

1 as assessments. Delinquent sums shall accrue interest in an amount established
2 by the Board.

3 ARTICLE XIII

4 ASSESSMENTS

5 Section 13.1. Assessments for Common Expenses.

6 13.1.1. Assessments to pay a judgment against the Association shall
7 be assessed equally against all Lots in the Association.

8 13.1.2. If any common expense is caused by the misconduct of any
9 Owner, the Association may assess that expense exclusively against such Owner
10 and his/her Lot and may collect such common expense in the same manner as
11 assessments.

12 Section 13.2. Covenants to Pay. Each Owner, by the acceptance of
13 a deed to a Unit, whether or not it is expressly stated in the deed, covenants
14 and agrees to pay to the Association all assessments and any additional charges
15 levied pursuant to this Article VIII.

16 13.2.1. Liability for Payment. The obligation to pay assessments
17 shall run with the land so that each successive record Owner of a Dwelling Unit
18 shall become liable to pay all such assessments. No Owner may waive or
19 otherwise escape personal liability for assessments or release the Unit owned by
20 him/her from any lien and charges hereof by non-use of the Common Areas,
21 abandonment of the Dwelling Unit, by attempting to renounce rights in the
22 Common Areas or the facilities or services, or for any other reason. Each
23 assessment shall constitute a separate assessment and shall also be a separate,
24 distinct and personal obligation of the Owner of the Dwelling Unit at the time
25 when the assessment was levied and shall bind his/her heirs, devisee, personal

1 representatives and assigns. Any assessment not paid within fifteen (15) days
2 after it becomes due is delinquent. The personal obligation of an Owner for
3 delinquent assessments shall not pass to a successive Owner unless the personal
4 obligation is expressly assumed by the successive Owner. Any assumption of
5 personal liability by a successor Owner (including a contract purchaser under
6 an installment land contract) does not relieve the Owner from personal liability
7 for delinquent assessments. After an Owner transfers his/her interest in a
8 Dwelling Unit, as evidenced by the recordation of a deed in the office of the
9 Pima County Recorder, he/she shall not be liable for any charges levied against
10 the Owner of the Dwelling Unit.

11 13.2.2. Funds Held in Trust. The assessments collected by the
12 Association shall be held by the Association for and on behalf of each Owner and
13 shall be used solely for the operation, care and maintenance of the Common Areas
14 as provided in this Declaration. Upon the sale or transfer of any Dwelling Unit,
15 the Owner's interest in the funds shall be deemed automatically transferred to
16 the successor Owner.

17 13.2.3. Offsets. No offsets against any assessment shall be permitted
18 for any reason, including, without limitation, non-use of the common recreational
19 facilities, abandonment of the Dwelling Unit, or any claim that the Association is
20 not properly discharging its duties.

21 Section 13.3. Regular Assessments.

22 13.3.1. Payment of Regular Assessments. Regular Assessments for
23 each fiscal year shall be established when the Board approves the budget for
24 that fiscal year. Regular Assessments shall be levied on a fiscal year basis,
25 although the Board may provide that such annual assessment is payable in equal

1 monthly installments. Unless otherwise specified by the Board, Regular
2 Assessments shall be due and payable in monthly installments on the first day
3 of each month during the term of this Declaration. Regular Assessments shall
4 commence for all Dwelling Units on the first day of the month following the
5 conveyance of the Dwelling Unit to the Owner, and may commence prior to that
6 date at the option of the Association.

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1 13.3.2. Budgeting.

2 a. Regardless of the number of Members or the amount of assets of
3 the Association, each year the Board shall prepare, approve and make available
4 to each Member a budget containing: (1) estimated revenue and expenses on an
5 accrual basis; (2) the amount of the total cash reserves of the Association
6 currently available for replacement or major repair of Common Areas and for
7 contingencies; (3) an itemized estimate of the remaining life of, and the methods
8 of funding to defray repair, replacement or additions to, major components of the
9 Common Areas; and (4) a general statement setting forth the procedures used by
10 the Board in the calculation and establishment of reserves to defray the costs
11 of repair, replacement or additions to major components of the Common Areas.

