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**SECOND AMENDED AND RESTATED  
DECLARATION OF ESTABLISHMENT OF  
CONDITIONS, COVENANTS AND RESTRICTIONS FOR  
CANOA HILLS TOWN HOMES LOTS 1 THROUGH 143**

**PLEASE NOTE:** this document is annotated to compare it to the current CC&Rs for Canoa Hills Townhomes. The final version, which will be filed in the office of the Pima County Recorder, will not show the annotations.

[ANNOTATIONS ARE SHOWN IN BRACKETS THROUGHOUT THE DOCUMENT]

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**SECOND AMENDED AND RESTATED  
DECLARATION OF ESTABLISHMENT OF CONDITIONS,  
COVENANTS AND RESTRICTIONS FOR  
CANOA HILLS TOWNHOMES**

THIS SECOND AMENDED AND RESTATED DECLARATION OF ESTABLISHMENT OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR CANOA HILLS TOWNHOMES (this “Declaration”) is made this \_\_\_\_ day of \_\_\_\_\_, 2022, by the owners (the “Owners”) of the real property described as:

Lots 1 through 64 of Canoa Hills Townhomes, a Pima County subdivision, as shown in the Plat of Record in Book 39 at page 78 of maps and plats on record in the Pima County Recorder’s Office; and

Lots 65 through 143 and Common Areas “A” and “B” of Canoa Hills Townhomes, a Pima County subdivision, as shown in the Plat of Record in Book 41 at page 56 of maps and plats on record in the Pima County Recorder’s Office, being a resubdivision of a portion of Lots 1 through 130, Canoa Hills Townhomes recorded Book 39 Page 78 of Maps and Plats, Pima County Records.

(together, the “Properties”).

**RECITALS [NEW]**

**WHEREAS**, Declarant executed the *First Amended and Restated Declaration of Establishment of Conditions, Covenants, and Restrictions for Canoa Hills Townhomes Lots 1 through 64 and Common Areas A and B*, recorded on August 18, 1988, in Docket 8353, Pages 108-163, office of the Pima County Recorder; and

**WHEREAS**, Declarant executed the *First Amended and Restated Declaration of Establishment of Conditions, Covenants, and Restrictions for Canoa Hills Townhomes Lots 65 through 143 and Common Areas A and B*, recorded on August 18, 1988, in Docket 8353, Pages 164-219, office of the Pima County Recorder; and

**WHEREAS**, the aforesaid First Amended and Restated Declarations for Canoa Hills Townhomes Lots 1 through 143 completely restated, amended, superseded and replaced any previous declarations or amendments covering the Properties except the Declaration of Establishment of Conditions, Covenants and Restrictions recorded on June 9, 1986, in Docket 7801 at pages 716-718, office of the Pima County Recorder, which remains in full force and effect and pertains to membership in Green Valley Recreation, Inc. (the “GVR Declaration”).

**WHEREAS**, Declarant executed a Supplemental Declaration for Lots 1-64, Canoa Hills Townhomes. Recorded on March 17, 1989, in Docket 8495 at pages 1465-1471, office of the Pima County Recorder; and

1           **WHEREAS**, Declarant executed a Supplemental Declaration for Lots 65-143, Canoa Hills  
2 Townhomes. Recorded on March 20, 1989, in Docket 8497 at pages 1655-1663, office of the Pima  
3 County Recorder; and

4           **WHEREAS**, the Board of Directors of Canoa Hills Townhomes, Inc. executed the Restated  
5 Declaration of Establishment of Conditions, Covenants and Restrictions for Canoa Hills Townhomes Lots  
6 1-143 to combined the identical Amended and Restated Declarations and Supplemental Declarations into  
7 one document (the "Original Declaration"), recorded on November 10, 1992, office of the Pima County  
8 Recorder; and

9  
10           **WHEREAS**, the Owners approved an Amendment to the Original Declaration, recorded on April 8,  
11 2021, Sequence 20210980665, office of the Pima County Recorder; and

12  
13           **WHEREAS**, this Declaration amends and restates the Original Declaration and amendment thereto  
14 and also is intended to supersede any prior declarations and amendments (except the GVR Declaration)  
15 that may remain in effect; and

16  
17           **WHEREAS**, at least 67% of the votes cast by Owners in an election duly called for that purpose at  
18 which a quorum was present have approved the adoption of this Declaration.

19  
20           **NOW THEREFORE**, the Owners hereby declare that the Properties are and shall be held, conveyed,  
21 encumbered, leased, and used subject to the following covenants, conditions, uses, restrictions,  
22 limitations, obligations, easements, equitable servitudes, charges and liens (hereinafter collectively  
23 referred to as the "Restrictions"), all of which are for the purpose of enhancing and protecting the value,  
24 desirability and attractiveness of the Properties. The Restrictions set forth herein shall run with the  
25 Properties, shall be binding upon all persons having or acquiring any right, title or interest therein, and  
26 shall inure to the benefit of, be binding upon and enforceable by all Owners, the Association and their  
27 successors and assigns in interest.

28  
29   **ARTICLE I**  
30   **DEFINITIONS**

31  
32           SECTION 1:   "Association" shall mean Canoa Hills Townhomes, Inc., its successors and  
33 assigns.

34  
35           SECTION 2:   "Common Areas" shall mean the real property designated on the Plat as  
36 Common Areas A (streets and sidewalks) and B (planted and unpaved areas).

37  
38           SECTION 3:   "Declarant" shall mean Lawyers Title of Arizona, an. Arizona Corporation,  
39 as Trustee under Trust 6486-T, and its successors or assigns.

40  
41           SECTION 4:   "Declaration" shall mean this Declaration as may be amended from time  
42 to time.

43  
44           SECTION 5:   "Dwelling Unit" shall mean the real property and improvements placed  
45 upon or within the boundary of any Lot.

1           SECTION 6: "Lot" shall mean the following numbered plots of land shown on the Plat  
2 (without regard to whether a structure has been-constructed thereon), 1 through 143 and  
3 including any improvements constructed or under construction thereon, if any, and including any  
4 new lot created by combining two or more adjacent Lots. When two or more Lots are purchased,  
5 combined and used as one lot with the approval of the Architectural Committee, the combined  
6 Lots shall be considered one lot for all purposes including voting rights and assessments.

7  
8           SECTION 7: "Member" shall mean every Person who holds membership in the  
9 Association.

10  
11           SECTION 8: "Mortgage" shall include any consensual monetary encumbrance to a Lot,  
12 evidenced by an instrument in recordable form and shall specifically include both mortgages and  
13 deeds of trust. The term "Mortgagee" shall include a beneficiary under a Deed of Trust, and the  
14 term "First Mortgagee" shall mean the holder of any Mortgage under which the interest of any  
15 Owner of a Lot is encumbered and which Mortgage has first and paramount priority, subject only  
16 to the lien of general or ad valorem taxes and assessments.

17  
18           SECTION 9: "Owner" shall mean the record holder, whether one or more Persons, of  
19 the Fee Simple title to any Lot which is part of the Properties, including a buyer under a contract  
20 for the conveyance of real estate pursuant to Title 33, Arizona Revised Statutes, but excluding  
21 Persons holding an interest merely as security for the performance of an obligation, and  
22 excluding buyers under sales agreements or deposit receipt and agreements.

23  
24           SECTION 10: "Person" shall include a corporation, company, partnership, firm,  
25 association or society, as well as a natural person.

