

**Shaw & Lines, LLC**

4523 E. Broadway Road

Phoenix, AZ 85040

Phone (480) 456-1500

Facsimile (480) 456-1515

[www.shawlines.com](http://www.shawlines.com)

Mark E. Lines - #020553

Augustus H. Shaw, IV - #021593

Patrick J. Whelan - #030994

*Counsel for Respondents*

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

**IN AND FOR THE COUNTY OF MARICOPA**

R.L. WHITMER,

Petitioner,

v.

HILTON CASITAS HOMEOWNERS  
ASSOCIATION, also known as HILTON  
CASITAS COUNCIL OF  
HOMEOWNERS, also known as  
COUNCIL OF CO-OWNERS, also known  
as HILTON CASITAS COUNCIL OF CO-  
OWNERS; and MICHAEL BENGSON,  
solely in his capacity as President of the  
named Respondent, and not personally,

Respondents.

Case No.: CV2016-055080

**MOTION TO DISMISS  
PETITIONER'S FIRST AMENDED  
VERIFIED COMPLAINT**

FOR THE ENFORCEMENT OF  
ADMINISTRATIVE LAW ORDER  
No. 14F-H1415004-BFS

*(Assigned to the Hon. Cynthia Bailey)*

Respondents, by and through counsel undersigned, hereby move to dismiss Petitioner's First Amended Verified Complaint ("1<sup>st</sup> Amended Complaint") in its entirety for failure to state a claim upon which relief may be granted pursuant to Rule 12(b)(6) *Ariz. R. Civ. P.* Respondents deny all allegations of the 1<sup>st</sup> Amended Complaint. No relief may be granted because Petitioner's allegations are legally deficient and/or moot.

Pursuant to Rule 12(b)(6), *Ariz. R. Civ. P.*, the Court may treat this Motion as one for summary judgment and summarily dispose of the case as provided in Rule 56, *Ariz. R. Civ. P.*, if matters outside the pleadings are considered. Respondents submit that Petitioner has provided numerous documents and exhibits with his 1<sup>st</sup> Amended Complaint that may be referred to in conjunction with those documents provided herewith that sufficiently relate to the matters "within the pleading" on record herein and/or matters of public

1 record, all of which may be considered on this Motion to justify dismissal as a matter of  
2 law – whether considered under Rule 12(b)(6) or Rule 56.

3 Petitioner’s allegations are barred as a matter of law and fact. Petitioner’s 1<sup>st</sup>  
4 Amended Complaint may be dismissed as a matter of law because his allegations are  
5 based on contractual interpretations and the application of governing statutes. In short,  
6 Petitioner’s allegations are baseless claim(s) premised on (1) Petitioner’s mis-  
7 understanding and misinterpretation of the applicable contractual and statutory provisions,  
8 and (2) retaliatory motive stemming from his failed attempts in prior litigation.

9 As outlined below, it is clear that Respondents have not willfully disobeyed any  
10 specific court order or statutory requirement. Respondents have ratified the previous  
11 years’ budgets pursuant to the statutory provisions [A.R.S. §33-1243(D)].

12 Moreover, seeking to have fines imposed through this petition proceeding for  
13 allegedly invalid business actions is not an available remedy based on the foregoing  
14 statutory limitation for an injunction through judicial relief. Arizona law does not permit  
15 sanctions against either Respondents as a remedy for violating a court order and/or A.R.S.  
16 §33-1243(D).

17 This Motion is supported by the following Memorandum of Points and Authorities.

18 **MEMORANDUM OF POINTS AND AUTHORITIES**

19 **I. Introduction.**

20 The underlying complaint involves the Administrative Law Judge Decision No.  
21 14F-H1415004-BFS (hereinafter referred to as the “ALJ Decision”).<sup>1</sup> In pertinent part, the  
22 ALJ Decision determined that “Hilton Casitas has not ratified the increased expenses and  
23 adopted an amended budget as required by applicable statute”... and ordered “**Hilton**  
24 **Casitas [to] fully comply with the applicable provisions of A.R.S. §33-1243(D) in the**  
25 **future.”**<sup>2</sup> Petitioner now asks the Court for a finding that Respondents, Hilton Casitas  
26 Council of Homeowners (hereinafter, the “Association”) and Michael Bengson  
27 (hereinafter, “Mr. Bengson”), are in contempt of court for allegedly failing to comply with  
28 the ALJ Decision.

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<sup>1</sup> The ALJ Decision, entered January 7, 2015 and certified February 18, 2015, is attached and incorporated as Exhibit 1 to the 1<sup>st</sup> Amended Complaint.

<sup>2</sup> See, the ALJ Decision, Ex. 1, at p. 4:¶4; p. 4:29-30 (**emphasis added**).

1 The ALJ Decision was based, in large part, on Mr. Bengson’s testimony indicating  
2 that, since his election to the Board in October of 2014, “the Board was aware of the  
3 budget problems and intended to meet soon to adopt an amended budget [that] would  
4 ratify the increased legal expenses incurred by Hilton Casitas.”<sup>3</sup> Mr. Bengson further  
5 stated that he and the new Board wanted to “get everything on the right track.”<sup>4</sup>

6 For purposes of clarity, the mandatory component of the ALJ Decision required  
7 *Hilton Casitas* to prepare and deliver financial reports in accordance with A.R.S. §33-  
8 1243(D). A.R.S. §33-1243(D) outlines the procedures required to ratify a community  
9 budget:

10 Except as provided in the declaration, within thirty (30) days after adoption of  
11 any proposed budget for the condominium, the board of directors shall provide  
12 a summary of the budget to all the unit owners... If ratification is required, the  
13 board of directors shall set a date for a meeting of the unit owners to consider  
14 ratification of the budget not fewer than fourteen (14) nor more than thirty (30)  
15 days after mailing of the summary. Unless at that meeting a majority of all the  
16 unit owners or any larger vote specified in the declaration rejects the budget,  
17 the budget is ratified, whether or not a quorum is present.

18 In sum, Petitioner now asks the Court for a finding that both the Association, and  
19 its board president, are in contempt of court for allegedly failing to comply with the  
20 community budget ratification procedures outlined in A.R.S. §33-1243(D).

21 At all relevant times, Respondents have been in (at least substantial) compliance  
22 with the ALJ Decision and the applicable rules and regulations governing the community  
23 association. Further, it is clear that Mr. Bengson was otherwise unable to take individual  
24 corrective measure, to the extent necessary, because a single board member has no  
25 unilateral ability to exercise legal rights independent of the corporation. *See*, A.R.S. §10-  
26 801(B). In short, Mr. Bengson *alone* could not effectuate the required corporate actions  
27 called for under the ALJ Decision or A.R.S. §33-1243(D).

28 Rule 17(a), *Ariz. R. Civ. P.*, requires that “[e]very action shall be prosecuted in the  
name of the real party in interest.” For that reason, Mr. Bengson is clearly not a proper  
party for purposes of the relief sought by Petitioner. As such, Mr. Bengson must be

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<sup>3</sup> *Id.* at p. 2:¶¶7-8.

<sup>4</sup> *Id.* at p. 2:¶8.

1 dismissed pursuant to Rule 12(b)(6), *Ariz. R. Civ. P.*, as he was acting at all times within  
2 the purview and scope of his legal authority as director for the Association.

3 **II. Standard of Review.**

4 Petitioner's 1<sup>st</sup> Amended Complaint must be dismissed in its entirety as it fails to  
5 state a claim upon which relief may be granted pursuant to Rule 12(b)(6), *Ariz. R. Civ. P.*  
6 The Court must grant a Rule 12(b)(6) motion where a plaintiff "would not be entitled to  
7 relief under any facts susceptible of proof in the statement of the claim." *Mohave*  
8 *Disposal, Inc. v. City of Kingman*, 186 Ariz. 343, 346, 922 P.2d 308, 311 (App. 1996).  
9 The trial court must "assume as true the facts alleged in the complaint" and dismiss the  
10 complaint when "plaintiff would not be entitled to relief under any interpretation of those  
11 facts." *Doe ex rel. Doe v. State*, 200 Ariz. 174, 24 P.3d 1269, 1270 (App. 2001); *Fidelity*  
12 *Sec. Life Ins. Co. v. State*, 191 Ariz. 222, 224, ¶4, 954 P.2d 580, 582 (1998).

13 The standards for motions to dismiss "do not permit a trial or appellate court to  
14 speculate about hypothetical facts that might entitle the plaintiff to relief." *Cullen v. Koty-*  
15 *Leavitt Ins. Agency, Inc.*, 168 P.3d 917, 923, ¶12, 216 Ariz. 509 (App. 2007).  
16 Additionally, legal conclusions or "unwarranted deductions of fact" may be disregarded.  
17 *Johnson Intern., Inc. v. City of Phoenix*, 192 Ariz. 466, ¶19, 967 P.2d 607, 611 (App.  
18 1998); *Aldabbagh v. Department of Liquor Licenses*, 162 Ariz. 415, 417, 783 P.2d 1207,  
19 1209 (App. 1989).

20 With regard to a finding of civil contempt, the moving party has the initial burden  
21 to establish, by clear and convincing evidence, "that the contemnors violated a specific  
22 and definite order of the court." *In re Dyer*, 322 F.3d 1178, 1190-1191 (9<sup>th</sup> Cir. 2003),  
23 quoting *In re Bennett*, 298 F.3d 1059, 1069 (9<sup>th</sup> Cir. 2002). Contempt is an "extraordinary  
24 remedy" implicating a court's discretionary and equitable power. *Tande v. Bongiovanni*,  
25 142 Ariz. 120, 122, 688 P.2d 1012, 1014 (1984). Under Arizona law, to be judged guilty  
26 of contempt, it must be found that a defendant acted in a willful manner. *State v. Cohen*,  
27 15 Ariz. 436, 489 P.2d 283 (App. 1971); *Riley v. Superior Court In and For Cochise*  
28 *County*, 124 Ariz. 498, 605 P.2d 900 (App. 1979) ("the burden of proof, both as to the act  
committed and the intent, is that of proof beyond a reasonable doubt").

**III. Petitioner's Allegations Fail to State a Legally Actionable Claim.**

1 Petitioner's petition for contempt is predicated on the ALJ Decision.  
2 Notwithstanding, the ALJ Decision does not provide a private cause of action for a  
3 contempt order or sanctions against Respondents. Further, the underlying obligation of the  
4 ALJ Decision – A.R.S. §33-1243(D) – also does not provide a specific remedy for any  
5 violation of the statute. Accordingly, no relief may be granted because Petitioner's  
6 allegations are procedurally and legally deficient.

7 Moreover, the undisputed facts show that no basis for any finding of contempt  
8 exists. The strict necessity of an existing case or controversy is lacking in this current  
9 matter requiring Petitioner's 1<sup>st</sup> Amended Complaint to be dismissed. At this point in  
10 time, the contempt action is not necessary as the Association is currently in compliance  
11 with the ALJ Decision and the underlying statute (A.R.S. §33-1242(D)).

12 Petitioner makes several specious arguments in his disjointed (mis)application of  
13 law, precedent and general jurisprudence, as alleged in his 1<sup>st</sup> Amended Complaint. All of  
14 Petitioner's allegations are based on either erroneous legal conclusions or Petitioner's  
15 speculation without any factual basis in his allegations or the documents provided with his  
16 pleading. Aside from the superfluous factual arguments, Petitioner does not offer any  
17 applicable legal authority establishing this Court's ability to provide the relief Petitioner  
18 requests. On the contrary, Petitioner's allegations confirm the well-established doctrines  
19 of personal/corporate liability for corporate actions.

