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10 **AMENDED AND RESTATED**
11 **DECLARATION OF PROTECTIVE COVENANTS,**
12 **CONDITIONS, AND RESTRICTIONS**
13 **FOR CATALINA PUEBLO**
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**AMENDED AND RESTATED
DECLARATION OF PROTECTIVE COVENANTS,
CONDITIONS, AND RESTRICTIONS
FOR CATALINA PUEBLO**

5 THIS AMENDED AND RESTATED DECLARATION OF PROTECTIVE COVENANTS,
6 CONDITIONS AND RESTRICTIONS FOR CATALINA PUEBLO (this "Declaration") is made
7 this ___ day of _____, 200_, by the owners (the "Owners") of the real property
8 described as:

9 Lots 1-117 of Catalina Pueblo, being a resubdivision of a
10 portion of Lot 53 of Catalina Foothills Estates No. 6, as
11 recorded in Book 20 of Maps and Plats at Page 99; in Book
12 22 of Maps and Plats at Page 77; and in Book 25 of Maps
13 and Plats at Page 97 (collectively, the "Properties").

14

RECITALS:

15 A. Catalina Pueblo is not merely a residential development, but a community,
16 governing itself through an Association. The Association considers it a civic duty of
17 every Member to participate in the affairs of the community, attend Association
18 meetings, cooperate in the operations and functions of the Association, serve on the
19 Association's Board and committees, and share in the neighborly pursuit of the
20 community's common interests.

21 B. The developers of the Properties and the subsequent owners of Lots within
22 the Properties signed and recorded the following documents:

23 1. *Declaration of Protective Covenants*, as recorded on June 12, 1970 in the
24 records of the Pima County Recorder, Pima County, Arizona ("Records") in Book 3766,
25 Pages 298 and following.

26 2. *Declaration of Establishment of Building and Use Conditions and Restrictions*
27 *of Catalina Pueblo*, as recorded on September 14, 1970 in the Records in Book 3830,
28 Pages 614 and following.

29 3. *Declaration of Protective Covenants*, as recorded about December 5, 1971 in
30 the Records in Book 4140 at Page 127 and following.

31 4. *Declaration of Establishment of Building and Use Conditions of Catalina*
32 *Pueblo*, as recorded on February 18, 1972 in the Records in Book 4191 at Page 270 and
33 following.

34 5. *Release of Reverter*, as recorded about November 24, 1973 in the Records in
35 Book 4650 at Page 281 and following.

1 6. *Declaration of Establishment of Building and Use Conditions and Restrictions*
2 *of Catalina Pueblo*, as recorded on January 14, 1974 in the Records in Book 4681 at
3 Page 619 and following.

4 7. *Declaration of Establishment of Building and Use Conditions and Restrictions*
5 *of Catalina Pueblo Amendment No. 1*, as recorded on February 25, 1975 in the Records
6 in Book 4961 at Page 466 and following.

7 8. *Declaration of Establishment of Building and Use Conditions and Restrictions*
8 *of Catalina Pueblo Amendment No. 2*, as recorded about March 30, 1978 in the Records
9 in Book 5738 at Page 684 and following.

10 9. *Amendment*, as recorded on March 16, 1994 in the Records in Book 9750 at
11 Page 719 and following.

12 10. *Protective Covenants of Catalina Pueblo*, as recorded on March 15, 1996 in
13 the Records in Book 10252 at Pages 286 and following.

14 11. *Protective Covenants of Catalina Pueblo*, as recorded on September 22, 1999
15 in the Records in Book 11137 at Pages 141 and following.

16 In accordance with the applicable requirements for amending the restrictions
17 affecting the Properties, the Owners of at least fifty-one percent (51%) of the Lots have
18 approved, in writing, the amendment and restatement of all applicable covenants,
19 conditions and restrictions of record affecting the Properties.

20 The Owners declare that the Properties shall be held, conveyed, encumbered,
21 leased and used subject to the following covenants, conditions, uses, restrictions,
22 limitations, obligations, easements, equitable servitudes, charges and liens (collectively
23 referred to in this Declaration as the "Restrictions"). These Restrictions are for the
24 purpose of enhancing and protecting the value, desirability and attractiveness of the
25 Properties. The Restrictions shall run with the Properties, shall be binding upon all
26 persons having or acquiring any interest in the Properties, and shall benefit, be binding
27 upon and enforceable by all Owners, the Association and their successors in interest.

28 **ARTICLE 1**
29 **DEFINITIONS**

30 The following terms used in this Declaration (and indicated by capitalization)
31 shall mean the following, unless the context otherwise specifies or requires:

32 **1.1 "Assessments"** are those annual, special or reimbursement assessments
33 which are levied by the Association and used to promote the recreation, health, safety
34 and welfare of the Members and their families and guests; the improvement of the
35 Common Areas; and all other purposes set forth in the Articles, Bylaws, Rules, this
36 Declaration and all applicable laws.

1 **1.2 "Articles"** means the Articles of Incorporation of the Association and any
2 amendments which have been filed in the office of the Arizona Corporation Commission.

3 **1.3 "Assessment Lien"** means a lien recorded at the direction of the Board
4 against any Lot for the non-payment of Assessments or any other sums due to the
5 Association, including late fees, interest, fines, attorneys' fees and any other collection
6 costs.

7 **1.4 "Association"** means the Catalina Pueblo Association, its successors and
8 assigns.

9 **1.5 "Board"** means the Board of Directors of the Association.

10 **1.6 "Bylaws"** means the Bylaws of the Association, as may be amended from
11 time to time.

12 **1.7 "Common Area" or "Common Areas"** means all real property owned by
13 the Association, including but not limited to: the pools and parks on Lots 34, 70 and
14 117; the sidewalk between the Adelita pool and Cerrada Caballo; and the streets within
15 the Properties.

16 **1.8 "Declaration"** means this instrument and any subsequent amendment or
17 restatement.

18 **1.9 "Deed"** means a deed or other instrument conveying the fee simple title in
19 a Lot.

20 **1.10 "Dwelling Unit" or "Unit"** means any improvements placed within the
21 confines of any Lot.

22 **1.11 "First Mortgage"** means any unpaid and outstanding mortgage, deed of
23 trust, or other security instrument on any of the Properties, which is recorded in the
24 office of the Recorder of Pima County, Arizona, having priority of record over all other
25 recorded liens except those governmental liens made superior by statute (such as
26 general ad valorem tax liens and improvement district assessments).

27 **1.12 "First Mortgagee"** means any Person named as a mortgagee or
28 beneficiary under any First Mortgage or any successors in interest of any such Person.

29 **1.13 "Governing Documents"** refers to this Declaration, the Articles, the
30 Bylaws of the Association and any Rules adopted by the Board.

31 **1.14 "Improvement"** means buildings, streets, driveways, parking areas,
32 lighting fixtures, fences, walls, rocks, hedges, plantings, planted trees and shrubs, signs
33 and all other structures or landscaping improvements of every type and kind.

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1 **1.15 "Lot"** means any parcel of land upon which one Dwelling Unit is located,
2 together with the Dwelling Unit, unless otherwise indicated by the context.

3 **1.16 "Member"** means every person who holds membership in the Association
4 as provided in Section 2.1 of this Declaration.

5 **1.17 "Owner"** means (1) the record owner, whether one or more persons, of
6 the fee simple interest of a Lot, or (2) the purchaser of a Lot under a recorded contract
7 for the sale of real property as set forth in Arizona Revised Statutes Section 33-741 and
8 following. The term "Owner" does not include persons or entities who hold an interest
9 in any Lot merely as security for the performance of an obligation, or a lessee or tenant
10 of an Owner as defined above, or a purchaser under a contract of sale which has not
11 been fully consummated with a deed to the purchaser recorded in the office of the
12 County Recorder of Pima County, Arizona.