12 b. The total amount needed to fund the annual budget shall be
13 charged equally against all Dwelling Units as Regular Assessments, subject to any
14 limitations set forth in the Bylaws.

15 c. Maximum Annual Assessment. The maximum annual assessment
16 shall be \$360.00 per Lot.

17 1. The maximum annual assessment may be increased up to 20%
18 of the previous year's assessment without a vote of the membership.

19 2. Two-thirds (2/3rds) of the Members present at any annual
20 or special meeting, provided a quorum is present, or a majority of the Owners,
21 if a vote is taken by a written mailed ballot, must approve any increase of the
22 assessment above 20% of the previous year's assessment.

23 c. The Board shall prepare and approve the annual budget and
24 distribute a copy thereof to each Member, together with written notice of the
25 amount of the Regular Assessments to be levied against the Owner's Dwelling

1 Unit, not less than forty-five (45) days nor more than sixty (60) days prior to
2 the beginning of the fiscal year.

3 13.3.3. Non-Waiver of Assessments. If before the expiration of any
4 fiscal year the Association fails to fix Regular Assessments for the next fiscal
5 year, the Regular Assessment established for the preceding year shall continue
6 until a new Regular Assessment is fixed.

7 Section 13.4. Special Assessments. Subject to the limitations in the
8 Bylaws, Special Assessments may be levied in addition to Regular Assessments for
9 (1) constructing capital improvements; (2) correcting an inadequacy in the
10 current operating account; (3) defraying, in whole or in part, the cost of any
11 construction, reconstruction, unexpected repair or replacement of improvements
12 in the Dwelling Unit(s) or Common Areas, ~~provided, however, that any expenditure~~
13 ~~which exceeds \$5,000.00 is approved by a majority of the owners;~~ or (4) paying
14 for such other matters as the Board may deem appropriate for the Project.
15 Special Assessments shall be levied in the same manner as Regular Assessments.

16 Section 13.5. Reimbursement Assessments. The Association shall levy
17 a Reimbursement Assessment against any Owner and his/her Dwelling Unit if a
18 failure to comply with the Association's Documents has (1) necessitated an
19 expenditure of monies by the Association to bring the Owner or his/her Dwelling
20 Unit into compliance or (2) resulted in the imposition of a fine or penalty. A
21 Reimbursement Assessment shall not be levied by the Association until Notice and
22 an opportunity for a Hearing has been given to the Owner. Reimbursement
23 Assessments may be enforced in the same manner as Regular and Special
24 Assessments, by the filing of a Notice of Lien as provided in this Declaration.

25 Section 13.6 Accounts.

1 13.6.1. Types of Accounts. Assessments collected by the Association
2 shall be deposited into at least two (2) separate accounts with a federally insured
3 bank and/or savings and loan association. The accounts shall be clearly
4 designated as (1) the current operating account and (2) the reserve account.
5 The Board shall deposit those portions of the assessments collected for current
6 maintenance and operation into the current operating account and shall deposit
7 those portions of the assessments collected as reserves for contingencies and for
8 replacement and deferred maintenance of capital improvements into the reserve
9 account.

10 13.6.2. Current Operating Account. All of the following may be paid
11 from the Current Operating Account:

- 12 a. All costs of enforcing the provisions of the Declaration
13 and Rules and Regulations of the Association;
- 14 b. Taxes and assessments, if any, levied or assessed
15 separately against the Common Areas;
- 16 c. Sums necessary to discharge any lien or encumbrance,
17 including taxes, levied against any Dwelling Unit which
18 constitutes a lien against any portion of the Common
19 Areas;
- 20 d. Insurance premiums and costs for policies purchased for
21 the benefit of the Association;
- 22 e. Water, sewer, electrical, gas, and other necessary utility
23 services for the Common Areas;
- 24 f. Costs of routine maintenance, repair and upkeep of
25 improvements in the Common Areas; and
- 26 g. All other goods, materials, supplies, furniture, labor,
27 services, maintenance, repairs or alterations which the
28 Association is authorized to secure and pay for
29 pursuant to the terms of this Declaration or by law,
30 other than those to be expended from the Reserve
31 Account.

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1 13.6.3. Reserve Account.