26  
27           SECTION 11: "Plat" shall mean the maps or plats of record in the office of the. County  
28 Recorder of Pima County, Arizona, in Book 39 of maps and Plats at Page 78 and Book 41 of Maps  
29 and Plats at Page 56 thereof, and any amendment thereto or resubdivision thereof.

30           SECTION 12: "Properties" shall mean that certain real property described in the Plat.

31  
32  
33                                   **ARTICLE II**  
34                                   **COMMON AREAS**

35  
36           SECTION 1: Ownership vested in Association.

37           Ownership of the Common Areas is hereby vested in the Association, subject to the  
38 easements addressed herein for purposes deemed necessary for the full use and enjoyment of  
39 the Properties. Common Areas are intended for use as public utility easements, drainageways,  
40 streets, open areas, and any recreational centers or other facilities, if any, and are for the  
41 common use and enjoyment of the Members of the Association and their invitees.

1           SECTION 2:    Conveyance of Owner's Rights.

2           Any sale, lease or sublease of a Lot by its Owner, or transfer of the same by operation of  
3 law, shall serve to transfer, convey, lease or sublease to the same extent all of said Owner's right  
4 to use and enjoy the Common Areas.  
5

6           SECTION 3:    Conveyance of Easements and Rights-of-Way.

7           Notwithstanding any other provision in this Declaration, the Association through its Board  
8 of Directors shall at all times have the right to grant and convey to any person or entity easements  
9 or rights-of-way, in, on, over, or under any Common Areas for the purpose of constructing,  
10 erecting, operating or maintaining thereon, therein and thereunder: roads, streets, walks,  
11 pathways, driveways, temporary overhead or permanent underground lines, cables, wires,  
12 conduits, or other, devices for the transmission of electricity, for lighting, heating, power,  
13 telephone, cable T.V., and other purposes, sewers, storm drains, and pipes, drainage easements,  
14 water systems, water, heating and gas lines or pipes, and any similar public or quasi-public  
15 improvements or facilities.  
16

17                                       **ARTICLE IV**  
18                                       **EASEMENTS, LICENSES AND ENCROACHMENTS**

19  
20           SECTION 1:    Easement for Encroachments.

21           Each Lot and the property included in the Common Areas shall be subject to an easement  
22 for encroachments created or necessary to be created by activities conducted and conditions  
23 existing upon the Properties, including, construction, settling and overhangs, as determined by  
24 the Association. A valid easement for said encroachments and for the maintenance of same, so  
25 long as they stand, shall and does exist.  
26

27           SECTION 2:    Easement for Enjoyment.

28           There is hereby created a blanket, nonexclusive easement upon, across, over and under  
29 all of the Common Areas for the use and enjoyment of all Members, their guests, invitees and  
30 licensees, subject to reasonable regulations of the Association, and for ingress, egress,  
31 installation, replacement, operation, repair and maintenance of all utilities, including but not  
32 limited to, water, sewer, gas, telephone, electricity, television antennae system, and any  
33 equipment or facilities for the installation of a telecommunications system.  
34

35           SECTION 3:    Drainage Easement.

36           A drainage easement is hereby created upon, across, over and under each Lot for the  
37 benefit of all other Lots.  
38

39           SECTION 4:    Utility Easements.

40           The Association reserves the right to grant a perpetual exclusive easement and right-of-  
41 way across and upon all Common Areas for the purpose of construction, maintenance, operation,  
42 repair, enlargements, alterations and improvements for a telecommunications system, security  
43 system or both, including structures, equipment and materials necessary for the operation of a



1 telecommunications or security system and acknowledges any duly recorded easement as  
2 recorded in the Pima County Recorder's office.

3  
4 SECTION 5: Permissible Encroachments.

5 Each Owner hereby acknowledges and agrees that Dwelling Units, or privately-owned  
6 patio walls, improvements and fixtures which are constructed on the Properties may from time  
7 to time encroach upon the Common Areas or other Lots in the Properties. Such encroachments  
8 are permissible and each Owner, by acceptance of the Deed to his Lot consents thereto and  
9 agrees that title to the land lying within such encroachments, and regardless of the platted lot  
10 line of the Lot upon which such structure or other work of construction has been constructed, is  
11 conveyed to the Owner of the Lot upon which the majority of the encroaching structure is built.

12  
13 **ARTICLE V**  
14 **THE ASSOCIATION**

15  
16 SECTION 1: Responsibilities of the Association.

17 The Association shall be responsible for the protection, improvement, alteration,  
18 maintenance, repair, replacement, administration, management and operation of the Common  
19 Areas. The Association shall, to the extent applicable, be responsible for:

20  
21 A. the maintenance of the common streets, roads, and sidewalks located  
22 within the Common Areas, and the entrance ways off of Camino del Sol and Camino Pato  
23 (from Canoa Ridge) **[REVISED]**;

24  
25 B. the maintenance of the landscaped portions of the Common Areas;

26  
27 C. the operation, maintenance (including insurance) and, if necessary, the  
28 replacement, restoration or reconstruction of street signs, walls, fences, and other  
29 improvements originally constructed by Fairfield on the Common Areas;

30  
31 D. the payment of real estate taxes, assessments and other charges on those  
32 portions of the Common Areas owned by the Association;

33  
34 E. the insurance of all improvements which the Association is obligated to  
35 maintain against damage by casualty with such companies and with such limits as the  
36 Association deems appropriate;

37  
38 F. the hiring, firing, supervision and paying of employees and independent  
39 contractors, including, but not limited to, watchmen, security personnel to operate the  
40 restricted entry system (if any), workmen, landscapers, attorneys, accountants, architects  
41 and contractors to carry out the obligations set forth herein;

42  
43 G. the maintenance of such liability insurance as the Association deems  
44 necessary to protect the Members and the Board of Directors of the Association from

1 liability for conditions existing and events occurring on or about the Common Areas  
2 including, but not limited to, errors and omissions insurance for the Board of Directors of  
3 the Association;

4  
5 H. the maintenance of workmen's compensation insurance for the  
6 employees, if any, of the Association;

7  
8 I. the purchase of all goods, supplies, labor and services reasonably  
9 necessary for the performance of the obligations set forth herein;

10  
11 J. the enforcement, in its sole discretion, of the provisions of this Declaration,  
12 including, but not limited to, the Use Restrictions provided for in Article XIII hereof;

13  
14 K. the establishment and maintenance of such cash reserves as the  
15 Association in its sole discretion deems reasonably necessary for the maintenance and  
16 repair of the improvements for which it is responsible and for unforeseen contingencies;

17  
18 L. the provision of payment for all utility services for Common Area facilities;  
19 and

20  
21 M. the entering into of such agreements and the taking of such actions as are  
22 reasonably necessary and convenient for the accomplishment of the obligations set forth  
23 above and the operation and maintenance of the Common Areas and facilities located  
24 thereon.

25  
26 SECTION 2: Bylaws, Articles of Incorporation, and Board of Directors.

27 The manner in which the Association carries out its responsibilities shall be controlled by  
28 the provisions of its Bylaws and Articles of Incorporation and the provisions thereof.

29  
30 The affairs of the Association shall be managed by a Board of Directors elected by the  
31 membership.

32  
33 A. The Board shall have the responsibility and authority to adopt and publish  
34 rules and regulations governing the use and the personal conduct of the members and  
35 guests on the Common Areas, and to establish penalties for the infraction thereof.