13 **1.18 "Person"** means a natural individual, corporation or other entity with the
14 legal right to hold title to real property.

15 **1.19 "Plat"** means the subdivision plats of the Properties recorded in the office
16 of the County Recorder of Pima County, Arizona, and any amendment or resubdivision
17 of those plats.

18 **1.20 "Properties"** means Lots 1-117 of Catalina Pueblo, which is a
19 resubdivision of a portion of Lot 53 of Catalina Foothills Estates No. 6, as recorded in
20 Book 20 of Maps and Plats at Page 99; in Book 22 of Maps and Plats at Page 77; and in
21 Book 25 of Maps and Plats at Page 97.

22 **1.21 "Restrictions"** means the covenants, conditions, restrictions, uses, rules,
23 limitations, obligations, easements, equitable servitudes, charges and liens described in
24 this Declaration.

25 **1.22 "Rules"** means any rules, regulations, policies and procedures adopted by
26 the Board which govern the conduct of Owners, tenants, visitors and guests on the
27 Properties.

28 **1.23 "Single Family"** means one or more persons, each related to the other
29 by blood, marriage, or legal adoption, or a group of not more than three (3) unrelated
30 persons, who maintain a common household in a Dwelling Unit.

31 **1.24 "Streets"** means all areas provided for motor vehicular traffic within the
32 Properties.

33 **1.25 "Vehicle"** means automobiles, trucks, vans, campers, trailers, self-
34 contained motor homes, motorcycles, dune buggies, golf carts, bicycles, tricycles,
35 trailers of all types (motorized or not), all other wheeled modes of transportation, and
36 boats, whether or not they are self-propelled.

1 **1.26 "Visible from Neighboring Property"** means, with respect to any given
2 object, that the object is or would be visible to a person six feet (6') tall, standing at
3 ground level on any part of the neighboring property.

4 **ARTICLE 2** 5 **ASSOCIATION**

6 **2.1 Membership in the Association.**

7 Each Owner of a Lot shall automatically be a Member of the Association. Membership
8 in the Association is a right attached to the ownership of each Lot and shall not be
9 transferred, except upon the transfer of ownership of a Lot, and then only to the Person
10 who becomes the Owner.

11 **2.2 Voting Rights.**

12 Each Owner shall be entitled to one vote for each Lot owned. When more than one
13 person holds an interest in any Lot, all such persons shall be Members. The vote for
14 such Lot shall be exercised as the Owners may determine, but in no event shall more
15 than one (1) vote be cast with respect to any Lot owned.

16 **2.3 Suspension of Voting Rights.**

17 The Association may suspend the voting rights of any Member for any period during
18 which any Assessment against his or her Lot remains unpaid and delinquent, and for
19 any period when the Board determines that Member is in violation of this Declaration,
20 the Bylaws or the Rules of the Association.

21 **2.4 Purpose of Association.**

22 The Association is a non-profit corporation which will serve as the governing body for
23 all Owners and Members.

24 **2.5 Rights and Responsibilities of Association.**

25 The Association, through the Board, shall have the right to enforce the provisions of
26 this Declaration. The Association shall be responsible for the proper and efficient
27 management of the Common Area and any other areas for which it is responsible under
28 the terms of this Declaration or for which it has assumed responsibility, including:

29 2.5.1 operating, maintaining, repairing, rebuilding and insuring
30 improvements on the Common Area now installed or subsequently authorized by the
31 Board;

32 2.5.2 paying real estate taxes, assessments, and other charges on the
33 Common Area;

1 2.5.3 obtaining and maintaining insurance as required by Article 4 of this
2 Declaration;

3 2.5.4 hiring, firing, supervising and paying employees and independent
4 contractors including but not limited to workmen, landscapers, attorneys, accountants,
5 architects and any other contractors;

6 2.5.5 purchasing all reasonably necessary supplies, labor and services for the
7 performance of the obligations set forth in this Declaration;

8 2.5.6 establishing and maintaining such adequate cash reserves as the
9 Association may, in its sole and absolute discretion, deem reasonably necessary for the
10 periodic maintenance, repair and replacement of the Improvements for which it is
11 responsible;

12 2.5.7 providing and paying for all services for the Common Area;

13 2.5.8 granting licenses, easements and other agreements for the use of
14 Common Area;

15 2.5.9 maintaining any personal property owned by the Association;

16 2.5.10 entering into such agreements and taking such actions as are
17 reasonably necessary and convenient to accomplish the obligations described above
18 and to operate and maintain the Properties as a prime residential development; and

19 2.5.11 such other matters as are provided for in the Governing Documents
20 and pertinent laws.

21 **2.6 Rules of the Association.**

22 The Board is empowered to adopt, amend or repeal such Rules as it deems
23 reasonable and appropriate, which shall be binding upon all persons subject to this
24 Declaration and shall govern the use or occupancy of the Properties. The Rules shall
25 govern such matters as the Board deems to be in furtherance of the purposes of the
26 Association, including, without limitation, architectural controls, the use of the Common
27 Area and the parking of Vehicles on the Properties. Rules may be adopted, amended,
28 or repealed by either (1) a two-thirds (2/3) vote of all the Directors, at any regular or
29 special meeting of the Board, or (2) a vote of the Owners of a majority of the Lots at
30 the annual meeting, a special meeting, or by mail ballot. The Rules are deemed
31 incorporated in this Declaration and shall have the same force and effect as if they were
32 part of this Declaration. They shall be binding upon all persons having any interest in,
33 or making any use of, any part of the Properties, whether or not copies of the Rules are
34 actually received by such persons. It shall be the responsibility of each person subject
35 to the Rules to review and keep abreast of any changes in the Rules.

1 **2.7 Conflict Among Governing Documents.**

2 In the event of any dispute or disagreement between any Owners or any other
3 persons subject to this Declaration relating to the Properties, or any question of
4 interpretation or application of the provisions of this Declaration, the Articles, Bylaws or
5 Rules, this Declaration shall control.

6 **2.8 Records and Accounting.**

7 The Association shall keep true and correct financial records, at the sole cost of the
8 Association, in accordance with generally accepted accounting principles. These
9 records, together with current copies of this Declaration, the Articles, Bylaws and Rules,
10 shall be available for inspection by all Owners and First Mortgagees of record at
11 reasonable times during regular business hours.

12 **ARTICLE 3**
13 **COVENANTS FOR ASSESSMENTS**

14 **3.1 Creation of the Lien and Personal Obligation to Pay Assessments.**

15 Each Owner, upon the recordation of a deed to any Lot, whether or not it shall be so
16 stated in the deed, agrees to pay to the Association: (1) annual Assessments or
17 charges, (2) special Assessments, and (3) reimbursement Assessments. These
18 Assessments shall be established and collected as provided in this Article. All
19 Assessments levied against a Lot, together with interest from the date of delinquency
20 until paid, late fees, costs and reasonable attorneys' fees, shall be charged against the
21 Lot and shall be a continuing lien upon the Lot (an "Assessment Lien").

22 Delinquent Assessments, together with interest, late fees, costs, and
23 reasonable attorneys' fees, shall also be the personal obligation of the person who was
24 the Owner of such Lot at the time the Assessment was levied, and shall bind his or her
25 heirs, devisees, personal representatives and assigns. Except as otherwise provided in
26 this Declaration, the personal obligation for delinquent Assessments shall not pass to
27 successors in title unless expressly assumed by them.