2 Out of the Reserve Account, the Association shall pay those costs
3 attributable to the maintenance, repair or replacement of capital improvements for
4 which reserves have been collected and held. Except for funds collected for
5 contingencies, no funds collected for the Reserve Account may be used for
6 ordinary current maintenance and operation purposes.

7 Section 13.7. Enforcement of Assessments.

8 13.7.1. Establishment of Lien. The Association has a lien against
9 each Dwelling Unit to secure payment of all assessments levied against the
10 Dwelling Unit pursuant to this Declaration, all additional charges and all sums
11 which become due and payable in accordance with this Declaration. Except for
12 the transfer of a Dwelling Unit pursuant to a foreclosure proceeding, the sale or
13 transfer of a Dwelling Unit shall not affect such lien. Any such lien shall be in
14 favor of the Association. Each Owner empowers the Association to enforce its lien
15 by foreclosure or any other proceeding at law and to collect the amount due from
16 each Owner by selling the Dwelling Unit of any defaulting Owner to the highest
17 bidder to satisfy such lien. Each Owner waives the benefit of any homestead or
18 exemption laws of this State now or then in effect regarding any lien created
19 pursuant to this Declaration.

20 13.7.2. Enforcement. In addition to all other remedies provided by
21 law, the Association, or its authorized representative, may enforce the obligations
22 of any Owner to pay each assessment provided for in this Declaration in any
23 manner provided by law or by either or both of the following procedures:

24 a. By Suit. The Association may commence and maintain a suit at
25 law against any Owner personally obligated to pay a delinquent assessment. The

1 suit shall be maintained in the name of the Association. Any judgment rendered
2 in any action shall include the amount of the delinquency, additional charges and
3 any other amounts as the court may award, including reasonable attorneys' fees.
4 A proceeding to recover a judgment for unpaid assessments may be maintained
5 without the necessity of foreclosing or waiving the lien established herein.

6 b. By Lien. To perfect its lien, the Association shall record a Notice
7 of Lien in the Office of the Pima County Recorder. The lien provided for in this
8 Section shall be in favor of the Association and shall be for the benefit of all the
9 Owners. The Association may commence and maintain proceedings to foreclose its
10 lien in the same manner as the foreclosure of mortgages. The lien for
11 assessments shall constitute a lien on each respective Dwelling Unit prior and
12 superior to all other liens, except (1) all taxes, bonds, assessments and other
13 levies which, by law, would be superior thereto, and (2) the lien or charge of
14 any first mortgage or deed of trust.

15 13.7.3. Additional Charges. In addition to any other amounts due
16 or any other relief or remedy obtained against an Owner who is delinquent in the
17 payment of any assessments, each Owner agrees to pay such additional costs,
18 fees, charges and expenditures ("Additional Charges") as the Association may
19 incur or levy in the process of collecting monies due and delinquent from the
20 Owner. All additional charges shall be included in any judgment in any suit or
21 action brought to enforce collection of delinquent assessments or may be levied
22 against a Dwelling Unit as a reimbursement assessment. Additional charges
23 include, but are not limited to, the following:

24 a. Attorneys' Fees. Reasonable attorneys' fees and costs incurred
25 in the event an attorney is employed to collect any assessment or sum due,

1 including the placement of the lien, or the filing of a suit or otherwise;

2 b. Late Charges. A late charge in an amount to be determined by
3 the Board, to compensate the Association for additional collection costs incurred
4 in the event any assessment or other sum is not paid when due; provided,
5 however, that such late charge shall not exceed ten percent (10%) of the
6 delinquent assessment or Twenty and No/100 Dollars (\$20.00) per month,
7 whichever is greater;

8 c. Cost of Suit. Costs of suit and court costs incurred as are
9 allowed by the Court;

10 d. Interest. Interest on all sums imposed in accordance with this
11 Article XIII including the delinquent assessment, reasonable costs of collection,
12 reasonable attorneys' fees and late charges, at an annual percentage rate to be
13 established by the Board, commencing thirty (30) days after the assessment
14 becomes due; and

15 e. Other. Any such other additional costs that the Association may
16 incur in the process of collecting delinquent assessments or sums.