36  
37 B. Exercise for the Association all powers, duties and authority vested in or  
38 delegated to the Association and not reserved to the membership by other provisions of  
39 this Declaration.

40  
41 C. Carry out the business of the Association and its routine administration.

42  
43 D. Enforce the Restrictions and rules and regulations affecting the  
44 membership of the Association.

1 **ARTICLE VI**  
2 **MEMBERSHIP**

3  
4 Every person who is an Owner of a Lot shall be a Member of the Association. Membership  
5 shall be appurtenant to and may not be separated from ownership of a Lot. Only persons who  
6 own Lots under recorded instruments, including deeds and contracts for sale, shall be members  
7 of the Association.  
8

9 **ARTICLE VII**  
10 **VOTING RIGHTS**

11  
12 There shall be one vote for each Lot, which vote may be exercised by the Owner or  
13 Owners of the Lot. When more than one person or entity holds an interest in any Lot, the vote  
14 for that Lot shall be exercised as agreed upon by the Owners, but in no event shall more than  
15 one vote be cast for any one Lot. If any Owner casts a vote on a particular matter, it will  
16 conclusively be presumed for all purposes that the person casting the vote was acting with the  
17 authority and consent of all of the Owners of the Lot, unless an objection by any other Owner is  
18 made at the time the vote is cast. If the owners of a Lot cannot agree on how to cast any vote,  
19 their vote will be prorated among them in accordance with their percentages of ownership.  
20

21 **ARTICLE VIII**  
22 **ASSESSMENTS**

23  
24 SECTION 1: Creation of the Lien and Personal Obligation to Pay Assessments.

25 **[REVISED]**

26 Each Owner, upon the recordation of a deed to any Lot, whether or not it shall be so  
27 stated in such deed, agrees and covenants to pay to the Association: (A) annual assessments or  
28 charges, and (B) special assessments. These assessments shall be established and collected as  
29 provided in this Article. All assessments levied against a Lot, together with interest from the date  
30 of delinquency until paid, late fees, costs and reasonable attorneys' fees, shall be charged against  
31 the Lot and shall be a continuing lien upon the Lot. Such lien shall be deemed to have attached  
32 as of the date of recordation of the Original Declaration, and shall be senior to all matters other  
33 than tax liens for real property taxes on the Lot, assessments on the Lot in favor of any municipal  
34 or other governmental assessing unit, reservations in patents, and the lien of any First Mortgage.  
35 Upon the voluntary conveyance of a Lot, the selling Owner and the buyer shall be and remain  
36 jointly and severally liable for the payment of all assessments levied against the Lot prior to the  
37 closing of said sale and unpaid at the time of the conveyance, subject to the provisions of this  
38 Article.  
39

40 Delinquent assessments, together with interest, late fees, costs, and reasonable  
41 attorneys' fees, also shall be the personal obligation of the person who was the Owner of such  
42 Lot at the time when the assessment was levied, and shall bind his/her heirs, devisees, personal  
43 representatives and assigns. Except as otherwise provided herein, the personal obligation for  
44 delinquent assessments shall not pass to successors in title unless expressly assumed by them.

1  
2           SECTION 2: Amount of Assessment.

3           The Board of Directors of the Association shall each year estimate the cost of managing,  
4 maintaining, operating and repairing any and all properties owned by the Association and the  
5 cost of such other activities and undertakings as are consonant with the purposes of the  
6 Association for the ensuing fiscal year. The assessment to be charged to each Owner for the  
7 Association's fiscal year shall be the amount established by the Board of Directors, who shall  
8 determine the time and frequency that said assessments are to be paid for each fiscal year.  
9

10           SECTION 3: Annual Assessment.

11           Each Owner shall pay to the Association within thirty (30) days from the receipt of notice  
12 of assessment and invoice, a sum equal to that Owner's pro rata share of actual Association costs  
13 and expenses incurred in the performance of its obligations with respect to the Common Areas,  
14 including, but not limited to, the cost of all water used thereon, the cost of gas, electricity and  
15 other utilities serving the Common Areas, all property taxes assessed, landscaping and  
16 maintenance costs related thereto; and the Association's legal and accounting costs, expenses of  
17 repair and cleaning, management fees due to outside management personnel or incurred by  
18 reason of services rendered in management of the Properties, expenses for the charges of a fire  
19 company, insurance premiums, reserve accounts, if established by the Board of Directors for  
20 repairs and maintenance, and for other necessary expenses. Each Owner's pro rata share of such  
21 expenses shall be determined by dividing the number of Lots he/she owns by the total number  
22 of Lots.  
23

24           SECTION 4: Special Assessments.

25           The Board of Directors shall determine and levy special assessments, in the same manner  
26 as set forth in Section 3 above, in the event that unexpected expenses arise, or hazards require  
27 repair or replacement of facilities in or on the Common Areas and the funds obtained through  
28 the annual assessments are insufficient therefor.  
29

30           SECTION 5: Effect of Non-Payment of Assessments. [REVISED]

31           Payment of annual and special assessments shall become delinquent 15 days after the  
32 due date. All delinquent assessments shall bear interest, from the date of default until paid at  
33 the rate of 10% or two percent (2%) per annum above the prime rate of interest customarily  
34 charged by the Association's banking institution for short-term loans to its most creditworthy  
35 customers as of the date of default or judgment, whichever interest rate is higher. The obligation  
36 of every Owner to pay assessments levied by the Association is absolute and shall not be affected  
37 by any claim the Owner may have, or believes he/she has, against any other Person, including  
38 the Association, nor shall such obligation be affected by any irregularity in the manner or timing  
39 in which notice of assessment is given. Moreover, the sale of a Lot encumbered by the lien of a  
40 delinquent assessment shall not relieve the Owner thereof from the obligation to pay the  
41 prorated share of assessments for any portion of a year which he/she owned said Lot.  
42

43           The lien against any Lot may be foreclosed in the same manner as a mortgage and the  
44 Association may record a Notice and Claim of Lien in the event of any assessment remaining

1 delinquent more than 15 days after the due date. Said Notice and Claim of Lien may be described  
2 by a different title, but shall be recorded in the office of the Pima County Recorder and may set  
3 forth the amount of the delinquent assessment and any other matter deemed appropriate by  
4 the Association.

5  
6 SECTION 6: Attorneys' Fees.

7 In the event it shall become necessary for the Association to employ an attorney to collect  
8 a delinquent assessment, whether by foreclosure of the lien created herein or otherwise, the  
9 delinquent Owner shall pay, in addition to the assessment and interest accrued thereon, such  
10 reasonable attorneys' fees and all other costs and expenses incurred by the Association as a result  
11 of such delinquency.

12  
13 SECTION 7: Subordination of Lien to Mortgagee.