28 **3.2 Purpose of Annual Assessments.**

29 The annual Assessments levied by the Association shall be used for the health, safety
30 and welfare of the Members and their guests; the improvement and maintenance of the
31 Common Area; the payment of all expenses and charges which are the responsibility of
32 the Association; and all other purposes described in the Governing Documents.

33 **3.3 Annual Budget and Assessment.**

34 **3.3.1 Budget.**

1 The Board shall prepare and submit to the Members for approval at the annual
2 meeting:

3 (1) A proposed budget for the following year containing (a) estimated
4 revenue and expenses; (b) the amount in the Reserve Fund; and
5 (c) any increase in the Reserve Fund considered necessary, along
6 with an explanation of how this increase was calculated.

7 (2) A proposed annual Assessment for the following year, based on
8 this budget.

9 **3.3.2 Approval of Proposed Assessment.**

10 The annual Assessment requires the approval of a majority of the Members who are
11 voting in person, by proxy or by absentee ballot at an annual meeting or at a special
12 meeting duly called for this purpose (at which a quorum is present).

13 **3.3.3 Non-Approval of Proposed Assessment.**

14 If no new annual Assessment is approved at the annual meeting, the annual
15 Assessment established for the preceding year shall continue until a new annual
16 Assessment is fixed.

17 **3.3.4 Assessment Against Lots.**

18 The total amount needed to fund the annual budget shall be charged equally against
19 all Lots as annual Assessments, subject to any limitations contained in the Governing
20 Documents.

21 **3.4 Reserve Fund.**

22 The Association shall maintain a separate Reserve Fund for the periodic repair and
23 replacement of the Common Area and other property.

24 **3.4.1 Funding the Reserve Fund.**

25 To the greatest extent possible, this Reserve Fund shall be funded by a portion of the
26 annual Assessments rather than by special Assessments. However, this provision shall
27 not limit the power of the Association to levy any Assessment or charge authorized by
28 this Declaration.

29 **3.4.2 Management of the Reserve Fund.**

30 The reserves which are collected as part of the annual Assessment shall be deposited
31 by the Association in a separate bank account to be held in trust for the purposes for
32 which they are collected or allocated. These reserves shall be considered a contribution
33 to the capital account of the Association by the Owners and, once paid, no Owner shall

1 be entitled to any reimbursement of those funds. The Board is only responsible for
2 providing for those reserves as the Board, in good faith, deems reasonable, and no
3 member of the Board is liable to any Owner or to the Association if the amount in the
4 Reserve Fund proves to be inadequate.

5 **3.5 Special Assessments.**

6 Special Assessments in addition to the annual Assessment may be recommended by
7 the Board for (1) constructing capital Improvements; (2) correcting an inadequacy in
8 the current operating account; (3) defraying, in whole or in part, the cost of any
9 construction, reconstruction, unexpected repair or replacement of Improvements in the
10 Common Area; or (4) paying for such other matters as the Board may consider
11 appropriate for the Properties. Special Assessments require the approval of a majority
12 of the Members who are voting in person, by proxy or by absentee ballot at an annual
13 meeting or at a special meeting duly called for this purpose (at which a quorum is
14 present). Special Assessments shall be fixed at a uniform rate for all Lots.

15 **3.6 Reimbursement Assessments.**

16 The Board may levy a reimbursement Assessment if (1) any Owner, his or her family
17 member, tenant, guest or invitee has failed to comply with the Association's Governing
18 Documents, causing an expenditure of money by the Association to bring the Owner or
19 his or her Lot into compliance; (2) any Owner, his or her family member, tenant, guest
20 or invitee has caused damage to the Common Area; or (3) any Owner, his or her family
21 member, tenant, guest or invitee has acted in a manner which resulted in the
22 imposition of a fine or penalty. A reimbursement Assessment shall not be levied until
23 notice and an opportunity for a hearing has been given to the Owner. Reimbursement
24 Assessments may be enforced in the same manner as annual Assessments.

25 **3.7 Certificate of Payment.**

26 The Association shall, upon demand, and for a reasonable charge, furnish a certificate
27 signed by an officer of the Association stating whether the Assessments on a specific
28 Lot have been paid. A properly executed certificate of the Association as to the status of
29 the Assessments on a Lot is binding upon the Association as of the date of its issuance.

30 **3.8 Effect of Non-Payment of Assessments; Remedies of the**
31 **Association.**

32 If any Assessment is not paid within fifteen (15) days of its due date, a late fee and
33 interest may be charged, in an amount to be determined by the Board. In addition to
34 all other legal remedies, the Association or its authorized representative may enforce
35 the obligations of any Owner to pay the Assessments by either or both of the following
36 procedures:

37 **3.8.1 Lawsuit.**

1 The Board may initiate and pursue a lawsuit in the name of the Association against
2 any Owner who is personally obligated to pay delinquent Assessments. Any judgment
3 obtained in the Association's favor shall include the amount of the delinquent
4 Assessments, interest and late fees; any additional charges incurred by the Association;
5 and any other amounts the court may award, including reasonable attorneys' fees and
6 court costs. A proceeding to recover a judgment for unpaid Assessments may be
7 maintained without the need to foreclose or waive the Association's lien.

8 **3.8.2 Enforcement of Assessment Lien.**

9 As provided in Paragraph 3.1 above, all Assessments, plus late fees, related interest
10 and costs, shall be a continuing lien upon the Lot assessed. An Assessment Lien shall
11 be deemed to have been attached as of the date of recordation of this Declaration.

12 **3.8.3 Notice and Claim of Lien.**

13 At any time after any default in the payment of any Assessment, the Association or
14 any authorized representative may make a written demand for payment by the
15 defaulting Owner. This demand shall state the date and amount of delinquency. Each
16 default shall constitute a separate basis for demand, but any number of defaults may
17 be included within a single demand. The Association may, whether or not such a
18 written demand is first made, file and record a claim of lien on behalf of the Association
19 against the Lot of the defaulting Owner. The claim of lien shall be signed and
20 acknowledged by any officer or duly-authorized agent of the Association, and recorded
21 in the office of the Pima County Recorder. It shall contain substantially the following
22 information:

- 23 (1) The name of the delinquent Owner;
- 24 (2) The legal description of the Lot against which claim of lien is
25 made;
- 26 (3) The total amount claimed to be owed for the amount of the
27 delinquency, together with any interest, collection costs, and
28 reasonable attorneys' fees;
- 29 (4) A statement that the claim of lien is made by the Association as
30 authorized by this Declaration;
- 31 (5) A statement that a lien is claimed against the Lot in an amount
32 equal to the amount stated; and
- 33 (6) A statement that the claim of lien will also extend to all
34 Assessments which become due but are not paid from the date of
35 the recording of the claim of lien to the date of payment of all
36 amounts set forth in the claim of lien and unpaid Assessments

1 (including interest, reasonable attorneys' fees, and collection
2 costs), and that the claim of lien will only be released when the
3 Owner is current in the payment of all such amounts.

4 **3.8.4 Foreclosure of an Assessment Lien.**

5 Any Assessment Lien may be foreclosed by appropriate action in court or in the
6 manner provided by law for the foreclosure of a realty mortgage or trust deed, as set
7 forth by the laws of the State of Arizona, as the same may be changed or amended.
8 The Assessment Lien shall be in favor of the Association and for the benefit of all other
9 Owners. If the foreclosure is by court action, reasonable attorneys' fees, court costs,
10 title search fees, interest and all other costs shall be allowed to the extent permitted by
11 law. Each owner expressly waives any objection to the enforcement and foreclosure of
12 an Assessment Lien.