20 Rather than offer what might be a substantial and meritorious argument in his  
21 favor, Petitioner continues to advance every possible argument based on overly-technical  
22 procedural interpretations attempting to turn constitutional due-process protections on  
23 their head. However, Petitioner's misapplication of the rules of procedure does not  
24 constitute a valid reason for a contempt entry against either Respondent. Petitioner's  
25 hyper-textualistic arguments cannot heighten procedure over substance. After all, "[t]he  
26 substantive law is that part of the law which creates and defines rights." *State v.*  
*Birmingham*, 96 Ariz. 109, 110, 392 P.2d 775, 776 (1964).

27 Moreover, under Arizona law, to be judged guilty of contempt, it must be found  
28 that a defendant acted in a willful manner. *See, State v. Cohen*, 15 Ariz. 436, 489 P.2d 283  
(App. 1971); *see also, Riley v. Superior Court In and For Cochise County*, 124 Ariz. 498,  
605 P.2d 900 (App. 1979) ("the burden of proof, both as to the act committed and the

1 intent, is that of proof beyond a reasonable doubt”). A person should not be held in  
2 contempt if his action ““appears to be based on a good faith and reasonable interpretation  
3 of the [court’s order].”” *Vertex Distrib., Inc. v. Falcon Foam Plastics, Inc.*, 689 F.2d 885,  
4 889 (9<sup>th</sup> Cir. 1982), quoting *Rinehart v. Brewer*, 483 F.Supp. 165, 171 (S.D.Iowa 1980).  
5 “Substantial compliance” with the court order is a defense to civil contempt, and is not  
6 vitiated by “a few technical violations” where every reasonable effort has been made to  
7 comply. *Vertex Distrib., Inc.*, 689 F.2d at 891; *see also, General Signal Corp. v. Donallco,*  
8 *Inc.*, 787 F.2d 1376, 1378-79 (9<sup>th</sup> Cir. 1986).

9 Petitioner alleges nothing that would suggest that Mr. Bengson or the Association,  
10 via the board of directors, engaged in any wrongful activities that would satisfy the  
11 required burden(s) allowing the Court to conclude or establish the need for sanctions.  
12 Petitioner has also made no allegations to pierce the corporate veil that shields Mr.  
13 Bengson of any personal liability. *Dietel v. Day*, 16 Ariz. App. 206, 492 P.2d 455 (1972)  
14 (“As a general rule, a corporation will be treated as a legal entity until sufficient reason  
15 appears to disregard the corporate form” and “the corporate form should not be  
16 disregarded.”).

17 Accordingly, Petitioner has failed to properly state any actionable claim upon  
18 which the requested relief may be given. Seeking to have fines imposed through this  
19 petition is not an appropriate remedy based on the foregoing statutory limitation for an  
20 injunction through judicial relief. Therefore, Petitioner’s 1<sup>st</sup> Amended Complaint must be  
21 dismissed in its entirety against Respondents.

22 i. **The Association is Currently in Compliance with the ALJ Decision and**  
23 **A.R.S. §33-1243(D).**

24 Pursuant to the ALJ Decision, the board of directors shall adopt an annual budget  
25 and thereafter have it ratified pursuant to the provisions of A.R.S. §33-1243(D) and the  
26 Association’s controlling/governing documents. In pertinent part, §33-1243(D) requires  
27 the board of directors to adopt a proposed budget, and then circulate a summary of the  
28 budget to all owners within thirty (30) days of the board adopting the proposed budget.

As a preliminary note, Petitioner’s 1<sup>st</sup> Amended Complaint makes no mention or  
asserts any grievance as to the Association’s adopted budgets and/or annual meetings for  
2017 or 2018. By doing so, Petitioner acknowledges the Association is currently in

1 compliance with the ALJ Decision including the notice and ratification procedures of §33-  
2 1243(D).

3 As evidenced by the Association's open meeting minutes,<sup>5</sup> the Association did not  
4 violate any provisions of the ALJ Decision, applicable statutes or its governing  
5 documents. Most importantly, the Association provided the requisite notice, summaries,  
6 documents and disclosures in preparation for the scheduled annual meetings for 2017 and  
7 2018 pursuant to §33-1243(D).

8 Notably, in December 27, 2017, the board of directors adopted a proposed annual  
9 budget for 2018. Thereafter, the board of directors circulated the required annual meeting  
10 notice and agenda to all unit owners, along with summaries of the proposed budget, in  
11 preparation for the January 23, 2018 annual meeting. The minutes from the 2018 annual  
12 meeting show that a majority of members did not oppose the proposed budget;  
13 consequently the 2018 budget was ratified pursuant to A.R.S. §33-1243(D).<sup>6</sup>

14 The board of directors properly complied with the required budget ratification  
15 procedures of §33-1243(D) for 2017 also. As evidenced by the open meeting minutes, the  
16 board of directors adopted a proposed budget on March 15, 2017, and circulated the  
17 required annual meeting notice and agenda to all unit owners, along with summaries of the  
18 proposed budgets, in preparation for the March 30, 2017 annual meeting. The minutes  
19 from the 2017 annual meeting show that a majority of members did not oppose the 2017  
20 budget.

21 **ii. The Association's Compliance with the ALJ Decision and A.R.S. §33-  
22 1243(D) Warrants Dismissal.**

23 The crux of Petitioner's 1<sup>st</sup> Amended Complaint relates to the notice and  
24 participation requirements of A.R.S. §33-1243(D) as to the 2016 budget and annual  
25 membership meeting. As noted above, the 2017 annual meeting notice, mailed March 15  
26 and 16<sup>th</sup> of 2017, included a ballot for each owner to expressly vote to ratify the 2016  
27 budget.<sup>7</sup> The notice with the ballot also gave requisite notice that the annual meeting was

28 <sup>5</sup> See the Open Meeting Minutes dated March 15<sup>th</sup> and 30<sup>th</sup> of 2017 as well as the Open Meeting Minutes dated  
December 27<sup>th</sup>, 2017 and January 23<sup>rd</sup>, 2018, collectively attached hereto as **Exhibit A**.

<sup>6</sup> Pursuant to A.R.S. §33-1243(D), "[u]nless at that meeting a majority of all the unit owners or any larger vote  
specified in the declaration rejects the budget, the budget is ratified, whether or not a quorum is present."

<sup>7</sup> See Ballots, attached hereto as **Exhibit B**.

1 scheduled for March 30, 2017, in which the proposed 2017 budget would also be  
2 discussed for ratification.

3 Albeit a technical violation, the retroactive ratification substantially complies with  
4 the ALJ Decision and §33-1243(D) governing the budget ratification procedures. In short,  
5 the Association's budget proposal and ratification procedure transpired with substantial  
6 compliance with the applicable statute and ALJ Decision. No willful violation occurred as  
7 a matter of law, despite Petitioner's allegations.

8 As a matter of public policy alone, these allegations should be dismissed as  
9 unwarranted and unsupported in light of the considerable current compliance. Imposing  
10 civil penalties would provide no benefit to the community as a whole.

11 Therefore, the allegations should be dismissed in its entirety for failure to state a  
12 claim upon which relief can be granted pursuant to Rule 12(b)(6), *Ariz. R. Civ. P.* There is  
13 no present case or controversy. There is nothing for the Court to settle.

14 **iii. Mr. Bengson is Not a Proper Party and Should Be Dismissed.**

15 The underlying ALJ Decision does name or order Mr. Bengson to comply, in any  
16 capacity – individually or executively – with the *Recommended Order* of the ALJ  
17 Decision. Petitioner has also not alleged of any independent wrongdoing by Mr. Bengson,  
18 or other allegations that establish actionable claims against him separately from the  
19 Association. As such, it is confusing as to why Petitioner has chosen to name Mr.  
20 Bengson in this action.

21 Petitioner contends that the mandatory component of the ALJ Decision somehow  
22 applies to Mr. Bengson in his sole and separate capacity as a member of the Association's  
23 board of directors. In making this contention, Petitioner mischaracterizes the law to such a  
24 degree that he is advocating a legal proposition that is precisely opposite the precedent  
25 established by basic principles of corporate law.

26 In his 1<sup>st</sup> Amended Complaint, Petitioner names "Michael Bengson, **solely in his**  
27 **capacity as** President of the named Respondent, **and not personally**". Yet for whatever  
28 reason, Petitioner then proceeds to make numerous contradictory allegations, a fair  
summary of which is found in the following thesis statement (§13 with *emphasis* added):

***Respondent Bengson is the HOA's president and the actions of the HOA's board were actually his actions.*** Mr. Bengson's promises to follow the statutory

1 provisions of A.R.S. §33-1243(D) regarding the approval and amendment of the  
2 budget were an integral part of the Administrative Law Judge's decision, who  
3 specifically referred to that promise in his decision. *Mr. Bengson as the HOA*  
4 *president violated his promise and caused the HOA to violate the*  
5 *Administrative Law Judge's order by his inactions and actions, knowing that*  
6 *his inactions and actions would violate the statute and Administrative Law*  
7 *Judge's order. Mr. Bengson, as president of the HOA, is liable for contempt.*

8 Petitioner's recitation of "law" is then followed by his giant leap to the conclusion  
9 that "Mr. Bengson, *as president of the HOA*, is liable for contempt." *Id.* (*emphasis*  
10 added). Petitioner appears to argue that Mr. Bengson's previous "promises" and  
11 assurances are legally sufficient to now impose personal liability on a principal for the  
12 corporation's actions. In making this assertion, Petitioner reveals a fundamental  
13 misunderstanding of the factual showing necessary to support a court's finding of  
14 contempt, as well as confusion regarding the appropriate legal standard for imposing  
15 personal liability on principals for corporate activities.

16 It is a well-established principle of corporate law that the corporate entity provides  
17 a liability shield for individuals and directors acting on behalf of the corporation in that  
18 capacity. An incorporated entity is a separate and distinct legal entity from those who  
19 operate it. The reasoning behind this agency doctrine makes practical sense and is outlined  
20 in numerous authorities, including 3 Am. Jur. 2d, Agency §302:

21 An agent is not liable for lawful acts done within the scope of his authority  
22 for and on behalf of a disclosed principal. The liability, if any, is that of the  
23 principal. If a contract is made with a known agent acting within the scope of  
24 his authority for a disclosed principal, the contract is that of the principal  
25 alone and the agent cannot be held liable thereon...

26 *See also, Lumberman's Ins. Co. v. Heiner, 74 Ariz. 152, 245 P.2d 415 (1952).*

27 "The law of agency is based on the principle of *qui facit per alium, facit per se, i.e.,*  
28 one acting by another is acting for himself." *Gustafson v. Rajkovich, 76 Ariz. 280, 263*  
29 *P.2d 540 (1953); see also, Ferrarell v. Robinson, 11 Ariz. 473, 465 P.2d 610 (App. 1970)*  
30 *(one who acts as an agent of a fully disclosed principal in a contractual transaction is not a*  
31 *party to the transaction and thus incurs no personal liability for the principal's breach of*  
32 *that agreement.).*

33 Petitioner will likely argue that Mr. Bengson alone could have somehow  
34 effectuated the ratification and/or adoption of the Association's budget on his own.

1 However, it is undisputed that Arizona law require further confirmation by the rest of the  
2 board of directors and/or membership.