14 The lien for assessments provided for herein, including without limitation any fees, costs,  
15 late charges, or interest which may be levied by the Association in connection with unpaid  
16 assessments, shall be subordinate to the lien of any First Mortgage. Sale or transfer of any Lot  
17 pursuant to foreclosure of any such First Mortgage or any proceeding in lieu thereof, including  
18 deed in lieu of foreclosure, or cancellation or forfeiture of such executory land sales contract,  
19 shall extinguish the lien of Assessments or charges which became due prior to any such sale or  
20 transfer, or foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure,  
21 or cancellation or forfeiture of any such executory land sales contract; provided, however, that  
22 any such delinquent Assessments or charges, including interest, late charges, costs, and  
23 reasonable attorneys' fees, which are extinguished as provided herein, may be reallocated and  
24 assessed to all Lots as a common expense or may be expressly assumed by a Successor Owner.  
25 No such sale, transfer, foreclosure, or any proceeding in lieu thereof, including deed in lieu of  
26 foreclosure, nor cancellation or forfeiture of such executory land sales contract, shall relieve any  
27 Owner of a Lot from liability for any Assessments or charges thereafter becoming due, nor from  
28 the lien thereof. In the event of foreclosure of a First Mortgage or the taking of a deed in lieu  
29 thereof, such First Mortgagee shall not be liable for unpaid Assessments or other charges which  
30 accrued prior to the acquisition of title to the Lot in question by such First Mortgagee.

31  
32 SECTION 8: Capital Reserve Fee. [NEW]

33 Except as otherwise set forth in this Section 8, all buyers of Lots shall pay a non-refundable  
34 Capital Reserve Fee at the time of voluntary conveyance of ownership rights in the Lot (including  
35 buyers under agreements for sale). The Capital Reserve Fee shall be secured by the lien for  
36 Assessments as set forth in Section 1 and shall burden the Lot after conveyance of ownership rights  
37 in the Lot. The buyer of the Lot shall also be personally obligated to pay the Capital Reserve Fee.  
38 Unless otherwise directed by the conveyer [the seller] and conveyee [the buyer] of a Lot, the  
39 Association shall collect the Capital Reserve Fee owed by the conveyee through the close of escrow  
40 if the Association is notified of the conveyance and if a title company is used to facilitate a particular  
41 conveyance of a Lot. The conveyer and conveyee may allocate the payment of the Capital Reserve  
42 Fee through the escrow process between the conveyer and conveyee in any manner. The failure of  
43 the Association to be notified of a conveyance shall not affect the obligation of the new Owner to

1 pay the entire Capital Reserve Fee and shall not impact the lien against the Lot for the Capital  
2 Reserve Fee.

3  
4 No Capital Reserve Fee shall be payable with respect to: (A) the transfer or conveyance  
5 of a Lot by devise or intestate succession; (B) a transfer or conveyance of a Lot for estate planning  
6 purposes, including conveyances for only nominal consideration to the existing Lot Owner's  
7 family member(s); (C) a transfer or conveyance to a corporation, partnership or other entity in  
8 which the conveyor owns a majority interest unless the Board determines, in its sole discretion,  
9 that a material purpose of the transfer or conveyance was to avoid payment of the Capital  
10 Reserve Fee, in which event a Capital Reserve Fee shall be due and payable with respect to such  
11 transfer or conveyance; (D) the transfer or conveyance of a Lot to a Person who already owns a  
12 Lot(s) in Canoa Hills Townhomes; (E) the transfer or conveyance of a Lot to a former Lot Owner,  
13 provided that the acquisition occurs within one year from the closing of escrow on the Owner's  
14 former Lot.

15  
16 Any and all Capital Reserve Fees collected shall be deposited into the Association's reserve  
17 account.

18  
19 The Capital Reserve Fee shall be \$500.00 until changed by the Board of Directors and shall  
20 become effective on the date this Declaration is recorded in the Pima County Recorder's office.  
21 The Board is authorized to change the Capital Reserve Fee from time to time in its sole discretion.

22  
23  
24 SECTION 9: Owner Not Exempt.

25 The nonuse of or failure to occupy a Lot shall not exempt the Owner thereof from  
26 payment of all assessments properly levied against that Lot, and the Owner thereof shall be liable  
27 for the same as long as said Owner shall own a Lot.

28  
29 **ARTICLE IX**  
30 **MORTGAGEE'S PROTECTION PROVISIONS**

31  
32 SECTION 1: Definition.

33 Notwithstanding and prevailing over any other provisions of this Declaration, or the  
34 Articles of Incorporation or the Bylaws of the Association, the following terms and provisions  
35 shall apply solely to and benefit only each First Mortgagee holding a Mortgage interest in any  
36 Lot.

37  
38 The term "First Mortgagees" as used for purposes of this Article IX shall mean any holder  
39 of a First Mortgage, except that in the case of necessary notices or consents as specified below,  
40 "Eligible First Mortgagees" shall mean only those holders of First Mortgages who have requested  
41 in writing of the Association that they be notified of proposed actions requiring notice to or  
42 approval of such First Mortgagees as set forth in Section 6 below.

43  
44 SECTION 2: No Personal Liability.

1 No First Mortgagee shall in any instance or manner be personally liable for the payment  
2 of any assessment or charge, nor for the observance or performance of any covenant, restriction,  
3 regulation, rule, Article, or Bylaw, except for those matters which are enforceable by injunctive  
4 or other equitable actions not requiring the payment of money and except as hereinafter  
5 provided.

6  
7 SECTION 3: Trustee's Sale and Foreclosure.

8 During the pendency of any trustee's sale or with respect to any proceeding to foreclose  
9 a paramount or first position Mortgage, including any period of redemption, the First Mortgagee  
10 (or receiver appointed in such action) may, but need not, exercise any or all of the rights and  
11 privileges of the Owner of the mortgaged Lot including, but not limited to, the right, if any, to  
12 vote as a Member of the Association to the exclusion of the Owner's exercise of such rights and  
13 privileges.

14  
15 SECTION 4: Obligation to Pay Assessments.

16 At such time as a First Mortgagee shall become record Owner of a Lot, said First  
17 Mortgages shall be subject to all of the terms and conditions of this Declaration, including, but  
18 not limited to, the obligation to pay as and when due any and all assessments and charges  
19 accruing thereafter and assessable against the Lot acquired, in the same manner as any Owner.

20  
21 SECTION 5: Title Acquired through Foreclosure or Default.

22 The First Mortgagee, or any other party acquiring title to a Lot through foreclosure suit or  
23 through any equivalent proceeding arising from the default under a First Mortgage, including,  
24 but not limited to, the taking of a deed in lieu of foreclosure, shall acquire title to the Lot acquired  
25 thereby free and clear of any lien authorized by or arising out of any of the provisions of this  
26 Declaration and which lien secured the payment of any assessment or charges accrued prior to  
27 the final conclusion of any such foreclosure suit or equivalent proceeding, including the  
28 expiration date of any period of redemption. Any such unpaid assessment shall nevertheless  
29 continue to exist as the personal obligation of the defaulting Owner of the Lot to the Association,  
30 and the Board of Directors may use reasonable efforts to collect the same from the Owner  
31 regardless of whether said Owner is or is not a Member of the Association. There shall be a lien  
32 upon the interest of the First Mortgagee or other party acquiring title to a Lot by foreclosure or  
33 by equivalent procedure for all assessments authorized by this Declaration which accrue and are  
34 assessed after the date the First Mortgagee or other acquirer has acquired title to the Lot free  
35 and clear of any right of redemption.

36  
37 SECTION 6: Material Changes By Association.

38 The Association, shall not, without first obtaining the approval of at least 67% of the votes  
39 of the Lot Owners and the consent of 51% of the Eligible First Mortgagees, amend this Declaration  
40 or Bylaws of the Association in any fashion so as to materially affect the following matters.