13 **3.9 No Offset and No Exemption of Owner.**

14 No offset against any Assessment shall be permitted for any reason, including, without
15 limitation, any claim that the Association is not properly discharging its duties. No
16 Owner is exempt from liability for payment of Assessments because he or she does not
17 use or enjoy the Common Areas, or has abandoned his or her Lot, or for any other
18 reason, including any allegation that the Board is not performing its obligations under
19 the Association's Governing Documents. Payment of Assessments shall not be
20 contingent on the performance by the Association of any obligations under the
21 Governing Documents.

22 **3.10 Subordination of the Lien to First Mortgages; Sale or Transfer of**
23 **Lots.**

24 An Assessment Lien recorded by the Association shall be subordinate to the lien of any
25 First Mortgage. Sale or transfer of any Lot resulting from the foreclosure of any First
26 Mortgage or any proceeding instead of foreclosure, including deed instead of
27 foreclosure, or cancellation or forfeiture of an executory land sales contract (collectively
28 referred as "foreclosure"), shall extinguish the Assessment Lien or charges which
29 became due prior to any such sale or transfer, or foreclosure. However, any delinquent
30 Assessments or charges, including interest, late charges, costs and reasonable
31 attorneys' fees, which are extinguished in this manner may be expressly assumed by a
32 successor Owner. No sale, transfer, or foreclosure shall relieve any Owner of a Lot from
33 liability for any subsequent Assessments or charges becoming due, nor from an
34 Assessment Lien. In the event of foreclosure of a First Mortgage or the taking of a deed
35 instead of foreclosure, the First Mortgagee shall not be liable for unpaid Assessments or
36 other charges which accrued before the acquisition of title by the First Mortgagee to the
37 Lot in question.

38 **3.11 Mortgagee Protection.**

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1 Notwithstanding any other provisions of this Declaration or other Governing
2 Documents, the following provisions shall apply to and benefit each First Mortgagee of
3 a Lot:

4 3.11.1 First Mortgagees shall not be personally liable for the payment of any
5 Assessment or charge, nor for the observance or performance of any Restriction, Rule,
6 Article or By-Law, except for those matters which are enforceable by injunctive or other
7 equitable actions not requiring the payment of money, nor shall a First Mortgagee be
8 liable for any violation of the Restrictions that occurred prior to such First Mortgagee
9 acquiring title.

10 3.11.2 During any proceeding to foreclose the First Mortgage, including any
11 period of redemption, the mortgagee (or receiver appointed in such action) may, but is
12 not required to, exercise all of the rights and privileges of the Owner of the mortgaged
13 Lot, including (but not limited to) the exclusion of the Owner's exercise of those rights
14 and privileges.

15 3.11.3 At such time as the First Mortgagee becomes the record Owner of a
16 Lot, he, she or it shall be subject to all the terms and conditions of this Declaration,
17 including but not limited to the obligation to pay for all future Assessments and
18 charges, in the same manner as any Owner.

19 3.11.4 If the First Mortgagee or any other party acquires title to a mortgaged
20 Lot through foreclosure or any equivalent proceeding based on a First Mortgage (such
21 as a deed instead of foreclosure), they do so free and clear of any lien authorized by
22 this Declaration securing the payment of any Assessment imposed before the final
23 conclusion of the foreclosure or equivalent proceeding.

24 3.11.5 Nothing in this Declaration shall in any manner be considered to give
25 an Owner or any other party priority over any rights of a First Mortgagee of a Lot
26 derived from the First Mortgagee's mortgage in the case of a distribution to an Owner
27 of insurance proceeds or condemnation awards for losses or to a taking of any Lot or
28 any part of the Common Area owned by the Association. Each First Mortgagee shall be
29 entitled to timely written notice of such loss or taking.

30 **ARTICLE 4**
31 **INSURANCE & CONDEMNATION**

32 **4.1 Mandatory Insurance.**

33 The Association is obligated to purchase and maintain at all times the following types
34 of insurance:

35 4.1.1 Property Insurance.

1 Property insurance on the Common Areas, insuring against all risks of direct physical
2 loss commonly insured against and for fire and extended coverage perils. The total
3 amount of insurance after application of any deductibles shall not be less than one
4 hundred percent (100%) of the replacement cost.

5 4.1.2 Liability Insurance.

6 Liability insurance in an amount to be determined by the Board, covering all
7 occurrences commonly insured against for death, bodily injury and property damage
8 arising from the use, ownership or maintenance of the Common Area.

9 4.1.3 Directors and Officers Insurance.

10 Directors and officers liability insurance covering all agents of the Association, in
11 amounts and on terms deemed in the best interest of the Association.

12 **4.2 Other Insurance.**

13 The Board shall obtain any other insurance it considers necessary to carry out the
14 Association's functions. This may include fidelity bonds covering officers, directors,
15 employees and other persons handling the Association's funds.

16 **4.3 Destruction.**

17 4.3.1 Duty of Association.

18 Except as otherwise provided in this Declaration, if Common Area improvements are
19 partially or totally destroyed the Association shall restore and repair them to their
20 former condition as soon as possible.

21 4.3.2 Funds for Restoration.

22 Insurance proceeds shall be applied to the costs of restoration and repair. If any
23 proceeds remain after repair and replacement, the Board shall retain them in the
24 general funds of the Association. Any funds needed for restoration and repair that are
25 over and above the amount of the available insurance proceeds may be obtained by a
26 special Assessment for reconstruction, with each Owner contributing a like sum for each
27 Lot owned.

28 **4.4 Individual Insurance.**

29 By taking title to a Lot, each Owner agrees to carry adequate insurance coverage for
30 all loss and damage that occurs to his or her Dwelling Unit and on his or her Lot.

31 **4.5 Condemnation.**

32 4.5.1 Taking.

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1 The term "taking," as used in this Section, shall mean either (1) condemnation by
2 eminent domain or (2) sale under threat of condemnation.

3 4.5.2 Authority of the Board.

4 In the event of a threatened taking of all or any portion of the Common Area, the
5 Members appoint the Board and such persons as the Board may designate to represent
6 all of the Owners in connection with the taking. The Board shall act in its sole
7 discretion with respect to any awards being made in connection with the taking and
8 shall be entitled to make a voluntary sale to the condemnor instead of proceeding to
9 condemnation.

10 4.5.3 Partial Taking.

11 If there is a taking of less than all of the Common Area and the funds received as a
12 result of the partial taking are not sufficient to fund any needed restoration or
13 replacement, the Board may obtain additional funds by a special Assessment for
14 reconstruction, with each Owner contributing a like sum for each Lot owned.

15 4.5.4 Distribution of Proceeds.

16 Any awards received on account of the taking shall be paid to the Association and to
17 mortgagees of record, as their interests may appear. In the event of a total taking, the
18 Board may retain any award in the general funds of the Association, and any
19 distribution of the award shall be on a reasonable and equitable basis. Notwithstanding
20 anything to the contrary in this Section, the distribution of any award or awards for a
21 taking of all or any portion of the Common Area shall be subject to the prior rights of
22 mortgagees.

23 **ARTICLE 5**
24 **OWNERSHIP AND USE OF THE COMMON AREA**

25 **5.1 Owner's Easements of Enjoyment.**

26 Every Owner shall have a non-exclusive right and easement of enjoyment to the
27 Common Area which belongs to and shall pass with title to every Lot, subject to the
28 provisions of this Declaration.

