubs, trees or obstruction of any kind  
13 shall be placed on any lot in a place which may cause a traffic hazard.  
14

15           11.12.2 Plantings in the Common Areas. The plantings and landscaping in  
16 the Common Areas shall not be destroyed or removed without the consent of the Board.  
17 If natural growth is removed with such consent, the Board may require the replanting of  
18 replacement of same, the cost of which shall be borne by the Owner responsible for such  
19 removal.  
20

21           **11.13 Antennas and Exterior Additions.** No exterior antennas or other devices for  
22 the transmission or reception of television or radio signals, including satellite dishes, shall  
23 be erected or maintained unless they are not Visible to Neighboring Lots or from the  
24 Common Areas. No exterior devices or additions, other than initially installed by the  
25 Declarant, including solar energy devices, shall be constructed on the exterior of a Dwelling  
26 Unit (including the roof) without the written authorization of the Architectural Review  
27 Committee.  
28

29           **11.14 Clotheslines.** Clotheslines will be permitted on the Lot, provided that they  
30 are not Visible from Neighboring Lots or from the Common Areas.  
31

32           **11.15 Common Areas.**

33  
34           11.15.1 Within drainage ways and detention/retention basins, no structure,  
35 planting or other material shall be placed or permitted to remain which may change the  
36 direction of flow or which may obstruct or retard the flow of water.  
37

38           11.15.2 All Common Areas shall be managed in compliance with all City of  
39 Tucson Ordinances.  
40

1                   **11.16 Vehicle Parking and/or Storage.**  
2

3                   11.16.1 Each Household is permitted to keep only the number of vehicles that  
4 will fit in the enclosed garage. Guests shall park their vehicles in the designated common  
5 area parking spaces, or within the enclosed garage of the host. The parking of any vehicle  
6 outside of a garage for more than ten (10) consecutive days is prohibited without prior  
7 approval of the Board. Garage doors shall remain closed except for temporary purposes,  
8 such as entering or exiting, loading or unloading passengers and personal property, or  
9 while attended.

10  
11                   11.16.2 Driveways shall be kept free of oil, grease, or other unsightly staining.  
12

13                   11.16.3 Parking or storage of recreational vehicles (including, but not limited  
14 to, trailers, campers, motor homes, mobile homes, van conversions and boats) is prohibited  
15 on all portion of the Property, unless parked in the enclosed garage on the Lot.  
16

17                   11.16.4 No commercial, construction or like vehicles (including, but not  
18 limited to, pickup-type vehicles in excess of three-quarter (3/4) ton capacity, and vehicles  
19 bearing commercial licenses or commercial insignia shall be parked or stored on any Lot  
20 than inside the enclosed garage.  
21

22                   11.16.5 The Board may establish parking regulations if it determines such are  
23 necessary. The Board shall consider an exception to these regulations only when an  
24 explanation with a request for special exception or temporary variance is submitted in  
25 writing in advance.  
26

27                   11.16.6 Except for emergency vehicle repairs, no automobile or other motor  
28 vehicle shall be constructed, reconstructed or repaired on any Lot, and no inoperable  
29 vehicle may be stored or parked on any Lot if it is visible from Neighboring Lots or is  
30 visible from the Common Areas.  
31

32                   11.16.7 The Board has the right to have any vehicle, including, but not  
33 limited to recreational vehicles, automobiles, motorcycles, etc., which is parked in violation  
34 of the Governing Documents towed away at the sole cost and expense of the Owner of the  
35 vehicle. Any expenses incurred by the Association in connection with the towing of any  
36 vehicle shall be paid to the Association by the Owner, within ten days from the date of  
37 demand by the Association and if not paid, shall be collected in the same manner as  
38 assessments.  
39

40                   **11.17 Right of Inspection.** Upon notice to the Owner and during reasonable hours,  
41 any Member of the Board of Directors of the Association, or any authorized representative,  
42 has the right to enter upon and inspect the Lot, (except the interior of Dwelling Units) for

1 the purpose of ascertaining whether or not the provisions of this Declaration have been or  
2 are being complied with, and such persons shall not be deemed guilty to trespass by reason  
3 of such entry.  
4

5 **11.18 Nuisance.** No Owner shall be allowed to store any unsightly material on  
6 his/her Lot or cause any condition on the Lot, which might, in the sole discretion of the  
7 Board, be a nuisance to the other Owners or their tenants, guests or visitors.  
8