3 Even a cursory review of the Association’s controlling/governing documents<sup>8</sup> show  
4 that Mr. Bengson does not have the individual capacity to comply with the ALJ Decision.  
5 *See, NLRB v. Trans Ocean Export Packing, Inc.* 473 F.2d 612, 616 (9<sup>th</sup> Cir. 1973) (the  
6 party asserting the impossibility defense in a civil contempt action must show  
7 “categorically and in detail” why he is unable to comply with the court’s order.). As such,  
8 the Court should decline to find Mr. Bengson in contempt because he alone is unable to  
9 effectuate compliance with the ALJ Decision in his individual capacity as a corporate  
10 director pursuant to the community documents and Arizona law. *See, United States v.*  
11 *Rylander*, 460 U.S. 752, 757, 103 S.Ct. 1548, 75 L.Ed.2d 521 (1983) (“where compliance  
12 is impossible, neither the moving party nor the court has any reason to proceed with the  
13 civil contempt action.”).

14 As such, Mr. Bengson is not is clearly not a proper party for purposes of the relief  
15 sought by Petitioner and should be dismissed pursuant to Rule 12(b)(6), *Ariz. R. Civ. P.*

16 **iv. Petitioner Lacks Standing.**

17 Petitioner lacks standing to maintain this current action or secure the requested relief.  
18 More succinctly, Petitioner is not a proper party or real party in interest as to the relief he  
19 seeks. Pursuant to the controlling recorded documents, Petitioner has no actual property  
20 interest in Casita #21 located within the Association. Accordingly, he has no justiciable  
21 interest or right to pursue the relief he now requests against Respondents.

22 Pursuant to Arizona law and the controlling/governing documents of the  
23 Association, such standing rights are appurtenant to each owner’s ownership of a casita  
24 and cannot be separated from such ownership. The right comes with ownership, not  
25 occupancy.

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<sup>8</sup> *See*, the Bylaws of the Council attached hereto as **Exhibit C**, at Article IV, Section 1 (“The business and affairs of the Council shall be governed by a Board of Directors composed of not less than three (3) nor more than five (5) persons”); Article IV, Section 10, entitled “Quorum of Board”; and Article VI, Section 1 (“The Board of Directors shall at all times manage and operate the Property and have such powers and duties as are granted the Board by the Declaration and these Bylaws.”).

1 Pursuant to the Assignment of Sublease, Petitioner's wife, Colleen London  
2 (hereinafter referred to as "Spouse"), is the sole interest holder in Casita #21.<sup>9</sup> Both the  
3 Assignment of Sublease and the concurrent Warranty Deed<sup>10</sup> expressly title Casita #21 to  
4 "*Colleen London, a married woman as her sole and separate property*". In addition to  
5 the above, Petitioner simultaneously executed and recorded a Disclaimer Deed "solely for  
6 the purpose of clearly showing of record that [Petitioner] has and claims no interest in and  
7 to the Property" [Casita #21].<sup>11</sup> Pursuant to these legally recorded documents, it is clear  
8 that Petitioner has no right, title, interest, claim or demand in and to Casita #21.

9 Thereafter in 2014, Spouse attempted to convey a one percent (1%) interest in  
10 Casita #21 to Petitioner via Special Warranty Deed dated August 21, 2014.<sup>12</sup> However,  
11 pursuant to the Association's governing/controlling documents, all transfers of interest  
12 require the written consent of the Sublessor – the Hilton Hotel.<sup>13</sup> In particular, Section 13  
13 of the Sublease expressly states that "Sublessee's right to otherwise sublet, sell, assign or  
14 transfer his Casita is and shall be subject to the Corporation's and Co-owners' right of  
15 first refusal as set forth in the Declaration and the Bylaws of the Council."

16 Consequently, the attempted transfer to Petitioner is not valid, binding or effective.  
17 Petitioner has no private interest of its own, and thus, has no such standing as a private  
18 party that he could utilize civil contempt proceedings intended to safeguard the rights and  
19 interests of private parties. As such, Petitioner lacks standing to sue for contempt of  
20 statutory obligations under §33-1242(D).

21 Moreover, Petitioner cannot act in a representational/member capacity for purposes  
22 of bringing the instant contempt action seeking contractual relief pursuant to the  
23 community documents and the Arizona Condominium Act. Petitioner lacks standing to  
24 bring a direct or derivative action against the Association.

25 The derivative lawsuit provisions in A.R.S. §§10-3631 and 10-3632 govern  
26 member lawsuits against nonprofit condominium association boards of directors. An

27 <sup>9</sup> See Assignment of Sublease recorded January 28, 2010, at Document No. 2010-0072789, attached hereto as  
28 **Exhibit D.**

<sup>10</sup> See Warranty Deed recorded January 28, 2010, at Document No. 2010-0072790, attached hereto as **Exhibit E.**

<sup>11</sup> See Disclaimer Deed recorded January 28, 2010, at Document No. 2010-0072791, attached hereto as **Exhibit F.**

<sup>12</sup> See Special Warranty Deed recorded in Document No. 2014-0553754, attached hereto as **Exhibit G.**

<sup>13</sup> See, Section 16.1 of the Association's Declaration attached and incorporated as **Exhibit 2** to the 1<sup>st</sup> Amended Complaint; *see also*, Article VII, Section 1 of the Bylaws of the Council.

1 action brought by an association member is derivative “if the gravamen of the complaint  
2 is injury to the corporation, or to the whole body of its stock or property without any  
3 severance or distribution among individual holders.” *Albers v. Edelson Tech. Partners*  
4 *L.P.*, 201 Ariz. 47, ¶17, 31 P.3d 821, 826 (App. 2001), quoting *Funk v. Spalding*, 74 Ariz.  
5 219, 223, 246 P.2d 184, 186 (1952).

6 A derivative lawsuit may be brought only if a member meets certain standing  
7 requirements as statutorily defined. *See*, A.R.S. §§10-3631, 10-3632. However, Petitioner  
8 does not have standing and did not provide the proper demand to the Association prior to  
9 filing this instant action.

10 Otherwise, a member may bring a direct action against an alleged wrongdoer  
11 without following the derivative lawsuit procedures if (1) the member has a relationship  
12 with the alleged wrongdoer apart from the member’s interest in the association, (2) the  
13 wrongdoer owes a duty to the member for a reason other than membership status, or (3)  
14 the injuries or damages sustained are unique to the individual member and not the  
15 association or membership as a whole. *See, Albers*, 201 Ariz. at 47, ¶18, 31 P.3d at 826.  
16 Petitioner does not meet any of these requirements though.

17 Accordingly, Petitioner is not a proper party with standing to bring this instant  
18 action and/or seek the requested relief.

19 **IV. Conclusion: Petitioner’s 1<sup>st</sup> Amended Complaint Should be Dismissed in its**  
20 **Entirety.**

21 It is clear that Respondents have not willfully disobeyed any specific court order or  
22 statutory requirement. The Association is currently in compliance with the ALJ Decision  
23 and the underlying statutory provisions of A.R.S. §33-1243(D). Further, the Association is  
24 in substantial compliance with the statutory provisions of A.R.S. §33-1243(D) after  
25 ratifying the 2016 budget at the 2017 annual meeting. Such conduct seemingly satisfies  
26 Petitioner’s concerns with respect to notice of expenses and would appear to conform, at  
27 least in spirit, to the ALJ Decision because it accomplishes the same effect, at least  
28 substantively, of the public policy concerns of the statute.

Further, the legal duties alleged against Mr. Bengson, even if presumed true, do not  
establish actionable claims of relief against him if no duty exists as a matter of law. Mr.

1 Bengson is not a properly named party in this matter pursuant to either the ALJ Decision  
2 or Arizona law.

3 Based on the foregoing, there is no basis in law or fact that warrants any further  
4 consideration of Petitioner's 1<sup>st</sup> Amended Complaint allegations. No good cause exists to  
5 require further proceedings. Respondents respectfully request the 1<sup>st</sup> Amended Complaint  
6 be dismissed in its entirety as well as any other relief the Court may deem proper.  
7 Respondents further request an award of its attorneys' fees and costs incurred in this  
8 matter pursuant to the contract between the parties, all applicable rules and pursuant to  
9 A.R.S. §§12-341.01, 12-349, 12-350 and Rule 11, *Ariz. R. Civ. P.*

10 DATED this 21<sup>st</sup> day of November, 2018.

11 **SHAW & LINES, LLC**

12 /s/ Augustus H. Shaw, IV

13 Augustus H. Shaw, IV

14 4523 E. Broadway Road

15 Phoenix, Arizona 85040

*Counsel for Respondents*

16 ORIGINAL submitted for electronic filing  
17 this 21<sup>st</sup> day of November, 2018, with:

18 Clerk of the Maricopa County Superior Court

19 ORIGINAL hand-delivered  
20 this 21<sup>st</sup> day of November, 2018, to:

21 Hon. Cynthia Bailey  
22 Northeast Regional Court Center  
23 18380 North 40<sup>th</sup> Street, Courtroom 108  
Phoenix, Arizona 85032

24 COPY of the foregoing mailed  
25 this 21<sup>st</sup> day of November, 2018, to:

26 R.L. Whitmer  
27 6333 North Scottsdale Road, Casita 21  
28 Scottsdale, Arizona 85250

*Petitioner, Pro Per*

By:  \_\_\_\_\_

# EXHIBIT A

## **Hilton Casitas Council of Homeowners**

### **Board of Directors Open Meeting Minutes**

**Wednesday March 15<sup>th</sup>, 2017 - 4:00pm**

Location: Cornerstone Properties, INC. Board Room with conference feature  
4523 E. Broadway Rd. Phoenix AZ 85040

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The meeting was called to order at 4:01pm by Mike Bengson. Quorum for the meeting was met and duly noted.

**Board Members present:** Mike Bengson (P) in person. Steven Pollock (VP) & Barrie Bercuson (S) via conference call.

**Homeowners present:** Anonymous caller

**Management:** Evon Potocki, Community Manager, and Larry Roberson of Cornerstone Properties, INC. in person.

Mike Bengson discussed the Board's cause for cancelling the Annual Meeting scheduled March 13<sup>th</sup> 2017. The Board thought it was wise to reschedule the Annual Meeting as they just received additional information from their attorney on estimated legal costs for this year. The Board decided it was better to address this now and openly with membership and provide an updated budget; rather than hold a special meeting in the near future. The association is faced with lawsuits requiring the Association to defend itself and seek legal representation. Legal costs are raised on the revised budget to \$40,000.

**Open Forum:** none

**New Business:**

**Revised 2017 Budget:** Steve Pollock made a motion to approve the Revised 2017 Budget. Barrie Bercuson seconded, motion carried. All in favor, duly approved.

Manager will email and mail out new Annual Meeting documentation to the membership with the new meeting scheduled March 30<sup>th</sup> 2017.

**Adjournment:**

There being no further business, the meeting was adjourned at 04:06 PM

# Hilton Casitas Council of Homeowners

## 2017 Annual Meeting Minutes

Thursday, March 30<sup>th</sup>, 2017 @ 5:00pm

Location: 6333 N. Scottsdale Road, Scottsdale, AZ 85250

(Inside the Sonora Ballroom of the Scottsdale Hilton Resort & Villas)

---

- I. The meeting was called to order at 5:10 PM by Augustus Shaw. The quorum for the meeting was met and duly noted.

**Board Members Present:** Mike Bengson (P), Steve Pollock (VP), Barrie Bercuson (S), and Don Randolph (T)

**Homeowners:** Barbara Askenazi, Peggy Bengson, Karen Randolph, John Brooke, Dorene Mykol, Pamela Penn, Richard Kosiec, Michael Sheedy, Bruce Stodola, Richard Walker

**Management Present:** Evon Potocki, Community Manager, Cornerstone Properties, Inc.

**Legal Counsel:** Augustus Shaw and Nicole Payne of Shaw & Lines

II. **Board of Directors Introduction**

- III. **Approval of March 31<sup>st</sup>, 2016 Annual Meeting Minutes.** Betsy Stodola motioned to approve the March 31, 2016 Annual Meeting Minutes. Pamela Penn seconded that motion. Motion carried and unanimously approved.