29 **5.2 Delegation of Use.**

30 The Owner's right of enjoyment in the Common Area shall be delegated to and be
31 used exclusively by those persons, such as family members, tenants and contract
32 purchasers, residing in the Dwelling Unit, subject to such Rules as the Association may,
33 from time to time, establish. The delegation shall not relieve the Owner of his or her
34 obligations and responsibilities as a Member under the Governing Documents.

1 **5.3 Damage or Destruction of Common Area.**

2 If any Common Area is damaged or destroyed by a willful or grossly negligent act of
3 an Owner or any of his or her guests, tenants, licensees, agents or members of his or
4 her family, that Owner shall be liable for the damage and irrevocably authorizes the
5 Association to repair the damaged property. The Association shall repair the damaged
6 property in good workmanlike manner in substantial conformance with the original
7 plans and specifications. The Owner shall then repay the Association the amount
8 actually expended for such repairs. Each Owner further agrees that these charges for
9 repairs, if not paid within thirty (30) days after completion of the work, shall be
10 delinquent. The Association may recover the delinquent amount as a reimbursement
11 Assessment as provided in Section 3.6 of this Declaration.

12 **5.4 Restriction on Conveyance of Common Areas and Facilities.**

13 The swimming pools, the parks, the sidewalk from Cerrada Caballo to the Adelita pool,
14 and the streets shall remain Common Area, and are to be owned by the Association.
15 The Common Area and facilities owned by the Association may not, by act or omission,
16 be abandoned, partitioned, subdivided, encumbered, sold or transferred without the
17 prior written approval of the Owners of two-thirds (2/3) of the Lots, except that the
18 Association shall have the right to grant easements over the Common Area for the
19 purpose of constructing, erecting, operating or maintaining: (1) roads, streets, walls,
20 pathways and driveways; (2) temporary overhead or permanent underground lines,
21 cables, wires, conduits or other devices for the transmission of electricity for lights,
22 heating, power, telephone, cable TV and other purposes; and (3) sewers, storm drains
23 and pipes, drainage easements, water systems, water heating and gas lines or pipes.

24 **ARTICLE 6**
25 **EXTERIOR MAINTENANCE**

26 **6.1 Exterior Maintenance, Repair, Upkeep and Repainting of Lots.**

27 6.1.1 Dwelling Units.

28 Maintenance and repair of Dwelling Units, including all other improvements and
29 landscaping on a Lot, shall be the sole responsibility of each Owner, subject to the
30 approval of the Board where applicable.

31 6.1.2 Plumbing, Electrical and Sewer.

32 Each Owner shall be responsible for maintenance, repair, replacement, etc. of all
33 Dwelling Unit plumbing, electrical, gas, and sewer lines and equipment on his or her
34 Lot, as well as the connection lines from the Lot to the main collection sewer line or
35 main gas line and to the electric power transformer or other connection to the main
36 power source.

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6.1.3 Exterior Lighting.

Each Owner shall be responsible for the maintenance and repair, including replacement of light bulbs and controls, of all exterior lighting fixtures located on the Owner's Lot, in accordance with specifications issued by the Board. The Association shall be responsible for repairing and maintaining street lighting and traffic signs now installed or subsequently authorized by the Board.

6.1.4 Failure to Maintain.

Maintenance and repair of all improvements and landscaping on a Lot, which are the Owner's responsibility, shall be undertaken in a manner and with such frequency as shall keep each Owner's Lot in an attractive, well-kept and maintained condition. In the event any Owner fails to fulfill his or her obligation under this Section, the Association, after approval of two-thirds (2/3) vote of the Board, shall have the right through its agents and employees to enter upon a Lot, and to repair, maintain and restore the Lot. Before exercising this right, the Board shall attempt to notify the Owner and arrange a time for the work to be done. The cost of such maintenance and repair shall be added to and become part of the Lot's Assessment. The Board shall have the right to determine whether or not a Lot is in need of maintenance and repair in order to conform to the standards of the general neighborhood of the Properties, and the Board shall use a reasonably high standard to determine whether such maintenance and repair is required so that the Lots as a whole will reflect a high pride of ownership.

6.1.5 Easement for Maintenance.

Each Owner or his or her authorized agent, in order to conduct any necessary maintenance, repair or repainting on his or her Lot, shall have the right of entry at reasonable times upon Lots adjacent to the Owner's Lot, provided reasonable notice of such entry is first given by the Owner to the Owner of the involved adjacent Lot. The Association shall have a right of entry and an easement upon each Lot for the purpose of fulfilling its responsibilities under this Article.

**ARTICLE 7
EASEMENTS AND COMMON WALLS**

7.1 Easement for Encroachments.

Each Lot and the Common Areas shall be subject to an easement for encroachments created by the original construction of the improvements on any Lot, including but not limited to driveways, walkways, exterior lighting (metered to a particular Dwelling Unit), drainage structures, etc., as a part of or for the use of a particular Lot, settling and overhangs, and for any party walls which are part of the original construction. A valid easement exists for those encroachments and their maintenance, so long as any encroachment stands or is rebuilt to stand.

1 **7.2 Utility & Mail Delivery Easements.**

2 In addition to any specific easements shown on the Plat, a blanket easement is
3 created upon, across, over and under the Common Area for ingress, egress, installation,
4 replacing, repairing and maintaining all utility and service lines and systems, including
5 but not limited to water, sewer, gas, telephone, electricity, television cable or
6 communications lines and systems, etc. By virtue of this easement, it shall be expressly
7 permissible for the providing utility or service company to install and maintain facilities
8 and equipment on the Common Areas and to affix and maintain wire, circuits and
9 conduits on, in, and under the walls of Common Areas. Notwithstanding anything to
10 the contrary contained in this Section, no sewers, electrical lines, water lines, or other
11 utilities or service lines may be installed or relocated on the Properties except as initially
12 designed and installed by the developer or subsequently approved by the Board. All
13 utility lines must be underground or otherwise obscured from view. This easement
14 shall in no way affect any other recorded easements on the Properties. In no event
15 shall any portion of the above-mentioned easements for utilities be construed to
16 authorize the placing or installing of sewers, electrical lines, water lines or other utilities
17 under any permanent building or structure constructed on the Properties. This
18 easement shall be limited to improvements as originally constructed. In addition, there
19 shall be an access easement for the delivery and collection of the U.S. Mail.

20 **7.3 Pedestrian/Utility Easement.**

21 If portions of the Lots are encumbered by a utility easement as shown on the Plat for
22 the installation and placement of utilities, then by accepting a deed to any Lot, the
23 Owner acknowledges and consents to that easement. Those portions of the Lots
24 subject to a utility easement shall also be subject to a pedestrian easement for the
25 purpose of providing access to the pools and parks located in the Common Area, and
26 for the maintenance of landscaping. Construction is prohibited on any utility and
27 pedestrian easement. It is the responsibility of each pertinent Owner to landscape and
28 maintain any utility easement on his or her Lot.

29 **7.4 Common Walls.**

30 The rights and duties of Owners with respect to common walls or fences shall be as
31 follows:

32 7.4.1 Each wall, including patio walls and fences, which is constructed as a
33 part of the original construction of the Dwelling Unit, any part of which is placed on,
34 adjacent to, or over the dividing line between separate Dwelling Units, shall constitute a
35 common wall. Each Owner consents to the use and construction of these common walls
36 and acknowledges that portions of the Properties may contain common walls. With
37 respect to any common wall, each of the adjoining Dwelling Unit Owners shall assume
38 the burden of and be entitled to the benefits recited in this Section. To the extent not

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1 inconsistent with this Section, the general rules of law regarding common walls shall
2 apply.