- 41
- 42 A. Voting rights of Members;
  - 43
  - 44 B. Assessments, assessment liens, or subordination of assessment liens;

1  
2 C. The establishment and maintenance of reserves for maintenance, repair  
3 and replacement of Common Areas and facilities related thereto;

4  
5 D. The responsibility for maintenance and repairs;

6  
7 E. The reallocation of interests in the general or limited common areas, or  
8 rights to their use;

9  
10 F. The delineation of the boundaries of any Lot;

11  
12 G. The convertibility of Lots into Common Areas or vice versa;

13  
14 H. The expansion or contraction of the Properties or the construction projects  
15 related thereto, or the addition, annexation or withdrawal of real Property to or from the  
16 Properties;

17  
18 I. The issuance of fidelity bonds with respect to the Properties;

19  
20 J. The imposition of any restrictions on an Owner's right to sell or transfer his  
21 or her Lot;

22  
23 K. A decision by the Association to establish self-management when  
24 professional management had been previously required by a first Mortgagee;

25  
26 L. The restoration or repair of the Properties after a hazard or partial  
27 condemnation in a manner other than that specified in this Declaration or in the Bylaws  
28 of the Association;

29  
30 M. Any action to terminate the legal status of the Properties after substantial  
31 destruction or condemnation thereof; or

32  
33 N. Any provisions based on such Bylaws that expressly benefit Mortgage  
34 holders, insurers or guarantors.

35  
36 SECTION 7: Termination of Legal Status of Properties.

37 Notwithstanding the foregoing, if the required percentage of the Owners of Lots shall  
38 determine to terminate the legal status of the Properties for reasons other than substantial  
39 destruction or condemnation, the required percentage approval of First Mortgagees shall be  
40 67%.

41  
42 SECTION 8: Right to Pay Charges in Default.

43 First Mortgagees are hereby granted the right but shall not be obligated to jointly or  
44 severally pay such taxes or other charges as are in default and which may or have become a



1 charge against any Common Areas owned by the Association, and such First Mortgagees may,  
2 jointly or severally, pay overdue premiums on hazard insurance policies or secure new hazard  
3 Insurance coverage on the lapse of a Policy for such Common Areas, and any First Mortgagees  
4 making such payment shall be owed immediate reimbursement therefor from the Association.  
5

6 SECTION 9: Precedence of First Mortgage.

7 Nothing in this Declaration shall in any manner be deemed to give an Owner, or any other  
8 party, priority over any rights of a First Mortgagee under the terms of such First Mortgagee's  
9 Mortgage in the case or a distribution to an Owner of insurance proceeds or condemnation  
10 awards for losses or to a taking of any Dwelling Unit or any part of the Common Areas owned by  
11 the Association. Each First Mortgagee shall be entitled to timely written notice of such loss or  
12 taking  
13

14 SECTION 10: Written Notification of Default.

15 Each First Mortgagee shall, upon written request to the Association, be entitled to  
16 written notification from the Association of any default in the performance by the Owner of a Lot  
17 encumbered by the Mortgage in favor of such First Mortgagee under any obligation provided for  
18 herein or under the community documents and which default is not cured within 60 days.  
19

20 SECTION 11: Inspection of Books and Records.

21 Each First Mortgagee shall, upon written request to the Association, be entitled to: (a)  
22 inspect the books and records of the Association during normal business hours; (b) receive an  
23 annual financial statement of the Association within ninety (90) days following the end of any  
24 fiscal year of the Association; and (c) receive written notice of all meetings of the Association,  
25 and designate a representative to attend such meetings.  
26

27 SECTION 12: Notice.

28 Each First Mortgagee shall, upon written request to the Association, be entitled to written  
29 notice from the Association at least thirty (30) days prior to: (a) abandonment or termination of  
30 the Association;(b) any material amendment to the Declaration, Articles or Bylaws and (c) the  
31 effectuation of any decision by the Association to terminate professional management and  
32 assume self-management of the Association.  
33

34 **ARTICLE X**  
35 **INSURANCE**  
36

37 SECTION 1: Scope of Coverage.

38 The Association shall secure policies of insurance and shall maintain the same so that a  
39 policy is in force at all times providing, to the extent that the same is available at reasonable cost,  
40 liability insurance coverage for the Common Areas and all insurable facilities and improvements  
41 thereon in an amount of a minimum of One Million (\$1,000,000.00) Dollars coverage insuring  
42 against liability for bodily injury and property damage resulting from the use of the Common  
43 Areas or the maintenance or operation thereof and any liability arising from a contract of  
44 employment between the Association and another person or entity. The Association shall also

1 secure fire and extended coverage, together with a standard "all risk" endorsement and, to the  
2 extent the same can be obtained, "agreed amount" and "inflation guard" endorsements, and any  
3 construction code endorsements required under law, which coverage shall be in an amount to  
4 be determined by the Board of Directors, but in no event less than, 100% of the current  
5 replacement value of Common Areas and facilities so that same will adequately and properly  
6 insure all structures, equipment and improvements on the Common Areas. The cost of such  
7 insurance shall be paid by the Association. The Association shall have authority to negotiate with  
8 the insurance carrier and to adjust losses, make settlements and give releases to the insurance  
9 carrier. Each policy of insurance provided for under this Section shall recite that the same may  
10 not be cancelled or benefits hereunder be alterable without 10 days' notice in writing to the  
11 Association.

12  
13 SECTION 2: Repair and Replacement of Damaged and Destroyed Property.

14 In the event of damage to or the destruction by fire or other casualty of Common Areas  
15 facilities or improvements covered by the described insurance policies, the Board of Directors of  
16 the Association shall, upon receipt of the insurance proceeds, contract to rebuild or repair such  
17 damaged or destroyed property to as good a condition as formerly existed, provided, however,  
18 that in the event that the proceeds of such insurance shall be insufficient to substantially restore  
19 or repair the damaged or destroyed facilities, the Board of Directors of the Association shall poll  
20 the Members, and upon the election of 67% or more of the total votes of the Members, may  
21 specially assess the Owners for the difference between the sum received as insurance proceeds  
22 and the reasonable cost of repair or replacement of the damaged or destroyed Common Area  
23 facilities. In the event that less than 67% of the Members shall consent to such special assessment  
24 of the Owners, no such assessment shall be made and the Board of Directors may determine to  
25 only partially restore or replace the damaged or destroyed facilities or to make some other use  
26 of the affected Common Area(s).

27  
28 SECTION 3: Owner's Responsibilities.

29 The Association shall in no event be required to replace or restore real or personal  
30 property located upon any Lot, and the insurance of Lots and improvements thereon against any  
31 and all hazards shall be the sole responsibility of the Owners thereof. In the event of damage to  
32 an improvement on a Lot, the Owner thereof shall repair or rebuild the improvement to the same  
33 standards and specifications of the original improvement, unless otherwise permitted by the  
34 Architectural Committee.

35  
36 SECTION 4: Mortgagee's Insurance.