9 **11.19 Changes in the Color and Roofs of the Improvements on the Lot.** No  
10 Owner may change the color of the exterior portion of the Improvements constructed on  
11 any Lot, including the color of the trim, the doors and the roofs. No Owner may change the  
12 roofing materials for those materials, which were originally used by the Declarant in its  
13 construction of the improvements on the Lots.  
14

15 **11.20 Drainage.** No person shall interfere with the established drainage patter over  
16 any Lot or the Common Areas, unless adequate provision is made so that the drainage  
17 conforms in all respects to the Pima County and City of Tucson rules and regulations and  
18 any drainage criteria promulgated by the Architectural Review Committee. "Established  
19 drainage" is defined as the drainage which exists at the time the overall grading of the  
20 Property is completed, or which is shown on any grading plans approved by Pima County.  
21 No fence, wall or any other structure or improvement may be constructed along any lot line  
22 in such a manner as to obstruct the natural flow of drainage across the lots and over the  
23 common area and the plans for all such improvements must be approved, in writing by the  
24 Architectural Review Committee.  
25

26 **11.21 Rules and Regulations.** The Board of Directors may adopt, amend and repeal  
27 Rules and Regulations pertaining to (1) the management, operation and use of the Common  
28 Areas; (2) minimum standard of maintenance of the Lots; (3) any other subject within the  
29 jurisdiction of the Association; (4) the conduct and actions of Owners, tenants, guests,  
30 visitors, and Developers, on the Lots and Common Areas when such conduct affects the  
31 other Owners of the value, desirability, and aesthetics of the project; (5) traffic and parking  
32 restrictions including speed limits on the private streets with the Project; and (6) the  
33 landscaping and maintenance of the Properties.  
34

35 **ARTICLE XII**  
36 **GENERAL PROVISIONS**  
37

38 **12.1 Enforcement.** The Association or any Owner, has the right to enforce, by any  
39 proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens or  
40 charges now or hereafter imposed by the provisions of this Declaration. This shall include  
41 enforcement of Rules and Regulations promulgated to the Association to carry out its

1 purpose and this Declaration. The prevailing party in any Court action shall be awarded  
2 reasonable attorneys' fees and costs.

3  
4 12.1.1 No delay or omission on the part of the Association or any Member  
5 in exercising its right to enforcement hereunder shall be construed as a waiver or breach  
6 of any of the provisions of the Association's Governing Documents or an acquiescence in  
7 any breach of these Governing Documents and no right of action shall accrue against the  
8 Board of Directors, the Association or any Member for their neglect or refusal to exercise  
9 such right of enforcement.

10  
11 12.1.2 No breach of the foregoing provisions, conditions, restrictions or  
12 covenants shall defeat or render invalid the lien of any mortgage or deed of trust made in  
13 good faith for value as to any portion of the Properties. Such provisions, conditions,  
14 restrictions and covenants shall be enforceable against any portion of the Properties  
15 acquired by any person through foreclosure for any breach occurring after such acquisition.

16  
17 **12.2 Severability.** Invalidation of any one of these covenants or restrictions by  
18 judgment or court order shall not affect any other which shall remain in full force and  
19 effect.

20  
21 **12.3 Amendment.**

22  
23 12.3.1 This Declaration may be amended upon the approval of two-thirds  
24 (2/3) of each Class of Members who are voting, in person or by proxy, at any regular or  
25 special meeting called for that purpose. Any amendment to this Declaration shall be by a  
26 written document signed by the President and Secretary attesting that the requisite number  
27 of votes had been obtained. All amendments become effective when filed with the Pima  
28 County Recorder's Office.

29  
30 12.3.2 For so long as there is a Class B Member of the Association, the  
31 following actions require the prior written approval of FHA or VA: amendments to the  
32 Declaration; annexation of additional properties; and dedication of any Common Areas.

33  
34 12.3.3 The Declarant or the Board of Directors may amend this Declaration  
35 or the Plat, without obtaining the approval of any Owner, to conform this Declaration or  
36 the Plat to the requirement or guidelines of the Federal National Mortgage Association, the  
37 Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the  
38 Veterans Administration or any federal, state or local governmental agency whose approval  
39 of the project, the Plat or the Governing Documents is required by law or requested by the  
40 Declarant or the Board.