17 13.7.4. Application of Payments. All payments received by the
18 Association shall first be applied to collection costs and attorney's fees, then to
19 late charges, then to interest and then to delinquent assessments.

20 13.7.5. Release of Lien. Upon payment of delinquent assessments or
21 other satisfaction thereof, the Association shall record a release of any recorded
22 lien.

23 Section 13.8. Statement of Assessment Lien. Within ten (10) days of
24 a request from an Owner liable for assessments, the Association shall furnish to
25 that Owner a written certificate signed by an officer or authorized agent of the

1 Association stating the amount of any assessment and any additional charges
2 secured by the lien upon his/her Dwelling Unit. A charge, not to exceed the
3 reasonable cost of preparation and reproduction of the certificate, may be levied
4 by the Board for the issuance of such certificate.

5 Section 13.9 Subordination of Lien. Notwithstanding any provision
6 to the contrary, the lien for assessments created by this Declaration shall be
7 subject and subordinate to and shall not affect the holder of a first mortgage
8 or deed of trust made in good faith and for value. Upon the foreclosure of any
9 first mortgage on a Dwelling Unit, any lien for assessments which became due
10 prior to such foreclosure shall be extinguished; provided, however, that after
11 such foreclosure there shall be a lien on the interest of the purchaser at the
12 foreclosure sale to secure all assessments, whether regular or special, charged
13 to such Dwelling Unit after the date of such foreclosure sale, which lien shall
14 have the same effect and shall be enforced in the same manner as provided
15 herein. For purposes of this Section, a mortgage may be given in good faith or
16 for value even though the mortgagee has constructive or actual knowledge of the
17 assessment lien provisions of this Declaration.

18 Section 13.10. Fines and Penalties. If any Owner, his/her family, or
19 any licensee, invitee, tenant or lessee violates the Declaration or any Rules
20 adopted by the Board, the Board may levy a fine upon the Owner of the Dwelling
21 Unit of not more than One Hundred and No/100 Dollars (\$100.00) for each violation
22 and/or may suspend the right of such person to use the Common Areas, under
23 such conditions as the Board may specify, for a period not to exceed thirty (30)
24 days for each violation. However, for each day a violation continues after
25 written notice to cease has been mailed, it shall be considered a separate

1 violation and subject to the imposition of the fine for each day the violation
2 continues thereafter. The Board shall establish a schedule of fines and a
3 procedure by which it imposes such fines, including the right to a hearing if
4 requested by the Owner. Any fines imposed hereunder which remain unpaid for
5 a period of ten (10) days or more after being assessed against the Owner shall
6 become a lien upon the Owner's Lot upon the recording of a Claim of Lien
7 prepared pursuant to this Declaration and collected in the same manner as
8 assessments.

9 Section 13.11. Date of Commencement of Monthly Assessments: Due
10 Dates. Monthly assessments shall commence as to each Lot on the first day of
11 the month following the conveyance of the Lot to an Owner.

12 Section 13.12. Uniform Rate of Assessment. Assessments shall be
13 assessed at a uniform rate for all Lots.

14 Section 13.13. Mortgage Protection and Additional Assessment as
15 Common Expense. Notwithstanding any other provision of this Declaration, the
16 By-laws, or Rules of the Association, the following provisions apply to each
17 holder of a first mortgage on a Lot ("First Mortgagee").

18 13.13.1. The First Mortgagee is not personally liable for the payment
19 of any assessment or charge, nor for the observance or performance of any
20 restriction or rule of the Association, except those matters which are enforceable
21 by injunctive or other equitable actions, not those requiring the payment of
22 money, except as set forth in Paragraph (c) below.

23 13.13.2. During the pendency of any proceeding to foreclose the
24 first mortgage, including any period of redemption, the first mortgagee may, but
25 is not required to, exercise any or all of the rights and privileges of the Owner

1 of the mortgaged Lot, including, but not limited to, the right to vote as a member
2 of the Association to the exclusion of the Owner's exercise of such rights and
3 privileges.