37 Notwithstanding any provision of this Declaration to the contrary, in the event any  
38 improvement constructed on the Common Areas is the subject of a Mortgage, then each policy  
39 of insurance procured pursuant to Section 1 of this Article shall contain or have attached thereto  
40 a standard mortgagee or beneficiary coinsurance and loss payable clause which provides that all  
41 proceeds paid thereunder shall be paid to the Association for the use and benefit of all  
42 Mortgagees under Mortgages encumbering any such improvements, as their interest may  
43 appear, and such policy or policies shall further provide that the insurance carrier issuing the  
44 same shall notify each First Mortgagee identified as such to such carrier at least ten (10) days in

1 advance of the effective date of any reduction in or cancellation of the policy. Such policy or  
2 policies shall further provide that the interest of each Mortgagee holding a Mortgage  
3 encumbering any such improvements in insurance proceeds shall not be invalidated by any  
4 action, neglect or inaction of the Board of Directors of the Association, Owners or their tenants  
5 or agents. Such policy or policies shall further provide for waiver by the insurer of any policy  
6 provisions which would render the mortgagee or beneficiary clause invalid by reason of the  
7 failure of such mortgagee or beneficiary to notify the insurer of any hazardous use of such  
8 improvements and any policy requirement that the mortgagee or beneficiary pay the premium  
9 thereof.

10  
11 **ARTICLE XI**  
12 **OWNER'S RESPONSIBILITIES**  
13

14 SECTION 1: Scope of Responsibilities.

15 Each Owner shall be responsible for all costs and expenses relating to the maintenance,  
16 repair, upkeep, taxation and assessment of his Lot(s) and any improvements thereon, including  
17 but not limited to, the payment of utility costs, ad valorem taxes, roof maintenance and repair,  
18 maintenance and repair of building exteriors, fence and walls, upkeep of trees, shrubs, grass,  
19 walks and other exterior portions of and structures on his Lot, unless otherwise provided herein.  
20 All exterior repairs shall be made in conformance with the original architectural design and style  
21 of the structure being repaired.

22  
23 SECTION 2: Failure to Maintain. [REVISED]

24 If any Owner fails to fulfill his/her obligations to maintain a Lot, after approval by 2/3rds  
25 vote of the Board of Directors, the Association shall have the right through its agents and  
26 employees, to enter upon the Lot, and to repair and maintain as needed in the sole discretion of  
27 the Board. The cost of such maintenance and repair shall be the responsibility of the Lot Owner,  
28 and an invoice shall be a sent to the Owner, which shall be due and payable within 30 days of its  
29 date. If not paid, the amount due shall be collectible like an assessment under Article VII, Section  
30 5.

31  
32 **ARTICLE XII**  
33 **ARCHITECTURAL COMMITTEE**  
34

35 SECTION 1: Composition of Committee.

36 There is hereby established an Architectural Committee which shall act in accordance  
37 with this Article XI. The Architectural Committee shall be composed of a minimum of three  
38 members appointed by the Board of Directors. Members of the Architectural Committee shall  
39 not, be entitled to any compensation for services performed pursuant to Articles XI or XII.  
40 Designated professional representatives of the Architectural Committee shall be entitled to such  
41 compensation as may be determined by the Board of Directors, payable as an expense of the  
42 Association.

1           SECTION 2: Review by Committee. [REVISED]

2           All architectural matters within the Properties shall be subject to the discretionary review  
3 of the Architectural Committee, except as otherwise provided herein. Subject to final review  
4 and approval by the Board of Directors, the Architectural Committee may promulgate and amend  
5 written rules and regulations concerning the construction, alteration, repair, modification or  
6 addition of any exterior building, wall, fence, coping, drive, or similar structure. All plans,  
7 specifications and plot plans related to the foregoing changes on a Lot shall be subject to the  
8 approval of the Architectural Committee. Such rules and regulations shall not be in conflict with  
9 any provisions in this Declaration. Decisions of the Architectural Committee may be appealed to  
10 the Board of Directors within 30 days after the Architectural Committee’s decision is issued. The  
11 appeal shall be conducted in accordance with procedural rules the Board may adopt.  
12

13           SECTION 3: Procedures.

14           Prior to the construction of any improvement upon a Lot, whether such improvement be  
15 initial improvements or later alterations, modifications or other changes, an Owners shall be  
16 required to obtain the written approval of the Architectural Committee which approval may be  
17 given in the sole discretion of the Architectural Committee. The Owner shall submit to the  
18 Architectural Committee two (2) complete sets of plans for the proposed improvements,  
19 specifications (including exterior color schemes) and plot plans which shall include the location  
20 of all major structures. Approval of the plans and specifications shall be evidenced, if at all, by  
21 the written endorsement of the Architectural Committee made on the plans and specifications.  
22 One (1) set of the endorsed plans shall be returned to the Owner of the Lot proposed to be  
23 improved prior to the beginning of any construction. One (1) set of plans and specifications shall  
24 be retained by the Architectural Committee. No changes or deviations in or from the plans and  
25 specifications, insofar as the exterior of the proposed improvements are concerned; shall be  
26 made without the written approval of the Architectural Committee. After construction is  
27 completed, no further change including any change of exterior color, shall be made without the  
28 written permission of the Architectural Committee.  
29

30           For purposes of this Article, architecture and improvements shall be deemed to, include,  
31 but not limited to, buildings, fixtures, radio antennae, television antennae, satellite stations or  
32 dishes, walls, fences, copings, awnings, sunshades, flagpoles, or any similar structures and any  
33 landscaping and any and all other related matters.  
34

35           SECTION 4: Alterations and Modifications – Discretion of Architectural Committee.

36           In reviewing plans for alterations, modifications, additions or other changes to a structure  
37 upon a Lot, the Architectural Committee shall exercise its discretion in deciding whether or not  
38 an alteration or modification is in harmony with the overall scheme of subdivision development.  
39 The Architectural Committee shall have the right to deny alterations or modifications for purely  
40 aesthetic reasons if the Architectural Committee considers the alteration or modification to be  
41 unattractive in relation to the overall scheme of development, or if the Committee considers the  
42 alteration or modification to be a nuisance or upset of design, or if the Architectural Committee  
43 considers the alteration or modification to be in contrast to or out of harmony with the style of  
44 existing structures, or if the physical views of the Properties will be disrupted by the alteration or

1 modification. The Architectural Committee may elicit the opinion of other Owners, including the  
2 neighbors of the Owner submitting the plan for alteration or modification, as to the conformity  
3 and harmony of the proposed plan with the overall scheme of development, and the effect that  
4 the proposed plan might have on the physical views of other Owners. After eliciting these  
5 opinions, the Architectural Committee may, but need not, take them into account in making its  
6 final decision of approval or disapproval of an alteration or modification to an existing structure.  
7 While the opinion of no single Lot Owner will control a decision of the Architectural Committee,  
8 within its own discretion, the Architectural Committee may, but need not, attach whatever  
9 significance it deems sufficient to the statements of residents and/or neighbors of the resident  
10 submitting the proposed alteration or modifications to an existing structure.

11  
12 SECTION 5: Minimum Criteria for Plans.

13 All plans must meet the following minimum criteria and such further criteria as the  
14 Architectural Committee promulgates:

15  
16 A. The plans shall be in accordance with the provisions of this Declaration and  
17 written rules and regulations of the Architectural Committee or Board of Directors, and  
18 shall not involve material changes to models designed or built by Fairfield without specific  
19 waiver of this subsection by the Architectural Committee, such waiver being at the  
20 absolute discretion of the Architectural Committee;

21  
22 B. The plans shall be in sufficient detail to permit the Architectural  
23 Committee to make its determination; and

24  
25 C. The plans shall be complete and ready for submittal to obtain a building  
26 permit from Pima County or other competent jurisdiction.