- IV. **President's Report.** President Mike Bengson gave an overview of 2016. Later mentioning goals for 2017 including road paving and the hopes of keeping legal costs under budget.

V. **Financial Report. 2016 Financial report given by Steve Pollock.**

- a. **Vote & Ballot Collection of the 2016 Expenses of the Association**
- b. **2016 Expenses of the Association were ratified by a vote of the Members.**

VI. **Review of the 2017 Budget**

- a. **Vote & Ballot Collection**
- b. **2017 Budget approved by a vote the Members.**

VII. **Election of 2017 Board of Directors**

- a. **Introduction of Candidates**
- b. **Vote & Ballot Collection**
- c. **Election Results** – Michael Bengson, Steve Pollock, Michael Sheedy, Richard Walker, and John Jack Huston won the election for Hilton Casitas Council of Homeowners Board of Directors.
- d. **Appointment of Officers** - Appointment of Officers tabled until the open Board Meeting to follow.

VIII. **Open Forum**

Barbara Askenazi brought up the unsolicited mail that went out to all the homeowners. Wanting to know fact information vs. hearsay.

Augustus Shaw answered several questions from the Members regarding the legal matters pending in the Association.

Betsy Stodola expressed concerns regarding the violations that are harming property values.

- IX. Motion to adjourn meeting at 6:20 PM

# **Hilton Casitas Council of Homeowners**

## **BOARD OF DIRECTORS OPEN MEETING MINUTES**

WEDNESDAY, DEC. 27<sup>TH</sup>, 2017 AT 8:00AM

LOCATION: CORNERSTONE PROPERTIES INC. BOARD ROOM

- I. The meeting was called to order at 8:04AM by Mike Bengson. Quorum for the meeting was met and duly noted.

**Board Members present:** Michael Bengson (VP), Jack Huston (S), and Richard Walker (M)

**Board Members absent:** Tim Glass(T),

**Management Present:** Evon Potocki, Community Manager, Cornerstone Properties, Inc.

### II. **Open Forum**

- III. **Approval of December 13, 2017 Meeting Minutes:** Richard Walker made a motion to approve the 12/13/17 meeting minutes. Seconded by Jack Huston. Motion carried and duly approved.

### IV. **Old Business**

- A. **Community Gates:** No updates since last meeting
- B. **Sewer Billing:** Jack Huston made a motion to separate the sewer billing and bill the individual owners based on the billing charges provided from the City of Scottsdale to the hotel, then to the association. Seconded by Rick Walker. All in favor and duly approved.
- C. **Community Streets**
1. **APEC Review- \$300:** Jack Huston made a motion to approve the \$300 APEC review fee. Tim Glass seconded. All in favor and duly approved.

### V. **New Business**

- A. **Architectural Applications**
1. **Casita 13 – Exterior Home Painting – True Taupewood –** Approved 4/0
  2. **Casita 14 – Exterior Home Painting – DEC757 Rincon Cove Body, DEA156 Cherry Cola Fascia –** Approved 4/0
- B. **Board of Directors Vacancy:** Jack Huston made a motion to table the Board Vacancy. Richard Walker seconded. Motion carried and unanimously tabled.
- C. **Community Street Proposals:** Jack Huston made a motion to approve Swine Asphalt Corp.'s Proposal Option #3 with the 1.5" Overlay, using the surplus/reserves from previous year(s) and asking the membership to approve a \$1,500 special assessment to fund the project. Option #3 cost: \$51,875.03. Rick Walker seconded. Motion carried and duly approved.
- D. **2018 Budget:** Rick Walker made a motion to approve the updated revised proposed 2018 budget. Jack Huston seconded. Motion carried and duly approved.

- VI. **Adjourn: With no further business, the meeting adjourned at 8:21 am**

## **HILTON CASITAS COUNCIL OF HOMEOWNERS**

### **2018 ANNUAL MEETING MINUTES**

TUESDAY, JANUARY 23, 2018 @ 5:30PM

LOCATION: 6333 N. SCOTTSDALE ROAD, SCOTTSDALE, AZ 85250

(INSIDE THE KIVA BALLROOM OF THE SCOTTSDALE HILTON RESORT & VILLAS)

---

- I. The meeting was called to order at 5:35 PM by Michael Bengson. The quorum for the meeting was met and duly noted.

**Board Members Present:** Mike Bengson (VP), John Jack Huston (S), Richard Walker (M)

**Board Members Absent:** Tim Glass (T)

**Homeowners:** Karen & Don Randolph, Dorene & Doug Mykol, Pamela Penn, Ashwani Kaura, Bruce & Betsy Stodola, Barrie Bercuson, and Peggy Bengson.

**Management Present:** Evon Potocki, Community Manager, Cornerstone Properties, Inc.

**Legal Counsel:** Augustus Shaw and Patrick Whelan of Shaw & Lines

II. **Board of Directors Introduction**

- III. **Approval of March 30, 2017 Annual Meeting Minutes.** Richard Walker made a motion to approve the March 30, 2017 Annual Meeting Minutes. John Jack Huston seconded. Motion carried and unanimously approved.

- IV. **Vice President's Report.** Mike Bengson gave an overview of 2017 and the challenges the HOA has been faced with. Including legal services, legal expenses, community road repair, HOA insurance, hotel sale, etc. The goal every year is to enhance the community and keep legal costs under budget.

- V. **Financial Report** - The association closed out the 2017 fiscal year with \$22,830.79 in their operating account and \$1,843.20 in their reserve account totaling \$24,673.99 in assets.

VI. **Open Forum**

John Jack Huston spoke about the Street Repair Project and how the Board ultimately came up with the repair option based on APEC, engineer consultants, evaluation of the roads and their recommendation.

Discussion by the members about the hotel sale, estoppel, and lawsuits.

VII. **Review of the 2018 Budget**  
a. **Vote & Ballot Collection**

*It's been determined that pursuant to ARS 33-1243(D) the 2018 Budget was ratified with an approval of 11/1*

VIII. **Election of 2018 Board of Directors**

a. **Introduction of Candidates**

b. **Vote & Ballot Collection**

c. **Election Results** – Richard Walker, Michael Bengson, John Jack Huston, Tim Glass, and Doug Mykol won the election for Hilton Casitas Council of Homeowners Board of Directors. Doug Mykol kindly declines his position on the Board of Directors.

d. **Appointment of Officers** - Appointment of Officers tabled until the open Board Meeting to follow.

IX. **Special Assessment**

a. **Vote & Ballot collection** - Quorum not met

X. **Motion to adjourn meeting at 6:40 PM**

**PLEASE NOTE: THESE MINUTES ARE A DRAFT AND NOT YET APPROVED BY THE MEMBERSHIP.**

# EXHIBIT B

**MAIL BALLOT AND CONSENT TO APPROVE  
HILTON CASITAS COUNCIL OF HOMEOWNERS  
2016 EXPENSE SUMMARY**

The Board of Directors of the Hilton Casitas Council of Homeowners (the "Association") desires to seek the Membership's approval of the enclosed 2016 Expense Summary of the Association.

**THE UNDERSIGNED, BEING THE OWNER(S) OF A LOT/UNIT IN THE ASSOCIATION, HEREBY VOTES AS FOLLOWS:**

X

**I CONSENT TO AND I APPROVE** the enclosed 2016 Expense Summary of the Association.

\_\_\_\_\_

**I DO NOT CONSENT TO AND I DO NOT APPROVE** the enclosed 2016 Expense Summary of the Association.

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3. Faxing your ballot to (602) 244-9214 by no later than 5 p.m. on March 29, 2017; or
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Name: Tami Prentice

Address: Casita 3

Signature: Tami Prentice

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Name:           DON RANDOLPH          

Address:           CASITA # 22          

Signature:           Don Randolph

**IN PERSON BALLOT AND CONSENT TO APPROVE**  
**THE HILTON CASITAS COUNCIL OF HOMEOWNERS**  
**2016 EXPENSE SUMMARY**

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Name: Barbara Askew

Address: Casita 16

Signature: Barbara Askew

**IN PERSON BALLOT AND CONSENT TO APPROVE**  
**THE HILTON CASITAS COUNCIL OF HOMEOWNERS**  
**2016 EXPENSE SUMMARY**

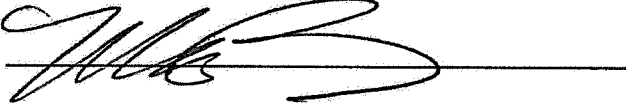
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Name: Michael BENSON  
Address: 6333 N. SOUTHWEST AVE  
Signature: 

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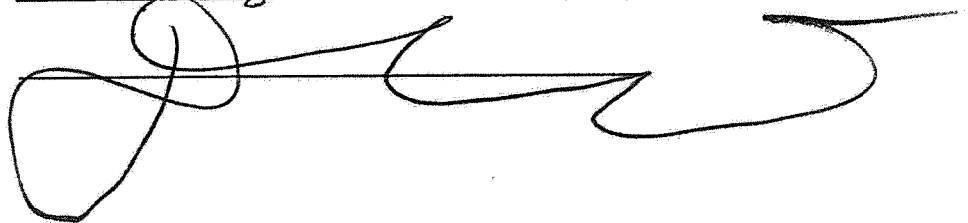
Name:

Doug Mykol

Address:

Casitas 6

Signature:





**MAIL BALLOT AND CONSENT TO APPROVE  
HILTON CASITAS COUNCIL OF HOMEOWNERS  
2016 EXPENSE SUMMARY**

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Name: \_\_\_\_\_

*Betsy Stodola*

Address: \_\_\_\_\_

*Nelson #14*

Signature: \_\_\_\_\_

*Betsy Stodola*

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Name:         Nash Bloemauit        

Address:         Casita 20        

Signature:         [Handwritten Signature]

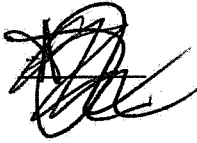
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Name: Nancy Diamond  
Address: 6333 N Scottsdale Rd #28  
Signature: 

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Name: 7285 Red Pine Trnd

Address: 124

Signature: Michael Alley Trustee

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Name:           BARRIE BERCASON            
Address:           #23            
Signature:           Barrie Bercaison





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**THE HILTON CASITAS COUNCIL OF HOMEOWNERS**  
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Name: John Meadows Revocable Trust  
Address: #5  
Signature: John Meadows

**MAIL BALLOT AND CONSENT TO APPROVE  
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2016 EXPENSE SUMMARY**

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Name:

Tim Glass

Address:

Casita #19

Signature:

Tim R. Glass

# EXHIBIT C

BYLAWS  
OF  
HILTON CASITAS COUNCIL OF CO-OWNERS

ARTICLE I

NAME AND LOCATION OF COUNCIL OF CO-OWNERS

Section 1. Name and Location. The name of this Council of Co-owners is HILTON CASITAS COUNCIL OF CO-OWNERS (hereinafter called the "Council"). Its principal place of business shall be located in the City of Scottsdale, Maricopa County, Arizona.

ARTICLE II

REFERENCE TO DECLARATION

Section 1. Reference. Reference is made to that certain Declaration of Horizontal Property Regime, recorded on May 22, 1972, in Docket 9448, pages 790 to 846 inclusive, records of Maricopa County, Arizona (hereinafter called the "Declaration"). The Declaration, as amended and supplemented from time to time as therein provided, is incorporated herein by reference. The Declaration covers Hilton Casitas (hereinafter called the "Property" or "Hilton Casitas"), as described in the Declaration.