1           12.3.4 So long as the Declarant owns any Lot within the Properties, it must  
2 give its written approval to any amendment to this Declaration.  
3

4           **12.4 Term.** The provision of this Declaration shall run with the land and continue  
5 and remain in full force and effect at all times and against all persons.  
6

7           **12.5 Compliance.** All covenants, conditions, provisions and restrictions contained  
8 in this Declaration or any subsequent amendments to this Declaration are subject to any  
9 and all applicable federal, state and local governmental rules and regulations.  
10

11           **12.6 Interpretation.** Except for judicial construction, the Association has the  
12 exclusive right to construe and interpret the provisions of this Declaration. In the absence  
13 of any adjudication to the contrary by a court of competent jurisdiction, the Association's  
14 construction or interpretation of the provisions of the Governing Documents shall be final,  
15 conclusive and binding on all Owners.  
16

17           **12.7 Binding Effect.** By acceptance of a deed or acquiring any ownership interest  
18 in any Lot, each person or entity, for himself, or itself, his heirs, personal representatives,  
19 successors, transferee and assigns, bind himself and his heirs, personal representatives,  
20 successors, transferee and assigns to all of the provisions, restriction, covenants, conditions,  
21 rules and regulations which have been imposed by this Declaration and any amendments  
22 thereto. In addition, each such person doing so acknowledges that this Declaration sets  
23 forth a general scheme of the Properties and evidences his intent that all restrictions,  
24 conditions, covenants, and rules and regulations contained herein or promulgated hereafter  
25 by the Association shall run with the land and be binding upon all subsequent and future  
26 Owners, grantees, purchasers, assignees and transferee thereof. Furthermore, each such  
27 person fully understands and acknowledges that this Declaration shall be mutually  
28 beneficial, prohibitive and enforceable by the various subsequent and future Owners.  
29

30           **12.8 Indemnification.** The Association shall indemnify to the fullest extent  
31 allowed by law every officer, director and committee member, against any and all  
32 expenses, including attorneys' fees, reasonably incurred by or imposed upon, any officer,  
33 director or committee member, in connection with any action, suit or other proceeding  
34 (including settlement of any suit or proceeding if approved by the then Board of Directors)  
35 to which he or she may be a party by reason of being or having been an officer or director.  
36 This provision shall not be deemed to include travel expenses to attend Association  
37 meetings or legal proceedings and shall only include reasonable actual expenses. The  
38 officers, directors and committee members, shall not be liable for any mistake of judgment,  
39 negligent or otherwise, except for their own individual willful misfeasance, malfeasance,  
40 misconduct or bad faith. The officers, directors and committee members shall have no  
41 personal liability with respect to any contract or other commitment made by them, in good  
42 faith, on behalf of the Association (except to the extent that such officers, directors or

1 committee members may also be members of the Association), and the Association shall  
2 indemnify and forever hold each such officer, director and committee member, free and  
3 harmless against any and all liability to others on account of each such contract or  
4 commitment. Any right to indemnification provided for herein shall not be exclusive of any  
5 other rights to which any officer, director or committee member, or former officer, director  
6 or committee member, may be entitled. The Association shall, as a common expense,  
7 maintain adequate general liability and Officer's and Director's Liability Insurance to also  
8 include committee members, to fund this obligation.

9  
10 **ARTICLE XIII**  
11 **ANNEXATION/DE-ANNEXATION OF PROPERTY**  
12

13 **13.1 Annexation of Additional Property by Declarant.** At any time up to the date  
14 which is seven (7) years after the date this Declaration is recorded, the Declarant has the  
15 right to annex and subject to this Declaration, all or any portion of the Additional Property,  
16 without the consent of any other Owner or person. To effect such annexation, a Declaration  
17 of Annexation covering the Additional Property (or the applicable portion or portions  
18 thereof) shall be executed and Recorded by Declarant. The Recordation of such Declaration  
19 of Annexation shall constitute and effectuate the annexation of the additional Property (or  
20 the applicable portion or portions thereof) described therein, making such Additional  
21 Property (or the applicable portion or portions thereof) and the Owners of such Property  
22 subject to this Declaration and the jurisdiction of the Association.  
23