27  
28 The Architectural Committee shall review and shall either approve or disapprove said  
29 plans and specifications within thirty (30) days from receipt thereof. Any plans not so approved  
30 or disapproved shall be deemed approved, and the provisions of Section 2 above shall be deemed  
31 waived.

32  
33 SECTION 6: Fee. [REVISED]

34 The Association may charge an applicant for architectural approval a fee which shall be  
35 paid to the Architectural Committee or its designated professional representative.

36  
37 SECTION 7: No Responsibility for Defects.

38 Neither the Association nor the Architectural Committee shall be responsible in any way  
39 for any defects in any plans or specifications submitted in accordance with the foregoing, nor for  
40 any structural defects in any buildings or structures erected according to such plans or  
41 specifications.

1           SECTION 8: Land Use and Building Type.

2           No improvement or structure whatever, other than a first-class private dwelling house,  
3 patio walls, swimming pool and customary outbuildings, garage or carport, may be erected,  
4 placed or maintained on any Lot. First-class materials and workmanship are required.  
5

6           SECTION 9: Conformity to Building Codes.

7           All structural and design work shall be accomplished in accordance with the Uniform  
8 Building Code as adopted by the County of Pima or other competent jurisdiction. Electrical and  
9 mechanical work shall conform to all applicable local and national codes. All buildings, fences,  
10 ledges, improvements or appurtenances or other structures of any nature shall be in compliance  
11 with the setback requirements of the County of Pima or other competent jurisdiction, including  
12 but not limited to, the front, side and rear setbacks; the same must be approved by the  
13 Architectural Committee before the commencement of any construction.  
14

15           SECTION 10: Fences, Walls and Hedges.

16           No fence or wall may exceed six (6) feet in height, without approval of the Architectural  
17 Committee. Any planting used to form a hedge will be subject to the same setback and height  
18 requirements as applied to a fence or wall. In determining the height of a wall or other such item,  
19 the natural ground level shall be used. Bare concrete walls and chain link fences are prohibited.  
20

21           SECTION 11: Screening.

22           Mechanical and electrical equipment to be installed by an Owner, other than Fairfield in  
23 the original construction, shall, within reason, be concealed from the view of any adjoining street  
24 front or Lot. Included within this restriction are air conditioning, evaporative coolers and pool  
25 pump or heating equipment. No such equipment shall be permitted to remain exposed at the  
26 side or rear of any Lot unless reasonably concealed by planting or fence. Notwithstanding the  
27 above, equipment or other improvements originally installed by Fairfield, or later replaced or  
28 repaired, shall be acceptable without the necessity of screening.  
29

30           SECTION 12: Lights.

31           All exterior lights must be located and maintained so as not to be directed toward or  
32 interfere with surrounding properties or the Common Areas, including streets.  
33

34           SECTION 13: Temporary Structures.

35           No temporary house, house trailer, motorhome, tent, garage, camper, boat or  
36 outbuilding of any kind shall be placed or erected upon any part of the Properties for use as living  
37 quarters. No residence placed or erected on any Lot shall be occupied in any manner at any time  
38 prior to its being completed in accordance with approved plans, as hereinafter provided, nor shall  
39 any residence, when completed, be in any manner occupied until made to comply with all  
40 requirements, conditions and restrictions set forth herein; provided that, during the actual  
41 construction or alteration of a building or buildings on any Lot, necessary temporary buildings for  
42 storage of materials and equipment may be erected and maintained by the person doing such  
43 work. The work of constructing, altering or remodeling any building on any part of the properties  
44 shall be prosecuted diligently from the commencement thereof until the completion thereof.

1           SECTION 14: Other Buildings.

2           No garage or other building or structure shall be erected, placed or maintained on any Lot  
3 until the construction and completion of the principal residence thereon, except that the  
4 necessary outbuildings, garage or other structures relating to the principal residence may be  
5 simultaneously constructed, and nothing herein shall be construed to prevent the incorporation  
6 and construction of a garage in and as part of such residence. The Architectural Committee may  
7 require that any garages and other accessory buildings be incorporated as a part of and attached  
8 to the Dwelling Unit, in a manner approved by the Architectural Committee rather than located  
9 apart from the Dwelling Unit.

10  
11           SECTION 15: Architectural Committee Approval.

12           No building of any nature shall be constructed or removed from within or without the  
13 Properties to any Lot within the Properties without the consent of the Architectural Committee,  
14 and in the event a building shall be so placed from without on any Lot, said building shall comply  
15 in all respects with each and every provision of this Declaration relating thereto.

16  
17           SECTION 16: Shrubs, Trees and Grasses.

18           No shrubs, trees or obstructions of any kind shall be placed on corner Lots in such places  
19 as to cause a traffic hazard. Bermuda grass, except that of a variety recognized to be pollen free  
20 and approved in writing by the Association, shall not be grown on any Lot. All trees and other  
21 vegetation planted in the Lot shall *be* kept trimmed to a height which will not materially interfere  
22 with views from neighboring building sites. The Architectural Committee may forbid the planting  
23 or maintenance of certain plants, trees and shrubs or restrict the propagation of such plants,  
24 trees and shrubs to native or indigenous species.

25  
26           SECTION 17: Antennae and Exterior Additions.

27           No exterior antennas, satellite dish stations, or other devices for the transmission or  
28 reception of television or radio signals shall be erected or maintained on any Lot except as initially  
29 designed or installed by Fairfield or its assigns, without prior written authorization of the  
30 Architectural Committee. This provision shall not prohibit the Association from maintaining or  
31 placing such equipment on or in the Common Areas. Further, no exterior devices or additions,  
32 other than initially installed by Fairfield or its agents, shall be constructed on the exterior of a  
33 Dwelling Unit (including the roof) without the written authorization of the Architectural  
34 Committee.

35  
36           SECTION 18: Signs.

37           An Owner may erect one (1) portable "open house" sign, which shall be no greater in size  
38 than four (4) square feet, on his/her Lot during the hours there is a realty representative  
39 attending the open house at the Dwelling Unit on the Lot, or while open by the Owners. A minimal  
40 number of "open house" direction signs may be placed on Common Areas to assist viewers in  
41 locating the "open house". All such signs must be removed when the Dwelling Unit is not open  
42 for public inspection.

1           SECTION 19: Derricks, Tanks, Heating and Cooling.

2           (a)       No structure designed for use in boring for water, oil or natural gas shall  
3           be erected, placed or permitted upon any part of the Properties, nor shall any water, oil,  
4           natural gas petroleum, asphaltum or hydrocarbon products or substances be produced  
5           or extracted therefrom.  
6

7           (b)       No elevated tanks of any kind shall be erected, placed or permitted upon  
8           any part of the Properties, and any tanks for use in connection with any Dwelling Unit on  
9           the Properties, including tanks for the storage of gas and fuel oil, gasoline or oil, must be  
10          buried or walled in to conceal them from the neighborhood Lots, roads or streets.  
11

12          SECTION 20: Clotheslines.

13          Clotheslines shall be of a retractable type concealed from view of neighboring Lots and  
14          streets.  
15

16          SECTION 21: Waivers.

17          Any or all of the restrictions of this Article are subject to waiver by the Architectural  
18          Committee, and any such waiver may apply at the option of the Architectural Committee to fewer  
19          than all of the Lots without waiver or such restriction as to any other Lot or Lots.  
20