ARTICLE III

MEMBERSHIP

Section 1. Qualification. Membership shall be limited to Owners (as said term is defined in the Declaration) of the

Casitas (as said term is defined in the Declaration). An owner will be deemed a member upon recordation, in the public records of Maricopa County, Arizona, of a Sublease and/or other instrument establishing a record title to the Casita. An owner shall remain a member of this Council until such member's death, or until such time as such member's Sublease is assigned or is terminated for any reason, or until such time as such member's right of occupancy of the Casita under the Sublease is terminated for any reason, at which time such member's membership in this Council shall automatically cease and terminate. No certificates of membership shall be issued, and membership shall be evidenced by an official list of said members, which list shall be kept by the Secretary of the Council.

Section 2. Place of Meetings. Meetings of the members of the Council shall be held at the Property or such other suitable place convenient to the members as may be designated by the Board of Directors.

Section 3. Annual Meetings. The first annual meeting of the members of this Council shall be held within one year after completion and occupancy by owners of seventy-five percent (75%) of the total number of Casitas to be constructed upon the Property, or at such earlier time as the initial Board of Directors shall designate, whichever is sooner. Thereafter the annual

meetings of the Council shall be held within three months after the end of each accounting year.

Section 4. Special Meetings. Special meetings of the Council may be held at any time upon the call of the President or a petition signed by at least twenty-five per cent (25%) of the members and presented to the Secretary.

Section 5. Notice of Meetings. The Secretary shall give written notice of each annual and special meeting to every member according to the Council's record of ownership, at least five days before the date set for such meeting, stating whether it is an annual or special meeting, the authority for the call thereof, the place, day and hour of such meeting and the purpose therefor, in any of the following ways: (a) by delivering it to him personally, or (b) by leaving it at his Casita in the Property or at his usual residence or place of business, or (c) by mailing it, postage prepaid, addressed to him at his address as it appears on the Council's records of ownership. If notice is given, pursuant to the provisions of this section, the failure of any members to receive actual notice of any meeting shall in no way invalidate such meeting or any proceedings thereat. The presence of any member in person or by proxy at any meeting shall be deemed a waiver of any required notice to such member unless he shall at the opening thereof object to the holding of such meeting

because of the failure to give notice in accordance with the provisions hereof.

Section 6. Quorum. The presence at any meeting in person or by proxy of a majority of members shall constitute a quorum, and the acts of a majority of the members at any meeting at which a quorum is present shall be the acts of the Council except as otherwise provided herein. The quorum percentage requirement shall be reduced by fifteen percent (15%) for each meeting which follows any prior meeting in which a sufficient number of members to constitute a quorum were not present in person or by proxy.

Section 7. Voting. A member shall be entitled to one vote for each Casita subleased (hereinafter referred to in the context of "owned") by such member. In the event any Casita is owned by two or more persons, by a corporation, partnership or other entity having more than one person as a member, whether by joint tenancy, tenancy in common, community property, or otherwise, the membership as to such Casita shall be joint and a single membership for such Casita shall be issued in the names of all, and they shall designate to this Council, in writing, at the time of issuance, one of their number who shall have the power to vote said membership, and, in the absence of such designation and until such designation is made, the Board of Directors of the Council shall make such designation.

Votes may be cast in person or by proxy by the respective members as shown in the records of ownership of the Council. An executor, administrator, guardian or trustee may vote in person or by proxy the vote for any Casita owned or controlled by him in such capacity, whether or not the same shall have been transferred to his name in the Council's records of ownership, provided that he shall first present evidence satisfactory to the Secretary of the Council that he owns or controls such Casita in such capacity.

Section 8. Proxies and Pledges. The authority given by any member to another person to represent him at meetings of the Council shall be in writing, signed by such owner and filed with the Secretary, and unless limited by its terms shall continue until revoked by writing filed with the Secretary or by the death or incapacity of such member.

Section 9. Adjournment. Any meeting of the Council may be adjourned from time to time to such place and time as may be determined by majority vote of the members present, whether or not a quorum be present, without notice other than the announcement at such meeting. At any such adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted by a quorum at the meetings as originally called.

Section 10. Order of Business. The order of business (if the subjects are appropriate) at all meetings of the Council shall be as follows:

- (a) Roll call;
- (b) Proof of notice of meeting;
- (c) Reading of minutes of preceding meeting;
- (d) Report of officers;
- (e) Report of committees;
- (f) Election of directors;
- (g) Unfinished business;
- (h) New business.

#### ARTICLE IV

##### BOARD OF DIRECTORS

Section 1. Number and Qualifications. The business and affairs of the Council shall be governed by a Board of Directors composed of not less than three (3) nor more than five (5) persons, who shall serve without compensation. The initial Board shall be composed of five members, and the number of members on the Board thereafter shall be established from time to time by the Board. No person shall be eligible for election as a director who is not at the time of election a member of this Council (except such persons who may serve as directors during the period from the date of recordation of the Declaration until the first annual meeting of the members).

Section 2. Powers. The Board of Directors shall have all powers necessary for the administration of the affairs of the Council and may do all such acts and things therefor as are not by law, the Declaration or these Bylaws directed to be exercised or done only by the members.

Section 3. Election and Term. The Board of Directors shall be elected annually by the members at the annual meeting of the members of the Council, or at any special meeting called for the purpose of such election, for a term of one year, and each member shall be entitled to one vote for each Casita owned by him.

Section 4. Vacancies. Vacancies in the Board of Directors caused by any reason other than removal of a director by the Council shall be filled by vote of a majority of the remaining directors, even though they may constitute less than a quorum, and each person so elected shall be a director until his successor is elected at the next annual meeting of the Council. Ceasing to be a member of the Council, death, incapacity or resignation of any director shall cause his office to become vacant.

Section 5. Removal of Directors. At any regular or special meeting of the Council duly called, any one or more of the directors may be removed with or without cause by vote of a majority of members and a successor may then and there be elected to fill the vacancy thus created. Any director

whose removal has been proposed by the members shall be given at least five days notice of such proposed action and an opportunity to be heard at such meeting.

Section 6. Annual Meeting. An organizational meeting of the Board of Directors shall be held at the place of, and immediately following, each annual meeting of the Council, and it shall not be necessary to give any notice to any directors in order for there to be a valid meeting, provided that a majority of the whole Board shall be present. At such meeting the Board shall elect the officers of the Council for the ensuing year.

Section 7. Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of the Directors. Notice of regular meetings of the Board shall be given to each director, personally or by mail, telephone or telegraph, at least one day prior to the date of such meeting.

Section 8. Special Meetings. Special meetings of the Board of Directors may be called by the President on at least one day's notice to each director, given personally or by telephone or telegraph, which notice shall state the time, place and purpose of such meeting. Special meetings of the Board shall be called by the President or Secretary in like manner and with like notice on the written request of at least two directors.

Section 9. Waiver of Notice. Before or at any meeting of the Board of Directors any director may in writing waive notice of such meeting, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a director at any meeting of the Board shall be a waiver of notice to him of such meeting. If all the directors are present at any meeting of the Board, no notice thereof shall be required, and any business may be transacted at such meeting.

Section 10. Quorum of Board. At all meetings of the Board of Directors a majority of the total number of directors established by these Bylaws shall constitute a quorum for the transaction of business, and the acts of a majority of the directors present at any meeting at which a quorum is present shall be the acts of the Board. If less than a quorum shall be present at any meeting of the Board, a majority of those present may adjourn the meeting from time to time. At any such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

Section 11. Fidelity Bonds. The Board of Directors may require that all officers, employees and agents of the Council handling or responsible for its funds, shall furnish adequate fidelity bonds. The premiums on such bonds shall be paid by the Council.

Section 12. First Board of Directors. The members of the first Board of Directors shall be George Palē, Gerald Hirt, Norman Grossman, Norman D. Levitt and Robert H. Karatz.

ARTICLE V  
OFFICERS

Section 1. Designation. The principal officers of the Council shall be a President, a Vice President, a Secretary and a Treasurer, all of whom shall be elected by, and in the case of the President from, the Board of Directors. The Board may appoint an assistant treasurer, an assistant secretary and such other officers as in its judgment may be necessary.

Section 2. Election and Term. The officers of the Council shall be elected annually by the Board of Directors at the Board's annual meetings and shall hold office at the pleasure of the Board. The officers elected shall hold office for a period of one (1) year, or until their successors are elected and qualified. No person shall be eligible for election as an officer who has not, at the time of election, fulfilled the membership requirements set forth in Article III hereof.

Section 3. Removal. Any officer may be removed either with or without cause by vote of a majority of the members of the Board of Directors and his successor elected, at any

regular meeting of the Board or any special meeting called for such purpose.

Section 4. President. The President shall be the chief executive officer of the Council and shall preside at all meetings of the Council and of the Board of Directors. Subject to the control of the Board he shall exercise general supervision and direction over the management and conduct of the business and affairs of the Council. He shall also have such other powers and duties as may be provided by these Bylaws or assigned to him from time to time by the Board.

Section 5. Vice President. The Vice President shall assume and perform the duties of the President in the absence or disability of the President or whenever the office of President is vacant. He shall also have such other powers and duties as may be assigned to him from time to time by the Board.

Section 6. Secretary. The Secretary shall attend and keep the minutes of all meetings of the Council and of the Board of Directors, give all notices thereof as provided by these Bylaws, maintain and keep a continuous and accurate record of ownership of all Casitas, have charge of such books, documents and records of the Council as the Board may direct, and in general perform all the duties incident to the office of Secretary.

Section 7. Treasurer. The Treasurer shall keep and maintain the books and financial records of the Council, and shall prepare regular reports thereof and be responsible for the proper deposit and custody in the name of the Council of all its funds and securities.

Section 8. Auditor. The Council may appoint annually an independent public accountant or accounting firm as auditor to audit the books and financial records of the Council.

#### ARTICLE VI

#### ADMINISTRATION

Section 1. Management. The Board of Directors shall at all times manage and operate the Property and have such powers and duties as are granted the Board by the Declaration and these Bylaws.

#### ARTICLE VII \*

#### COVENANTS AND RESTRICTIONS AS TO SALE, LEASING AND OTHER ALIENATION

Section 1. Sale or Lease. Except for any leasing of a Casita for a period of not in excess of 60 days (which shall require no notice to or approval by the Corporation, as said term is defined in the Declaration, or the Council), any owner who wishes to sell or lease his Casita (or any lessee of any Casita wishing to assign or sublease such Casita) to any person not related by blood or marriage to the owner shall give to the Corporation and the Council no less than fifteen (15)

days' prior written notice of the terms of any contemplated sale or lease, together with the name and address of the proposed purchaser or lessee. The Corporation shall at all times have the first right and option to purchase or lease such Casita upon the same terms, which option shall be exercisable for a period of fifteen (15) days following the date of receipt of such notice. If said option is not exercised by the Corporation within said fifteen (15) days, the Council shall have the second right and option to purchase such Casita upon the same terms, which option shall be exercisable for a period of five (5) days following the expiration of the Corporation's option period. If said option is not exercised by the Council within said five (5) days, the owner (or lessee) may, at the expiration of said period and at any time within sixty (60) days after the expiration of the last option period, contract to sell or lease (or sublease or assign) such Casita to the proposed purchaser or lessee named in such notice upon the terms specified therein.