4 13.13.3. At the time the First Mortgagee becomes the record Owner
5 of a Lot, such First Mortgagee become subject to all of the terms and conditions
6 of these Restrictions, including, but not limited to, the obligation to pay all
7 assessments and charges accruing after recordation of such deed to the Lot, in
8 the same manner as any Owner, including the right of the Association to place
9 a lien on the Lot if the assessment becomes delinquent.

10 13.13.4. Any party acquiring title to a mortgaged Lot through
11 foreclosure, whether judicial or otherwise, including acceptance of a deed in lieu
12 of foreclosure, acquires title to the Lot free and clear of any lien of the
13 Association for accrued assessments, including those accruing through the
14 expiration of any period of redemption.

15 Any unpaid assessment will continue to be the personal obligation of
16 the person who was the record title owner of the property during the time the
17 assessment became due. The Board shall use all reasonable efforts to collect
18 such delinquent assessments, even though such Person is no longer a member of
19 the Association.

20 13.13.5. The Association may not take the following action unless at
21 least 2/3rds of the Lot Owners and 2/3rds of the Eligible First Mortgagees
22 approve such action:

- 23 a. change the method of determining the obligations,
24 assessments, dues or other charges which may be levied
25 against a Lot Owner;
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27 b. by act or omission change, waive or abandon any

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scheme of regulations, or enforcement thereof, pertaining to the architectural design or exterior appearance of the Dwelling Units, the exterior maintenance of Dwelling Units, the maintenance of common property, party walls or common fences and driveways or the upkeep of lawns and planting areas of the subdivision;

- c. fail to maintain fire and extended coverage insurance on the Common Areas and common property on a current replacement cost basis in an amount of not less than one hundred percent (100%) of the insurable value (based on current replacement costs);
- d. use hazard insurance proceeds for losses to any Common Areas or common property for other than the repair, replacement or reconstruction of such common property.

13.13.5. First Mortgagees are granted the right to jointly or singly pay taxes or other charges which are in default and which may or have become a charge against any Common Areas or other common property owned by the Association, and such First Mortgagees may, jointly or singly, pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such Common Areas or common property and any First Mortgagees making such payments shall be owed immediate reimbursement from the Association.

13.13.6. Nothing in this Declaration shall in any manner be deemed to give a Dwelling Unit Owner, or any other party, priority over any rights of a First Mortgagee of a Dwelling Unit pursuant to the terms of such First Mortgagee's mortgage in the case of a distribution to a Dwelling Unit Owner of insurance proceeds or condemnation awards for losses to or a taking of Common Areas or other common property owned by the Association.

13.13.7. Each First Mortgagee shall, upon notice to the Association, be entitled to a written notification from the Association of any default in the

1 performance by the Owner of a Dwelling Unit encumbered by the mortgage in
2 favor of such Mortgagee of any obligation under this Declaration or under the
3 Articles of Incorporation, Bylaws, Rules and Regulations of the Association which
4 is not cured within sixty (60) days.

5 13.13.8. Eligible First Mortgagees shall, upon written notice to the
6 Association, have the right, during regular business hours, to: (1) inspect the
7 books and records of the Association; (2) receive an annual financial statement
8 of the Association within ninety (90) days following the end of any fiscal year
9 of the Association; and (3) receive written notice of all meetings of the
10 Association, and designate a representative to attend such meetings.

11 13.13.9. Eligible First Mortgagees shall be entitled to written notice
12 from the Association at least thirty (30) days prior to: (1) abandonment or
13 termination of the Association; (2) any material amendment to the Declaration,
14 Articles or By-laws; and (3) the effectuation of any decision by the Association
15 to terminate professional management and assume self-management of the
16 Association.

17 ARTICLE XIV

18 GENERAL PROVISIONS

19 Section 14.1. Enforcement. The Association or any Member, shall
20 have the right to enforce, by any proceeding at law or in equity, all restrictions,
21 conditions, covenants, reservations, liens or charges now or hereafter imposed
22 by the provisions of this Declaration. This shall include enforcement of Rules
23 and Regulations promulgated to the Association to carry out its purposes and this
24 Declaration. The Association shall be reimbursed for all attorney's fees and costs
25 incurred in enforcing this Declaration, whether suit is filed, or not.