3 7.4.2 The Owners of contiguous Dwelling Units who have a common wall
4 shall have reciprocal easements for support and an equal right to use such wall
5 provided that such use by one Owner does not interfere with the use and enjoyment by
6 the other Owner.

7 7.4.3 Unless other provisions of this Section are applicable, the costs of
8 reasonable repair and maintenance of a common wall shall be shared equally by the
9 Owners who make use of the common wall.

10 7.4.4 In the event any common wall is damaged or destroyed through the
11 act of one adjoining Owner, any of his or her guests, agents or family members so as to
12 deprive the other Owner of the full use and enjoyment of such wall, then the first of
13 such Owners shall proceed to rebuild and repair the same to as good condition as
14 formerly without cost to the other Owner.

15 7.4.5 In the event any common wall is damaged or destroyed by some cause
16 other than the act of one of the adjoining Owners, his or her agents, guests or family
17 (including ordinary wear and tear and deterioration from lapse of time), then in such
18 event, both such adjoining Owners shall proceed to rebuild or repair the same to as
19 good condition as formerly at their joint and equal expense.

20 7.4.6 Notwithstanding anything to the contrary contained in this Section,
21 there shall be no impairment of the structural integrity of any common wall without
22 prior consent of the Board. In addition to meeting the other requirements of these
23 Restrictions and of any building code or similar regulations or ordinances, any Owner
24 proposing to modify, make additions to or rebuild his or her Dwelling Unit in any
25 manner which requires the extension or other alteration of any common wall shall first
26 obtain the written consent of the Board which shall consider, in its discretion, the
27 adjoining Owner's preference concerning the proposed modification, extension or
28 alteration of the common wall.

29 7.4.7 Unless otherwise agreed in writing by the disputants, any dispute
30 arising concerning a common wall or common carport post shall be submitted to the
31 Board under rules set forth by the Board. The Board may decide the matter or submit
32 the dispute to binding arbitration. In either event, the decision shall be binding on the
33 disputants.

34 **7.5 Drainage Easements.**

35 Drainage easements on any Lot, as shown on the Plat, exist to convey stormwater.
36 They are for the exclusive use of Pima County for any necessary maintenance work and
37 have been left in as natural a state as possible. The pertinent Lot Owner shall be
38 responsible for maintaining any drainage easement on his or her property so it presents

1 a neat appearance, is free of trash and other debris and does not impede the natural
2 flow of the drainage.

3 **ARTICLE 8**
4 **ARCHITECTURAL CONTROLS**

5 **8.1 Review of Proposed Exterior Changes.**

6 The following exterior changes (subsequently referred to as "Architectural
7 Improvements") must first be submitted to and approved in writing by the Board:

8 8.1.1 Any structural alteration, addition or change (including color) to the
9 exterior of a Dwelling Unit or an existing structure;

10 8.1.2 Any construction of an improvement (including but not limited to any
11 building, fence, wall, driveway or other surfaced area), proposed to be made, placed or
12 constructed upon any Lot (except by the Association upon the Common Area).

13 8.1.3 Any change in the final grade of any Lot; and

14 8.1.4 Any major changes in landscaping (except within patios enclosed by
15 walls) including but not limited to the planting or removal of trees, removal of specimen
16 cacti or shrubs; the use of decorative boulders, stones and rock ground cover; and the
17 installation of walls or berms.

18 **8.2 Requirements for Review.**

19 In order to facilitate the Board's review of proposed Architectural Improvements, the
20 Board may require the submittal of plans and specifications showing the nature, design,
21 kind, quality, shape, height, materials, color scheme and location of the proposed
22 Architectural Improvement. In addition to any Rules governing the review of
23 Architectural Improvements, the Board may adopt under the authority of Section 2.6 of
24 this Declaration Rules for the design of Architectural Improvements, which shall at a
25 minimum adhere to the following parameters:

26 8.2.1 Setbacks.

27 No garage, building, addition, or other structure, such as a fence, wall, entrance
28 feature, or hedge, shall be built or installed between the existing 50-foot or 55-foot
29 building setback lines as shown on the Plat and the exterior property lines along
30 Campbell Avenue and Avenida de Posada, respectively.

31 8.2.2 Residences.

1 Only a one-story, one-family home shall be allowed on each Lot, with the exception of
2 the residences built by the original developer at 2741 E. Avenida de Pueblo and 6231 N.
3 Campbell Avenue.

4 8.2.3 Outbuildings.

5 Secondary or temporary structures of any sort are prohibited, except for existing
6 freestanding garages built by the original developer.

7 8.2.4 Patio Walls.

8 When patio walls are closer than thirty (30) feet to the front property line, they shall
9 not be more than four (4) feet high.

10 8.2.5 Applicable Building Codes.

11 It is the responsibility of the Lot Owner to insure that any remodeling, construction or
12 reconstruction approved by the Board complies with all applicable county, state and
13 federal building codes and that necessary permits are obtained.

14 **8.3 Standard of Review.**

15 The Board shall exercise its best judgment to the end that all Dwelling Units and
16 Architectural Improvements on lands located within the Properties conform to and
17 harmonize with the existing surroundings and structures. Decisions of the Board in this
18 regard shall be binding and conclusive.

19 **8.4 Procedures.**

20 The Board shall approve or disapprove in writing all plans within thirty (30) days after
21 the first regularly-scheduled meeting of the Board following submission and issuance by
22 the Association of a receipt for the plans. The Board may establish rules amplifying or
23 supplementing these procedures. The Board shall not be bound by previous decisions
24 or interpretations of its standards. Any consent or approval of a prior set of plans and
25 specifications shall not preclude disapproval of a subsequent identical or similar set of
26 plans and specifications.

27 **8.5 Vote.**

28 A majority vote of the Board at a meeting at which a quorum is present is required to
29 approve a proposed Architectural Improvement.

30 **8.6 Liability.**

31 Although the Board shall have the right to reject plans and specifications for reasons
32 which may include their failure to comply with zoning or building ordinances or other
33 governmental regulations or restrictions, or on the basis that such plans and

1 specifications are defective or not prepared in accordance with sound engineering
2 practices, the approval of plans and specifications shall not constitute a representation,
3 warranty or guarantee that such plans and specifications comply with proper
4 engineering or design principles, with zoning or building ordinances or with other
5 governmental regulations or restrictions. By approving plans and specifications, neither
6 the Board nor its members assumes any liability or responsibility for the approval, or for
7 any defect in the structure constructed from such plans and specifications.

8 The Board and its members shall not be liable in damages or otherwise to
9 any person submitting requests or plans for approval, or to any Owner of land subject
10 to this Declaration, by reason of any action, mistake in judgment, negligence, failure to
11 act, approval, disapproval or failure to approve or disapprove with respect to any
12 matter within their jurisdiction. Any Owner acquiring title to any Lot waives his or her
13 claim for damages or other relief arising under the architectural review process
14 established under this Declaration or by the Board.

15 **8.7 Variances.**

16 The Board may grant reasonable variances or adjustments from any Restrictions
17 imposed by this Article or Article 9 in order to overcome practical difficulties and
18 prevent unnecessary hardships arising by reason of the application of those
19 Restrictions.

20 **8.8 Nonconforming Architectural Improvements.**

21 Architectural Improvements which are not approved by the Board, or Architectural
22 Improvements which do not conform to the plans and construction schedule approved
23 by the Board are a violation of this Declaration and are subject to enforcement in the
24 manner provided in Article 10.