Section 2. Gift. Any owner who wishes to make a gift of his Casita or any interest therein to any person or persons who would not be heirs at law of the owner under the laws of intestate succession of this state, shall give to the Corporation and the Council not less than fifteen (15) days'

written notice of his or her intent to make such gift prior to the contemplated date thereof, together with the name and address of the intended donee and the contemplated date of such gift. The Corporation shall at all times have the first right and option, and if it fails to exercise such right the Council shall have the second right and option, to purchase such Casita or interest therein for cash at fair market value to be determined by arbitration as herein provided. The Corporation's option shall be exercisable until the expiration of forty-five (45) days after receipt by it of the written notice, and the Council's option shall be exercisable until the expiration of five (5) days after expiration of the Corporation's option period. Within five (5) days after receipt of said written notice by the Corporation and the Council, the Corporation and the owner desiring to make such gift shall each appoint a qualified real estate appraiser to act as arbitrators. The two arbitrators so appointed shall, within ten (10) days after their appointment, appoint another qualified real estate appraiser to act as the third arbitrator. Within ten (10) days after the appointment of said arbitrator, the three arbitrators shall determine, by majority vote, the fair market value of the Casita or interest therein which the owner contemplates conveying by gift, and shall thereupon give written notice of

such determination to the owner, the Corporation and the Council. The Corporation's and Council's respective options to purchase the Casita or interest therein shall expire within the time periods set forth above.

Section 3. Devise. In the event any owner dies leaving a will devising his Casita or any interest therein to any person or persons not his heirs at law under the laws of interstate succession of this state, and said will is admitted to probate, the Corporation shall have the first option and the Council shall have the second option (to be exercised in the manner hereinafter set forth) to purchase said Casita or interest therein either from the devisee or devisees thereof named in said will or, if a power of sale is conferred by said will upon the personal representative named therein, from the personal representative acting pursuant to said power, for cash at fair market value which is to be determined by arbitration. Within twenty (20) days after the appointment of a personal representative for the estate of the deceased owner, the Corporation shall appoint a qualified real estate appraiser to act as an arbitrator, and shall thereupon give written notice of such appointment to the said devisee or devisees or personal representative as the case may be. Within twenty (20) days thereafter said devisee or devisees, or personal representative, as the case may be, shall appoint a qualified

real estate appraiser to act as an arbitrator. Within ten (10) days after the appointment of said arbitrator, the two so appointed shall appoint another qualified real estate appraiser to act as the third arbitrator. Within ten (10) days thereafter, the three arbitrators shall determine, by majority vote, the fair market value of the Casita or interest therein, and shall thereupon give written notice of such determination to the devisee or devisees (or personal representative), the Corporation and the Council. The Corporation's option to purchase the Casita or interest therein shall expire thirty (30) days after the arbitrators' written determination is delivered to the Corporation and the Council, and if the Corporation fails to exercise the option, the Council's option shall expire fifteen (15) days after the Corporation's option period.

Section 4. Consent of Voting Members. The Council shall not exercise any option hereinabove set forth to purchase any Casita or interest therein without the prior written consent of two-thirds of the voting members. The Council may bid to purchase at any sale of a Casita or any interest therein of any deceased owner which is held pursuant to an order or direction of a court upon the prior written consent of two-thirds of the voting members of the Council, which consent

shall set forth a maximum price which the Council is authorized to bid and pay for said Casita or interest therein.

Section 5. Release or Waiver of Options. The Corporation may, by written consent to be given within ten (10) days after application for such consent is received by the Corporation, release or waive any of the options given to it (for the particular transaction under consideration) in this Article. If the Corporation so releases or waives its options, then upon the written consent of a majority of the Board of Directors, such consent to be given within ten (10) days after application for such consent is received by the Board, and upon the written consent of two-thirds of the members of the Council, such consent to be given at the first meeting of the members after application for such consent is received by the Secretary, any of the options contained in this Article (with respect to the particular transaction at hand or the particular owner so applying) may be released or waived by the Council, and the Casita or any interest therein may be sold, conveyed, leased, assigned, given or devised free and clear (for that particular transaction) of the provisions of this Article.

Section 6. Proof of Termination of Option. A certificate executed and acknowledged by the respective secretaries of the Corporation and the Council stating that the provisions of

this Article as hereinabove set forth have been met by an Owner, or duly waived by the Corporation and the Council, and that the rights of the Corporation and the Council hereunder have terminated, shall be conclusive upon the Corporation, the Council and the owners in favor of all persons who rely thereon in good faith, and such certificate shall be furnished upon request to any owner who has in fact complied with the provisions of this section or in respect to whom the provisions of this section have been waived.

Section 7. Nonapplicability. The provisions applicable to (or obligations imposed upon) an owner in this Article shall not apply to the Corporation in its capacity as the owner of any Casita.

#### ARTICLE VIII

##### MANAGING AGENT AND EXECUTION OF INSTRUMENTS

Section 1. Managing Agent. The Board of Directors may annually employ a responsible corporation, partnership, individual or other entity, as Managing Agent to manage and control the Property, subject at all times to direction by the Board, with all the administrative functions set forth elsewhere in these Bylaws and such other powers and duties and at such compensation as the Board may establish.

Section 2. Execution of Instruments. All checks, drafts, notes, acceptances, conveyances, contracts and other

instruments shall be signed on behalf of the Council by such person or persons as shall be provided by general or special resolution of the Board of Directors, or, in the absence of any such resolution applicable to such instrument, by the President or Vice President and by the Treasurer or Secretary.

## ARTICLE IX

### OBLIGATIONS OF MEMBERS

Section 1. Assessments. All members shall pay to the Council or its Managing Agent in advance on the first day of each and every month the monthly installments of assessments against their respective Casitas for common expenses of the Property in accordance with the operating budget which shall be prepared thirty (30) days prior to the beginning of each fiscal year. In the event any member is delinquent in the payment of any monthly assessment for a period in excess of thirty (30) days, the Board of Directors may take any and all necessary action, pursuant to its powers set forth in the Declaration, including at its discretion and without limitation, sever or disconnect any or all utility connections to his Casita after five (5) days written notice.

Section 2. House Rules. The Board of Directors, upon giving notice to all members in the same manner as herein provided for notice of meetings of the Council, may adopt, amend or repeal any supplemental rules and regulations governing

details of the operation and use of the Property not inconsistent with any provision of law, the Declaration or these Bylaws.

Section 3. Record of Ownership. Every Casita owner shall promptly cause to be duly recorded or filed of record the Sublease, deed or other instrument establishing a record title to the Casita in the Property and deliver to the Secretary of the Council a certified copy of such instrument. The Secretary shall maintain all such information in the Council's records of ownership of the Casitas.

Section 4. Mortgages. Any Casita owner who mortgages his Casita or any interest therein shall notify the Corporation and the Board of Directors of the name and address of his mortgagee, and also of the release of such mortgage, and the Secretary shall maintain all such information in the Council's records of ownership. The Board of Directors at the request of any mortgagee or prospective purchaser of any Casita shall report to such person the amount of any assessments against such Casita then due and unpaid.

## ARTICLE X

### AMENDMENTS

Section 1. Procedure. These Bylaws may be amended by fifty-one percent (51%) of the members at a meeting of the members specially held for such purpose; provided, however,

that no amendment shall be valid and effective unless it bears the signed and acknowledged concurrence of the Corporation (as said term is used in the Declaration).

#### ARTICLE XI

#### CONFLICTS

Section 1. Control. These Bylaws are set forth to comply with the provisions set forth in the Declaration. In case any of the provisions of these Bylaws conflict with the provisions of said Declaration, the provisions of said Declaration shall control.

PROPOSED AMENDMENT TO  
BYLAWS OF  
HILTON CASITAS COUNCIL OF CO-OWNERS

ARTICLE VII

COVENANTS AND RESTRICTIONS AS TO SALE,  
LEASING AND OTHER ALIENATION

Section 1. Sale or Lease. Except for any leasing of a Casita for a period of not in excess of 60 days (which shall require no notice to or approval by the Corporation, as said term is defined in the Declaration, or the Council), any owner who wishes to sell or lease any interest in his Casita (or any lessee of any Casita wishing to assign or sublease any interest in such Casita) to any person not related by blood or marriage to the owner shall deliver to the Corporation and the Council no less than fifteen (15) days' prior written notice of the terms of any contemplated sale or lease, together with the name and address of the proposed purchaser or lessee and such other information as the Corporation or Council may reasonably require. The giving of such notice shall constitute a warranty and representation by the owner to the Corporation and Council and any purchaser or lessee produced by the Corporation or Council as hereinafter provided, that the proposal is bona fide in all respects. Such warranty, notice and the time periods relating thereto shall

hereinafter be referred to in this Article VII and its Sections as "Notice". The Corporation, or a purchaser or lessee furnished by it, shall at all times have the first right and option to purchase or lease such Casita upon the same terms, which option shall be exercisable for a period ending fifteen (15) days following the date of receipt of such Notice. If said option is not exercised by the Corporation within such period, a purchaser or lessee furnished by the Board of Directors of the Council (the "Board"), shall have the second right and option to purchase such Casita upon the same terms, which option shall be exercisable for a period ending five (5) days following the scheduled expiration of the Corporation's option period. If said option is not exercised by the Board within such period, the owner may, at any time within sixty (60) days after its expiration, contract to sell or lease (or sublease or assign) such Casita to the proposed purchaser or lessee named in such Notice upon the terms specified therein, but none other.

Section 2. Gift. Any owner who wishes to make a gift of his Casita or any interest therein to any person or persons who would not be heirs at law of the owner under the laws of intestate succession of this state, shall give Notice to the Corporation and the Council of his or her intent to make such gift prior to the contemplated date thereof, together with the name and address of the intended donee, the contemplated date of such gift and its terms. The Corporation, or

a purchaser furnished by it, shall at all times have the first right and option, and if it fails to exercise such right, a purchaser furnished by the Board shall have the second right and option, to purchase such Casita or interest therein for cash at fair market value to be determined by arbitration as herein provided, unless such purchase price can be determined by prior agreement. The Corporation's option shall be exercisable until the expiration of forty-five (45) days after receipt by it of the written Notice, and the Board's option shall be exercisable until the expiration of five (5) days after scheduled expiration of the Corporation's option period. Within five (5) days after receipt of said written Notice by the Corporation and the Board, the Corporation and the owner desiring to make such gift shall each appoint a qualified real estate appraiser to act as arbitrators. The two arbitrators so appointed shall, within ten (10) days after their appointment, appoint another qualified real estate appraiser to act as the third arbitrator. Within ten (10) days after the appointment of said arbitrator, the three arbitrators shall determine, by majority vote, the fair market value of the Casita or interest therein which the owner contemplates conveying by gift, and shall thereupon give written notice of such determination to the owner, the Corporation and the Board. The Corporation's and Board's respective options to purchase the Casita or interest therein shall expire as set forth above.

Section 3. Devise. In the event any owner dies leaving a will devising his Casita or any interest therein to any person or persons not his heirs at law under the laws of intestate succession of this state, and said will is admitted to probate, the Corporation, or a purchaser furnished by it, shall have the first option and a purchaser furnished by the Board shall have the second option (to be exercised in the manner hereinafter set forth) to purchase said Casita or interest therein either from the devisee or devisees thereof named in said will or, if a power of sale is conferred by said will upon the personal representative named therein, from the personal representative acting pursuant to said power, for cash at fair market value which is to be determined by arbitration. Within twenty (20) days after actual notice of the appointment of a personal representative for the estate of the deceased owner, the Corporation shall appoint a qualified real estate appraiser to act as an arbitrator, and shall thereupon give written notice of such appointment to the personal representative. Within twenty (20) days thereafter said personal representative shall appoint a qualified real estate appraiser to act as an arbitrator. Within ten (10) days after the appointment of said arbitrator, the two so appointed shall appoint another qualified real estate appraiser to act as the third arbitrator. Within ten (10) days thereafter, the three arbitrators shall determine, by majority vote, the fair market value of the

Casita or interest therein, and shall thereupon give written notice of such determination to the personal representative, the Corporation and the Board. The Corporation's option to purchase the Casita or interest therein shall expire twenty (20) days after the arbitrators' written determination is delivered to the Corporation and the Board, and if the Corporation fails to exercise the option, the Board's option shall expire five (5) days after the Corporation's option period.