24 **13.2 Declarant's Rights After Annexation.** On the date that the Declaration of  
25 Annexation is recorded, the Declarant shall be entitled to its Class B votes for each Lot  
26 annexed into the Project. In addition, the additional property shall become a part of the  
27 Property subject, in all respects, to each and every provision of this Declaration (including,  
28 but not limited to, the provisions regarding Assessments).  
29

30 **13.3 Withdrawal of Annexed Property.** Declarant may, at its sole discretion, and  
31 without the approval, assent, or vote of the Association or other Owners, from time to time  
32 until fifteen (15) years after the Recordation of this Declaration, remove or withdraw from  
33 the Subdivision, portions of the annexed property that Declarant, in Declarant's sole  
34 discretion, deems necessary or desirable in connection with the development of the  
35 subdivision; provided however, that: (I) with respect to the removal or withdrawal of any  
36 annexed property, any portion of which lies within a Parcel or Lot that is owned by an  
37 Owner other than Declarant or an Affiliate of Declarant, Declarant shall have obtained the  
38 prior written consent of such Owner to such removal or withdrawal; and (ii) FHA, VA,  
39 FNMA, FHLMC, or any other Agency, as the case may be and to the extent they or each of  
40 them may be involved with the removal or withdrawal of property from annexed property,  
41 has approved the withdrawal. A Declaration of De-Annexation from the Declaration of  
42 Covenants, Condition, and Restrictions covering the Annexed Property shall be executed



1 and recorded by Declarant. The Recordation of such Declaration of De-Annexation from  
2 Declaration of Covenants, Condition, and Restrictions shall constitute and effectuate the  
3 removal, withdrawal and De-Annexation of the Annexed property described therein,  
4 releasing such Annexed Property and the Owners and Occupants thereof from  
5 encumbrance by this Declaration and jurisdiction of the Association. If Annexed Property  
6 is removed or withdrawn, the number of Lots or Parcels shall be as provided in the plat,  
7 and Declarant shall be entitled to votes as determined in accordance with Section 3.2.2. of  
8 this Declaration.  
9

10 **13.4 Disclaimer of Representations.** Declarant makes not representations or  
11 warranties whatsoever that: (1) the Project will be completed in accordance with the plans  
12 for the Project as the exist on the date this Declaration is recorded; (2) any Property subject  
13 to this Declaration will be committed to or developed for a particular use or for any use; or  
14 (3) the use of any Property subject to this Declaration will not be changed in the future.  
15

16 **13.5 Annexation of Property by the Owners.** After the expiration of the Class B  
17 votes, any annexation of additional Property requires the approval of the Owners of at least  
18 two-thirds (2/3) of the Lots.

19 IN WITNESS WHEREOF, the undersigned certify that at least two-thirds (2/3) of  
20 the Owners voting in a duly-held election approved the amendments to Sections 6.17, 6.18  
21 and 11.3.5 through 11.3.10 of the foregoing instrument and that this instrument restates the  
22 Second Amended and Restated Declaration, including the aforesaid amendments, and that  
23 this Third Amended and Restated Declaration supersedes and replaces the Second  
24 Amended and Restated Declaration.

THE PRESIDIO AT WILLIAMS CENTRE HOMEOWNERS  
ASSOCIATION, an Arizona non-profit corporation

By Richard W. Lang  
President

NANNIE WENIG

ATTEST:

By *[Signature]*  
Secretary

STATE OF ARIZONA     )  
                                      : ss.  
County of Pima         )

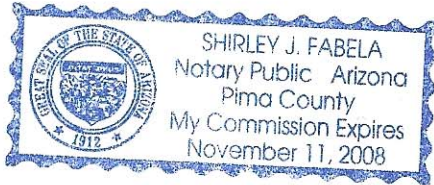
The foregoing instrument was acknowledged before me this 30<sup>TH</sup> day of MARCH, 2007, by RICHARD LANG, President, of THE PRESIDIO AT WILLIAMS CENTRE HOMEOWNERS ASSOCIATION, an Arizona non-profit corporation, on behalf of the corporation.



*[Signature]*  
Notary Public

STATE OF ARIZONA     )  
                                      : ss.  
County of Pima         )

The foregoing instrument was acknowledged before me this 3RD day of APRIL, 2007, by THOMAS FLOH, Secretary, of THE PRESIDIO AT WILLIAMS CENTRE HOMEOWNERS ASSOCIATION, an Arizona non-profit corporation, on behalf of the corporation.



*[Signature]*  
Notary Public

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