25 **8.9 Landscaping.**

26 The Board shall determine if the landscaping or lack of landscaping on any Lot needs
27 to be modified to maintain harmony with the standard set in the community. The
28 Board shall notify an Owner of any needed modification. Any non-compliance by an
29 Owner with the directive of the Board shall be subject to the enforcement provisions of
30 Article 10.

31 **8.10 Inspection.**

32 At any reasonable time and without being deemed guilty of trespass, any member or
33 agent of the Board may enter on any Lot, after reasonable notice to the Owner of the
34 Lot, in order to inspect the exterior improvements constructed or being constructed on
35 the Lot to insure they are in compliance with the Rules, plans and specifications
36 approved by the Board.

1 **ARTICLE 9**
2 **USES AND RESTRICTIONS**

3 All the Properties are subject to the following limitations and restrictions (as
4 well as the others contained in or authorized by this Declaration):

5 **9.1 Animals.**

6 No animals except domesticated pets belonging to the Owner or resident may be kept
7 or maintained on the Properties. The keeping of pets is subject to the following
8 limitations:

9 9.1.1 No Commercial Purpose.

10 No pets may be kept, bred or maintained for any commercial purpose.

11 9.1.2 Number and Type of Pets.

12 Each Owner or resident may keep no more than two (2) dogs or two (2) cats, or one
13 (1) of each on a Lot.

14 9.1.3 Control of Pets Required.

15 All animals must be controlled at all times so that they will not interfere with any
16 Owner's access to and use of the Common Area.

17 9.1.4 Clean-up Required.

18 The Owner of a Lot where any pet is kept shall be required to remove immediately,
19 and dispose of hygienically, any animal waste produced by the pet and left on his or her
20 or any other Owner's Lot or on any part of the Common Area.

21 9.1.5 Restrictions on Nuisance.

22 No animal shall be allowed to become a nuisance. The Board may determine, in its
23 sole and absolute discretion, whether, for the purposes of this Section a particular
24 animal is a nuisance. The Board may require the removal from the Properties of any
25 pet determined to be a nuisance.

26 **9.2 Business Activities.**

27 All Lots shall be used for single-family residential purposes only, and no other
28 structures except single-family residential units shall be placed or maintained on a Lot.
29 However, the following applies with respect to business activities within the Properties:

30 9.2.1 Criteria for Home Business.

1 No trade or business may be conducted in or from any Dwelling Unit, except that an
2 Owner, tenant or other occupant residing in any Dwelling Unit may conduct business
3 activities within the Lot so long as (1) the existence or operation of the business activity
4 is not apparent or detectable by sight, sound or smell from outside the Dwelling Unit;
5 (2) the business activity conforms to all zoning requirements for the Properties; (3) the
6 business activity does not involve the presence of any person who does not reside in
7 the Dwelling Unit, or door-to-door solicitation of residents of the Properties; (4) the
8 existence or operation of the business does not increase that Lot's use of Common Area
9 facilities; (5) the existence or operation of the business does not require customers or
10 delivery trucks to visit the Dwelling Unit; and (6) the business activity does not
11 constitute a nuisance, as may be determined in the sole discretion of the Board.

12 **9.2.2 Pertinent Definitions.**

13 The terms "business" and "trade" as used in this provision shall be construed to have
14 their ordinary, generally-accepted meanings, and shall include, without limitation, any
15 occupation, work or activity undertaken on an ongoing basis which involves the
16 provision of goods or services to persons other than the provider's family and for which
17 the provider receives a fee, compensation or other form of consideration, regardless of
18 whether: (1) such activity is engaged in full or part-time; (2) such activity is intended
19 to or does generate a profit; or (3) a license is required for the activity.

20 **9.2.3 Yard Sales or Garage Sales.**

21 Yard sales, garage sales, and estate sales are prohibited, except that such sales may
22 be held in connection with the sale of a Dwelling Unit.

23 **9.3 Leases.**

24 **9.3.1 Obligations of Tenants.**

25 All provisions of the Governing Documents which govern the conduct of Owners and
26 which provide for sanctions against Owners shall also apply to all tenants of any
27 Dwelling Unit. The Owner shall provide the tenant with copies of the Governing
28 Documents. In the event the Owner fails to do so, the Association may provide copies
29 to the tenant and charge the Owner the cost of doing so.

30 **9.3.2 Requirements for Leases.**

31 All leases shall be in writing and shall specifically provide:

32 **9.3.2.1** The lease is subject in all respects to the provisions of the
33 Governing Documents.

34 **9.3.2.2** The failure of the tenant to comply with the terms and conditions
35 of the Governing Documents constitutes a material default of the lease, and the Owner

1 shall be entitled to reenter and retake possession of the premises under the provisions
2 of the Arizona Landlord Tenant Act, A.R.S. Sections 33-1301 and following.

3 **9.3.3 Notification to Association.**

4 Within fifteen (15) days of lease inception, an Owner leasing his or her Unit shall give
5 the Association, in writing, the name of the tenant of the Unit and such other
6 information as the Association may reasonably require.

7 **9.3.4 Enforcement of Leasing Restrictions.**

8 All leases which do not contain the provisions set forth in Section 9.3.2 shall be
9 deemed null and void at the option of the Board. An Owner shall provide a copy of an
10 operative lease within ten (10) days of the Board's written request for one.

11 **9.4 Noise.**

12 No Owner shall engage in or permit any activity to occur on the Properties which shall
13 result in unusual, loud or obtrusive noises or sounds.

14 **9.5 Resubdivision.**

15 Neither a Lot nor any portion of the Common Area shall be re-subdivided.

16 **9.6 Rubbish, Garbage and Storage.**

17 No portion of the Properties shall be used in whole or part for the storage of
18 construction materials, rubbish or garbage of any kind, nor for the storage of anything
19 which will cause the Lot to appear unclean or unsightly or which will otherwise be
20 obnoxious. No trash, yard waste, or rubbish of any kind may be dumped or otherwise
21 discarded anywhere on the Properties. The Board shall have the sole discretion to
22 determine if any activity by an Owner, his or her family, invitees or tenants is in
23 violation of this Section.

24 **9.7 Sales of Lots.**

25 Each Owner shall promptly notify the Board of any sale or transfer of his or her Lot
26 and shall provide the Board with the name and address of the new Owner and any
27 other information as may be reasonably required by the Association. The Board may
28 charge a reasonable transfer fee to compensate the Association for changing its records
29 and providing the new Owner with copies of all Association documents.

30 **ARTICLE 10**
31 **ENFORCEMENT**

32 **10.1 Enforcement Methods.**

1 The Restrictions contained in the Governing Documents may be enforced as described
2 in this Section. The selection of a specific method of enforcement does not preclude
3 the use of any other method.

4 10.1.1 Fines and Penalties.

5 If any Owner, his or her family, or any licensee, invitee or tenant violates the
6 Governing Documents, the Board may levy a fine upon the Owner of the Dwelling Unit
7 for each violation and may suspend the right of the Owner and/or the other person
8 violating the Governing Documents to use the Common Area, under such conditions as
9 the Board may specify. Each day a violation continues after written notice to cease has
10 been mailed and/or delivered may be considered a separate violation and subject to the
11 imposition of a fine. The Board shall establish a procedure by which it imposes such
12 fines, including the right to notice and an opportunity to be heard. Any fines which
13 remain unpaid for a period of fifteen (15) days after the due date for payment shall
14 become a lien on the Owner's Lot. Overdue fines will be collected in the same manner
15 as delinquent Assessments, including the imposition of late fees and interest.