Section 4. Consent of Voting Members. Any written notice given pursuant to this Article VII shall be (i) delivered to the Corporation at:

P. O. Box 1989  
Scottsdale, Arizona 85252

to the Council at:

6333 North Scottsdale Road  
Scottsdale, Arizona 85252

Attention: Secretary,  
Hilton Casitas Council of  
Co-Owners

and to the owner at the address furnished by him in his Notice (if none, to his Casita), or the address of the personal representative; the noticing party obtaining a signed, dated receipt therefor, or (ii) sent by United States mail, postage prepaid, certified, return receipt requested, and the postmark or date of delivery shown on such return receipt shall be conclusive as to the date of such delivery.

Section 5. Release or Waiver of Options. The Corporation or the Board may, in writing at any time, waive any of the options given to it (for the particular transaction under consideration only) in this Article. If such waivers are obtained from both the Corporation and the Board, the Casita or any interest therein may be sold, conveyed, leased, assigned, given or devised free and clear (for that particular transaction only) of the provisions of this Article, provided that the transaction is consummated within sixty (60) days thereafter.

Section 6. Proof of Termination of Option. For any action pursuant to this Article, a certificate executed and acknowledged by the President or the Secretary of the Corporation and executed and acknowledged by the President or Secretary of the Council stating the action taken, or that the provisions of this Article as hereinabove set forth have been met by an owner or duly waived by the Corporation and the Board, or that the rights of the Corporation and the Board hereunder have terminated, shall be conclusive upon the Corporation, the Council and the owners in favor of all persons who rely thereon in good faith, and such certificate shall be furnished upon request to any owner who has in fact complied with the provisions of this Section or in respect to whom the provisions of this Section have been waived.

Section 7. Nonapplicability. The provisions applicable to (or obligations imposed upon) an owner in this Article shall not apply to the Corporation in its capacity as the owner of any Casita.

**GALLAGHER & KENNEDY**  
A PROFESSIONAL ASSOCIATION

MICHAEL L. GALLAGHER  
E. CALVIN FUCHS  
MICHAEL J. AHEARN  
JOHN E. LUNDIN  
DEAN C. SHORT, II  
ROGER E. BRODMAN  
G. SYARR BOUNDS  
BRIAN K. ISHIKAWA  
CHARLES R. STERRACH  
JUDITH A. MORSE  
TERENCE W. THOMPSON  
JAMES D. HOWARD, JR.  
MICHAEL J. RUSMAN  
ROBERT E. JONES, JR.  
R. MICHAEL VALENZUELA  
LEAH PALLIN  
DONALD B. PETRIE  
JOSEPH E. COTTERMAN  
ADAM A. STODNICKI  
LORI ANNE WARD  
PATRICK J. PAUL  
DONALD PEGER JOHNSON  
ROBERT GRASSO JR.  
JENNIFER L. THOMPSON

MICHAEL K. KENNEDY  
W. CHARLES THOMPSON  
CHARLES F. RICHARDS  
DAVID A. DUFFEE  
GREGORY L. MAST  
BRAD HOLM  
ELLIOT TALENFELD  
MARK W. KENNEDY  
THOMAS A. MARAZ  
STEVEN N. BERGER  
TOM HENZE  
ANNE L. LEARY  
SCOTT K. HENDERSON  
STEPHANIE NICHOLS-YOUNG  
MARK R. CAMERON  
HELENE S. FENLON  
SMERRY R. SCOTT  
MATTHEW W. WRIGHT  
BARRY D. MITCHELL  
PAUL F. VAN HOUTEN  
NANCY K. SWIFT  
JAMES B. CONNOR  
TERRI L. DUCKWORTH

KEVIN E. O'MALLEY  
STEPHEN M. SCOTT  
PAUL V. WENTWORTH  
WILLIAM H. JURY  
ROBERT J. HILLIGAN  
CHARLES A. BISCHOFF  
MICHAEL W. SILLYMAN  
JEFFREY J. TONNER  
JEFFREY T. PYBURN  
ROBERT W. BOATMAN  
JAY A. ZWEIG  
MARK G. CHESTER  
JOSEPH N. GARAGIOLA JR.  
DON D. SKYPECK  
SARA D. BRANSCUM  
THOMAS A. LANGAN  
DEBORAH J. DEPAOLI  
JAMES R. TAYLOR  
MARK DEATHERAGE  
TREVOR H. CHAIT  
MARK A. PALMER  
TODD C. WILEY  
LAURA C. TONCHEFF

2600 NORTH CENTRAL AVENUE  
PHOENIX, ARIZONA 85004-3020

16021 530-8000  
FAX: 16021 237-8459

PETER KIEWIT, JR.  
GLORIA G. YBARRA  
OF COUNSEL

WRITER'S DIRECT LINE

(602) 530-8599

August 16, 1994

W. Borger  
4624 Britannia Dr. S.W.  
Calgary, Alberta T2S 1J6  
CANADA


Re: Articles of Incorporation of Hilton  
Casitas Council of Homeowners, filed  
August 11, 1994 with the Arizona  
Corporation Commission

Dear Mr. Borger:

Enclosed is the file-stamped original of the Articles  
of Incorporation of Hilton Casitas Council of Homeowners for the  
Council's minute book. I have retained a copy of the same in our  
files. If you have any questions, do not hesitate to call me.

Sincerely,

GALLAGHER & KENNEDY, P.A.

  
Paul V. Wentworth

PVW:gf  
Enclosure  
CC: Robert H. Karatz (w/encl.)  
292000



AZ. CORP. COMMISSION  
FILED

AUG 11 1994

APPR. David Dick  
TERM \_\_\_\_\_  
DATE 8/11/94

0724099-7

ARTICLES OF INCORPORATION

OF

HILTON CASITAS COUNCIL OF HOMEOWNERS

In compliance with the requirements of Arizona Revised Statutes Section 10-1001, et seq., as they may be amended from time to time, the undersigned, who is of legal age, and for the purpose of forming a nonprofit corporation, hereby certifies as follows:

ARTICLE I

NAME

The name of the corporation is HILTON CASITAS COUNCIL OF HOMEOWNERS (the "Association").

ARTICLE II

DEFINED TERMS/CONFLICTING PROVISIONS

Capitalized terms used in these Articles of Incorporation without definition shall have the meanings ascribed to such terms in that certain Declaration of Horizontal Property Regime for Hilton Casitas recorded in the Office of the County Recorder of Maricopa County, Arizona on May 22, 1972, page 790 (the "Declaration"), the terms and provisions of which are hereby incorporated by reference into these Articles of Incorporation as if set forth herein. In the event of any conflict or inconsistency between the terms or provisions of the Declaration and those of these Articles, the terms and provisions of the Declaration shall control.

ARTICLE III

PRINCIPAL OFFICE

The principal office of the Association shall be located at 6333 North Scottsdale Road, #10, Scottsdale, Arizona 85253.

ARTICLE IV

STATUTORY AGENT

Gallagher & Kennedy Service Corporation, which has a business address of 2600 North Central Avenue, Phoenix, Arizona 85004-3020, is the initial statutory agent for the Association.

ARTICLE V

PURPOSE OF THE ASSOCIATION

The object and purpose for which the Association is organized is to provide for the management, maintenance, and care of the Common Elements and to perform such other duties as are imposed upon the Association under the Declaration. In furtherance of, and in order to accomplish the foregoing object and purpose, the Association may and is authorized to transact any and all lawful business for which nonprofit corporations may be organized under the laws of the State of Arizona, as they may be amended from time to time.

ARTICLE VI

INITIAL BUSINESS

The character of the business that the Association initially intends to conduct in Arizona is to provide for the management, maintenance, and care of the Common Elements and to exercise and perform such other powers and duties as are imposed upon or granted to the Association under the Declaration.

ARTICLE VII

MEMBERS

The Association shall have one class of Members. The designation of the class of membership, the manner of election or appointment of Members and the qualifications and rights of Members shall be as set forth in the Bylaws and Declaration.

ARTICLE VIII

BOARD OF DIRECTORS

The number of directors constituting the initial Board of Directors is five (5). The names and addresses of the directors of the Association, who shall serve as directors until the first annual meeting of the Members or until their successors are elected and qualified, are as follows:

<u>Name</u>	<u>Mailing Address</u>
Robert Karatz	6333 North Scottsdale Road, #10 Scottsdale, Arizona 85253
Arnold Horwitch	6333 North Scottsdale Road, #16 Scottsdale, Arizona 85253

<u>Name</u>	<u>Address</u>
Robert Karatz	6333 North Scottsdale Road, #10 Scottsdale, Arizona 85253

#### ARTICLE XIII

##### LIABILITY OF DIRECTORS

In accordance with the provisions of Arizona Revised Statutes Section 10-1029, as the same may be amended from time to time, the directors of the Association shall not be liable for monetary damages to the Association or to its Members for breach of fiduciary duty as a director, except as follows:

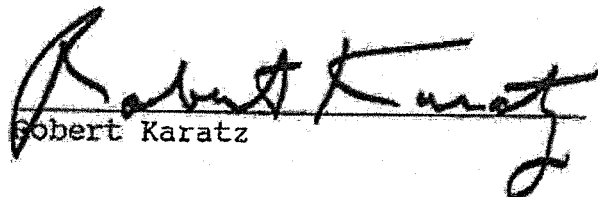
- (a) Any breach of the director's duty of loyalty to the Association or its Members;
- (b) Acts or omissions which are not in good faith or which involve intentional misconduct or a knowing violation of law;
- (c) Any violation of Arizona Revised Statutes Section 10-1026;
- (d) Any transaction from which the director derived an improper personal benefit; or
- (e) Any violation of Arizona Revised Statutes Section 10-1097.

#### ARTICLE XIV

##### INDEMNIFICATION

The Association shall indemnify, to the fullest extent allowed by Arizona law, any person who incurs liability or expense by reason of such person acting as an officer, director, employee or agent of the Association. This indemnification shall be mandatory in all circumstances in which indemnification is permitted by Arizona law.

DATED: June 20, 1994.

  
Robert Karatz

# EXHIBIT D

Recorded at the request of:  
Security Title Agency

When recorded mail to:

Colleen London  
P.O. Box 5617  
Scottsdale, AZ 85261-5617  
Escrow No.: ST09020348-ST44

1/3

902  
Y01

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CAPTION HEADING:

**ASSIGNMENT OF SUBLEASE**

**DO NOT REMOVE**

This is part of the official document.

ASSIGNMENT OF SUBLEASE

FOR VALUE RECEIVED, Debra D. D. Coyner, Trustee of The Sallie Busch Wheeler Family Trust, dated June 7, 1990 (hereinafter called "Assignor"), hereby sells, assigns, and transfers to Colleen London, a married woman as her sole and separate property (hereinafter called "Assignee"), all of Assignor's right title and interest in and to that certain Sublease dated February 24, 1975 and recorded on April 14, 1975 at Docket 11115, pages 444-463 in the public records of Maricopa County, Arizona (as amended, the "Sublease"), between Linscott Hotel Corporation, an Arizona corporation, as assigned to Procaccianti AZ II, L.P., a Delaware Limited Partnership, as Sublessor, and Edmond C. Chapman and Ann M. Chapman, husband and wife, original sublessee, as assigned to Assignor hereunder by mesne assignments of record by Instrument as Document 94-853615, and which Sublease covers that certain real property situated in the County of Maricopa, State of Arizona, described as follows:

TRACT NO. 21, OF HILTON CASITAS, ACCORDING TO DECLARATIONS OF HORIZONTAL PROPERTY REGIME RECORDED IN DOCKET 9448, PAGE 790, ACCORDING TO THE MAP OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF MARICOPA COUNTY, ARIZONA, RECORDED IN BOOK 149 OF Unofficial Document IVIAPS, PAGE 49 AND 50 AFFIDAVIT OF CORRECTION RECORDED IN DOCKET 10025, PAGE 605 and 606.

SUBJECT TO THE DECLARATION OF HORIZONTAL PROPERTY REGIME (THE "DECLARATION") RECORDED ON MAY 22, 1972 DOCKET 9448, PAGES 790, RECORDS OF MARICOPA COUNTY, ARIZONA; AND SUBJECT TO CURRENT TAXES, ASSESSMENTS, RESERVATIONS IN PATENTS AND ALL EASEMENTS, RIGHTS OF WAY, ENCUMBRANCES, LIENS, COVENANTS, CONDITIONS AND RESTRICTIONS AS MAY APPEAR OF RECORD.

TOGETHER WITH A PROPORTIONATE INTEREST IN AND TO THE COMMON AREAS, AS SET FORTH IN SAID DECLARATION OF HORIZONTAL PROPERTY REGIME AND AS SHOWN ON SAID PLAT.

It is expressly understood and agreed that Assignee herein shall assume and perform all of the obligations of the Sublessee, and shall pay any and all sums, including but not limited to rent, payable by the Sublessee, under the terms of the aforesaid Sublease, and shall pay any and all sums required to be paid pursuant to, and shall be bound by the terms and conditions of, the aforesaid Declaration.

Assignor confirms that the Sublease has not been terminated and is not in default as of the date of the Assignment.

IN WITNESS WHEREOF, Assignor has executed this Assignment of Sublease as of the 21<sup>st</sup> day of January, 2010.

Debra D. D. Coyner

Debra D. D. Coyner,  
Trustee of The Sallie Busch Wheeler Family Trust (ASSIGNOR)

STATE OF Virginia )  
COUNTY OF Albemarle )

On this, the 21<sup>st</sup> day of January, 2010, before Stephani Giannini Belt personally appeared Debra D. D. Coyner, Trustee of The Sallie Busch Wheeler Family Trust, known to me to be the person whose name(s) is subscribed to the within instrument and acknowledged that she executed the same for the purposes therein contained.

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

Stephani Giannini Belt

Notary Public

My Commission Expires: January 31, 2011



ACCEPTANCE OF ASSIGNMENT OF SUBLEASE

Colleen London (hereinafter called "Assignee") hereby accepts the foregoing Assignment of Sublease and agrees to all of the terms and conditions contained in said Assignment of Sublease and the Sublease referred to therein, and specifically agrees to assume and perform all of the obligations required to performed by the Sublessee, and to pay all of the sums, including by not limited to rent, required to be paid by the Sublessee pursuant to the terms of the Sublease.

DATED this 25<sup>TH</sup> day of JAN, 2010.

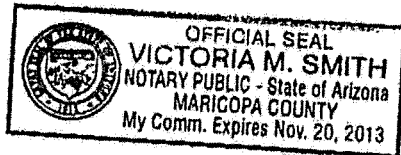
Colleen London  
Name: Colleen London (ASSIGNEE)

STATE OF AZ )  
COUNTY OF MARICOPA ) Unofficial Document

On this, the 25<sup>TH</sup> day of JAN, 2010, before me VICTORIA M SMITH, personally appeared Colleen London, known to me to be the person whose name(s) is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

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

Victoria M Smith  
Notary Public  
My Commission Expires: 11/20/2013





# EXHIBIT E

Recorded at the request of:  
Security Title Agency

When recoded, mail to:

Colleen London  
P.O. Box 5617  
Scottsdale, AZ 85261-5617

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Y01

Escrow No.: ST09020348-ST44

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**WARRANTY DEED**

For the consideration of Ten Dollars, and other valuable considerations,

**Debra D.D. Coyner, as Trustee of the Sallie Busch Wheeler Family Trust dated June 7, 1990**

does hereby convey to

**Colleen London, a married woman as her sole and separate property**

the following real property situated in Maricopa County, Arizona:

SEE EXHIBIT "ONE" ATTACHED HERETO AND MADE A PART HEREOF

SUBJECT TO: Current taxes and other assessments, reservations in patents and all easements, rights of way, covenants, conditions and restrictions as may appear of record.

The undersigned hereby warrants the title against all persons whomsoever, subject to the matters set forth.

Dated: January 20, 2010

Sallie Busch Wheeler Family Trust dated June 7, 1990

*Debra D.D. Coyner*  
Debra D.D. Coyner, Trustee

**NOTARY ACKNOWLEDGMENT(S) TO SPECIAL WARRANTY DEED**

State of Virginia

County of Albemarle

The foregoing document was acknowledged before me this 21<sup>st</sup> day of January, 2010,

by Debra D.D. Coyner

(Seal)



*Stephanie Giannini Bell*  
Notary Public

TICOR TITLE INSURANCE COMPANY

LEGAL DESCRIPTION

EXHIBIT "ONE"

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF MARICOPA, STATE OF ARIZONA AND IS DESCRIBED AS FOLLOWS:

Parcel No. 1:

ALL IMPROVEMENTS LOCATED ON: Tract 21, Hilton Casitas, according to Book 149 of Maps, Page 49 & 50, records of Maricopa County, Arizona, and as set forth in Declaration of Horizontal Regime recorded in Docket 9448, Pages, 790-846.

In compliance with A.R.S. 33-404, Beneficiaries for Grantor's Trust are:

Kenneth M. Wheeler  
P.O. Box 5629  
Charlottesville, VA 22905

Douglas E. B. Wheeler  
P.O. Box 5629  
Charlottesville, VA 22905

Unofficial Document

# EXHIBIT F

Recorded at the request of:  
Security Title Agency

When recorded, mail to:  
Colleen London  
P.O. Box 5617  
Scottsdale, AZ 85261-5617

902  
Y01

Escrow No.: ST09020348-ST44

3/3

Space above this line for Recorder's Use  
APN: 174-15-022

**DISCLAIMER DEED**

This Disclaimer Deed is made by, R.L. Whitmer,

("Undersigned")

To Colleen London,

("Spouse");

(1) The spouse has acquired title to the following-described property located in Maricopa County, Arizona:

SEE EXHIBIT "ONE" ATTACHED HERETO AND MADE A PART HEREOF

("Property").

*Affidavit and Fee exempt under ARS 11-1134-B3*

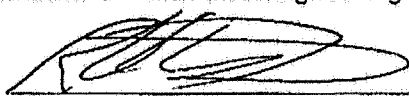
(2) The Property is the sole and separate property of Spouse having been purchased with the separate funds of Spouse or acquired as a gift or devise made to Spouse as Spouse's sole and separate property.

(3) Undersigned has no past or present right, title, interest, claim or lien of any kind or nature whatsoever in, to or against the Property.

(4) This Disclaimer Deed is executed, not for the purpose of making a gift to Spouse, but solely for the purpose of clearly showing of record that Undersigned has and claims no interest in and to the Property.

Now, therefore, Undersigned disclaims, remises, releases and quitclaims under Spouse and to the heirs and assigns of Spouse forever, all right, title, interest, claim and demand which Undersigned might appear to have in and to the Property.

Dated: 1/25/2010

  
R.L. Whitmer


**NOTARY ACKNOWLEDGMENT(S) TO DISCLAIMER DEED**

State of AZ

County of MARICOPA

The foregoing document was acknowledged before me this 25<sup>TH</sup> day of JAN, 2010.

by R.L. WHITMER

  
Notary Public

(Seal)



**SECURITY TITLE AGENCY**  
**LEGAL DESCRIPTION**  
**EXHIBIT "ONE"**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF MARICOPA, STATE OF ARIZONA AND IS DESCRIBED AS FOLLOWS:

Parcel No. 1:

ALL IMPROVEMENTS LOCATED ON: Tract 21, Hilton Casitas, according to Book 149 of Maps, Page 49 & 50, records of Maricopa County, Arizona, and as set forth in Declaration of Horizontal Regime recorded in Docket 9448, Pages, 790-846.

Parcel No. 2:

Tract 21, Hilton Casitas, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 149 of Maps, Pages 49 & 50, and as set forth in Declaration of Horizontal Regime recorded in Docket 9448, Pages 790-846;

EXCEPT ALL IMPROVEMENTS LOCATED THEREON.

Unofficial Document

# EXHIBIT G

Unofficial  
20 Document

**WHEN RECORDED, RETURN TO:**

06.  
ra

Colleen London  
Casita 21  
6333 N. Scottsdale Road  
Scottsdale, Arizona 85250

**SPECIAL WARRANTY DEED**

Exempt from Affidavit of Property Value Per ARS Section 11-1134-B.8.


For and in consideration of Ten Dollars (\$10.00) and other valuable consideration, Colleen London ("Grantor"), a married woman dealing with her sole and separate property, does hereby convey to R. L. Whitmer ("Grantee"), her husband, one percent interest, and retains ninety nine percent interest as her sole and separate property in the following described real property situated in Maricopa County, Arizona (the "Property") together with all improvements thereon, and all such rights, privileges, easements, hereditaments, tenements and appurtenances belonging to such Property:

Casita Number 21 of the Hilton Casitas according to the Platt thereof recorded in Book 149 of Maps, Pages 49 to 50 inclusive, records of Maricopa County, Arizona, together with all improvements located thereon. The term "Casita" is used therein in the meaning defined in that certain "Declaration of Horizontal Property Regime" for the Hilton Casitas rerecorded in Docket 9448, Pages 790 to 846, records of Maricopa County, Arizona. Together with an undivided interest in the General Common Elements and a proportionate interest in the Limited Common Elements as set forth in the Declaration of Horizontal Property Regime for the Hilton Casitas rerecorded in Docket 9448, Pages 790 to 846, records of Maricopa County, Arizona.

Subject to the taxes and assessments not yet delinquent, reservation in patent and all easements, rights of way, liens, covenants, conditions, restrictions, obligations and liabilities as may appear of record; and such state of facts as would be disclosed by a proper inspection or an accurate ALTA survey of the Property, the Grantor warrants the title against all acts of Grantor and no other.

DATED this 21<sup>st</sup> day of August, 2014.

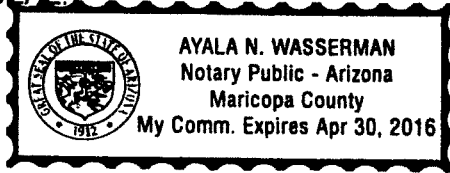
**GRANTOR:**

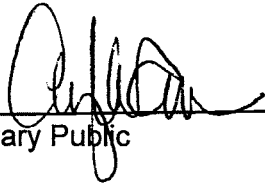
  
\_\_\_\_\_  
Colleen London

STATE OF Arizona )  
 ) ss.  
County of Maricopa )

The foregoing Special Warranty Deed dated August 21, 2014 comprised of 2 pages from Colleen London, a married woman dealing with her sole and separate property, as Grantor in favor of herself and R. L. Whitmer, her husband, was acknowledged before me this 21 day of August 2014, by Colleen London.

SEAL:



  
\_\_\_\_\_  
Notary Public

Unofficial Document