16 10.1.2 Board Action to Correct Violations.

17 If an Owner (1) fails to maintain improvements or landscaping on his or her Lot as
18 required by Section 6.1.4 above; (2) maintains nonconforming Architectural
19 Improvements; (3) conducts an offensive or obnoxious activity in violation of Section
20 9.6; or (4) violates parking restrictions contained in the Rules, the Board may, after
21 providing notice of violation as provided in the Rules, exercise its right and easement to
22 direct the Association's agents or contractors to enter upon the Owner's Lot for the
23 purpose of correcting the violations. All reasonable costs incurred by the Association to
24 bring the Lot into conformity with the Restrictions, including costs of labor, materials
25 and related administrative costs, such as attorneys' fees, shall be added to the
26 Assessment to which the Owner's Lot is subject and collected in the same manner as
27 any other Assessment.

28 10.1.3 Court Action.

29 The Association or any Member has the right to enforce, by any proceeding at law or
30 in equity, all restrictions, conditions, covenants, reservations, liens or charges imposed
31 by the provisions of this Declaration. This shall include enforcement of Rules
32 promulgated by the Association to carry out its purposes and duties under this
33 Declaration. The prevailing party in any court action shall be awarded reasonable
34 attorneys' fees and costs.

35 **10.2 Waiver.**

36 No delay or omission on the part of the Association in exercising its right to enforce
37 this Declaration shall be construed as a waiver of any breach of any of the restrictions
38 and covenants contained in this Declaration or acquiescence in any breach of this

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1 Declaration, and no right of action shall accrue against the Board, the Association or
2 any Member for their neglect or refusal to exercise their enforcement rights. The
3 failure of the Association or an Owner to take enforcement action with respect to a
4 violation of the Governing Documents shall not constitute a waiver of the right of the
5 Association or any Owner to enforce the Governing Documents in the future.

6 **10.3 Protection of Mortgagee.**

7 No breach of this Declaration shall defeat or render invalid the lien of any mortgage or
8 deed of trust made in good faith for value as to any portion of the Properties. The
9 Declaration shall be enforceable against any portion of the Properties acquired by any
10 person through foreclosure for any breach occurring after such acquisition.

11 **10.4 Notice of Violation.**

12 In the event that any Owner, his or her guests, tenants or family members are in
13 violation of any of the provisions of the Governing Documents, the Association, after
14 providing notice and an opportunity to correct the violation, has the right to record a
15 "Notice of Violation" with the Pima County Recorder's Office, stating the name of the
16 Owner, the Lot and the nature of the violation, and the Association's intent not to waive
17 any of its enforcement rights. The Notice shall remain of record until the violation is
18 corrected.

19 **10.5 No Obligation to Enforce.**

20 The Association is not obligated to take any enforcement action if the Board
21 determines, in its sole discretion, that enforcement would not be appropriate or in the
22 best interests of the Association.

23 **10.6 Cumulative Rights and Remedies.**

24 All rights and remedies of the Association under the Governing Documents or at law or
25 in equity are cumulative, and the exercise of one right or remedy shall not waive the
26 Association's right to exercise another right or remedy, including the submittal of the
27 violation and its enforcement to arbitration or mediation.

28 **10.7 Violation of Law.**

29 Every provision of this Declaration, as amended from time to time, is subject to any
30 and all applicable federal, state and local governmental rules and regulations,
31 ordinances and subdivision regulations. Any violation of any federal, state, municipal or
32 local law, ordinance or regulation pertaining to the ownership, occupation or use of the
33 Properties is declared to be a violation of the Governing Documents and subject to any
34 enforcement procedures set forth in the Governing Documents.

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**ARTICLE 11
GENERAL PROVISIONS**

11.1 Severability.

Judicial invalidation of any one of these Restrictions shall not affect any others, which shall remain in full force and effect.

11.2 Amendment.

This Declaration may be amended at any time with the approval of the Owners of a majority of the Lots as provided in Section 2.2 at any annual or special meeting called for that purpose, or by a written ballot. Any amendment to this Declaration shall be evidenced by a written document signed by the president and secretary of the Association attesting that the Owners consented to such amendment. The amendment shall become effective when filed with the Pima County Recorder's Office.

11.3 Term.

The provisions of this Declaration shall run with the land and continue and remain in full force and effect at all times and against all persons.

11.4 Binding Effect.

By acceptance of a deed or acquiring any ownership interest in any Lot, each person or entity, for himself, herself, or itself, his or her heirs, personal representatives, successors, transferees and assigns, binds himself or herself and his or her heirs, personal representatives, successors, transferees and assigns to all of the Restrictions imposed by this Declaration and any amendments. In addition, each person doing so acknowledges that this Declaration sets forth a general scheme of the Properties and evidences his or her intent that all Restrictions contained in this Declaration or subsequently promulgated by the Association shall run with the land and be binding upon all subsequent and future Owners. Furthermore, each such person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by future Owners.

11.5 Indemnification.

The Association shall indemnify to the fullest extent allowed by law every officer, director and committee member against any and all expenses, including attorneys' fees, reasonably incurred by or imposed upon any officer, director or committee member in connection with any action, suit or other proceeding (including settlement of any suit or proceeding if approved by the then Board) to which he or she may be a party by reason of being or having been an officer, director or committee member. This provision shall not be deemed to include travel expenses to attend Association meetings or legal proceedings, and shall only include reasonable actual expenses. Neither officers,

1 directors nor committee members shall be liable for any mistake of judgment, negligent
2 or otherwise, except for their own individual willful misfeasance, malfeasance,
3 misconduct or bad faith. The officers, directors and committee members shall have no
4 personal liability with respect to any contract or other commitment made by them, in
5 good faith, on behalf of the Association (except to the extent that such officers,
6 directors, or committee members may also be members of the Association), and the
7 Association shall indemnify and forever hold each such officer, director and committee
8 member free and harmless against any and all liability to others on account of any such
9 contract or commitment. Any right to indemnification provided for in this Section shall
10 not be exclusive of any other rights to which any officer, director or committee
11 member, or former officer, director or committee member may be entitled.

12 **11.6 Captions and Headings.**

13 The captions and headings of sections and articles of this Declaration are inserted for
14 convenience of reference only and in no way define, describe or limit the scope or
15 intent of this Declaration or any of its Provisions.

16 **11.7 Interpretation.**

17 Except for judicial construction, the Association has the exclusive right to construe and
18 interpret the provisions of this Declaration. In the absence of any adjudication to the
19 contrary by a court of competent jurisdiction or any ruling to the contrary in a binding
20 arbitration proceeding, the Association's construction or interpretation of the provisions
21 of the Governing Documents shall be final, conclusive and binding on all Owners.

22 The undersigned certify that the Owners of at least fifty-one percent (51%) of
23 the Lots as provided in Section 2.2 have voted to approve this Amended and Restated
24 Declaration, and that the true and correct signatures of the Owners are attached to this
25 Declaration.

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CATALINA PUEBLO ASSOCIATION

By *Jill Atlas*
President

ATTEST:

Cathy Jensen
Secretary

STATE OF ARIZONA)
County of Pima)

) SS:
)



Notary Public State of Arizona
Pima County
Susan Alvin
Expires November 18, 2005

The foregoing instrument was acknowledged before me this 21st day of April, 2003, by Jill Atlas, President, and by Cathy Jensen, Secretary, of Catalina Pueblo Association, an Arizona non-profit corporation, on behalf of the corporation.

Susan Alvin
Notary Public

My Commission expires:

Nov. 18, 2005

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