21          SECTION 22: Conflict of Interest.

22          In the event a conflict of interest arises wherein a member of the Architectural Committee  
23          wishes to alter, remodel, and/or add to his existing structural, a substitute member shall be  
24          appointed by the Board of Directors to the Architectural Committee to, in conjunction with the  
25          remaining two (2) members of the Committee, approve or disapprove said plans and  
26          specifications.  
27

28                                   **ARTICLE XIII**  
29                                   **USE RESTRICTIONS**  
30

31          Violations of the following Sections shall be investigated by the Architectural Committee and  
32          reported to the Board of Directors with a recommendation of possible action.  
33

34          SECTION 1: Business Activities. [REVISED]

35          All Lots shall be used for single-family residential purposes only. The following applies  
36          with respect to home business activities within the Properties:  
37

38                A.       Criteria for Home Business. No trade or business may be conducted in or  
39                from any Lot, except that an Owner or occupant residing in any Lot may conduct business  
40                activities within the Lot so long as (1) the existence or operation of the business activity  
41                is not apparent or detectable by sight, sound or smell from outside the Lot; (2) the  
42                business activity conforms to all zoning requirements and any other governmental  
43                requirements for the Properties; (3) the business activity does not involve any person  
44                conducting such business who does not reside in the Lot or door-to-door solicitation of



1 residents of the Properties; (4) the existence or operation of the business does not  
2 increase that Lot's use of Common Area facilities over the standard for a single family  
3 dwelling; (5) the existence or operation of the business does not require more than a  
4 reasonable number of customers or delivery trucks to visit the Lot; and (6) the business  
5 activity does not constitute a nuisance, or a hazardous or offensive use, or cause the  
6 owners to violate any other provisions of this Declaration, or threaten the security or  
7 safety of other residents of the Properties, as may be determined in the sole discretion of  
8 the Board.

9  
10 B. Pertinent Definitions. The terms "business" and "trade," as used in this  
11 provision, shall be construed to have their ordinary, generally-accepted meanings.

12  
13 C. Rentals. No room or rooms in any residence on said Lots shall be rented  
14 or leased; provided that nothing in this Section shall be construed as preventing the  
15 renting or leasing of an entire Lot, together with its improvements. However, no Lot may  
16 be rented for a hotel or transient purpose, which shall be construed to mean for a period  
17 of less than 30 days, nor shall any lot be rented to other than a family as defined by the  
18 Pima County Zoning Code.

19  
20 SECTION 2: Trash Collection. [REVISED]

21 All equipment for the storage or disposal of garbage or other waste shall be kept in a clean  
22 and sanitary condition. No container shall be kept at any time in view of an adjacent street except  
23 for the day of trash pickup by the commercial rubbish collector. The Board of Directors of the  
24 Association shall engage a single company for trash removal and recycling services. Each  
25 household shall use only the single company selected. The Board shall decide and notify the  
26 Owners whether the Association will have a single contract with the company selected with the  
27 costs included in the Association's assessments, or whether each household shall contract with  
28 the single company selected and pay directly. The Board may promulgate rules and regulations  
29 governing all matters pertaining to trash removal and recycling services.

30  
31 SECTION 3: Nuisance and Noise. [REVISED]

32 No Lot shall be used in whole or part for the storage of trash or debris of any character  
33 whatsoever nor for the storage of any property or thing that will cause such Lot to appear in an  
34 unclean or untidy condition or that will be obnoxious otherwise. No obnoxious or offensive  
35 activity shall be carried on upon any Lot, nor shall anything be done, placed or stored thereon  
36 which may become an annoyance or nuisance to the neighborhood or occasion any noise or odor  
37 which will or might disturb the peace, quiet, comfort or serenity of the occupants of surrounding  
38 properties. No Owner shall engage in any activity or permit any activity to occur on the Properties  
39 which shall result in unusual, loud or obtrusive noise or sounds.

40  
41 SECTION 4: Resubdivision.

42 No Lot or Lots shall be resubdivided, except for the purpose of combining the  
43 resubdivided portions with another adjoining Lot or Lots, provided that no additional Lot is  
44 created thereby. This Section shall not prohibit the combining of Lots.

1  
2           SECTION 5: Vehicle Parking and Storage. [REVISED]

3           All Owners and guests and invitees shall park any and all motorized or nonmotorized  
4 vehicles in off-road parking spaces shown on approved plans. Parking spaces shall include the  
5 paved driveways in each Lot and any additional parking spaces, if any, as set forth in the Plat but  
6 shall not include other Common Areas not so designated. Additional parking spots, if any, may  
7 be designated from time to time by the Board of Directors. Notwithstanding the above provision,  
8 Owners and their guests and invitees may park in front of a Lot for purposes of loading and/or  
9 unloading personal belongings from a motorized or nonmotorized vehicle if the time in which the  
10 vehicle is parked in any non-designated space is less than 1-1/2 hours in any 24-hour period.  
11 Parking and/or storing of recreational vehicles (including, but not limited to, motorhomes, vans,  
12 campers, trailers and boats) is prohibited on all portions of the Properties, except within the  
13 confines of either a standard-sized carport or a standard-sized garage, as approved by the  
14 Architectural Committee or on the parking area of an Owner's Lot or in any designated common  
15 parking areas within the subdivision for a period of not more than 72 hours in any seven-day  
16 period and not more than 144 hours in any 30-day period, for the purposes of loading, unloading,  
17 or, for providing parking for guests of the Owner who may be driving or pulling a recreational  
18 vehicle. The use and/or occupancy of a recreational vehicle (including, but not limited to, a  
19 motorhome, van, camper, trailer, or boat) as living quarters on either a temporary or permanent  
20 basis is strictly prohibited on any portion of the Properties. An Owner or resident may request  
21 that the Board of Directors grants a variance to the restrictions in this Section. Such variance shall  
22 be granted or denied at the Board's sole discretion.  
23

24           SECTION 6: Inoperable Vehicles and Commercial Vehicles.

25           No inoperable, junk, or wrecked vehicles shall be placed on or stored on any Lot or  
26 Common Areas, nor shall any commercial, construction, or like vehicles be placed on or stored  
27 on any Lot or Common Areas, except as may be permitted by the Association, in writing, for  
28 limited periods of time.  
29

30           SECTION 7: Drainage-Ways.

31           No structure, planting or other material, except as originally installed, shall be placed or  
32 permitted to remain within any drainage-way which may change the direction of flow or which  
33 may obstruct or retard the flow of water.

34           [SECTION ON PRESERVING NATIVE GROWTH IS DELETED]  
35

36           SECTION 8: Animals.

37           No cattle, sheep, goats, pigs, rabbits, poultry or other livestock shall be bred, raised or  
38 kept on the Properties, nor shall dogs, cats or other animals be kept in kennels or similar  
39 enclosures on the Properties. This restriction shall not be construed, however, as prohibiting the  
40 keeping of ordinary domestic pets as long as such pets are kept confined in the single-family  
41 residence and fenced yard. When domestic pets, which are allowed to be kept on the Properties,  
42 are taken out of an Owner's Lot, the domestic pet(s) shall be on a leash and the Owner shall be  
43 required to pick up immediately any animal feces left on any other Owner's Lot or on the  
44 Common Areas.

1  
2       SECTION 9: Inspection.

3       During reasonable hours any member of the Board of Directors of the Association, or any  
4 authorized representative of any of them, shall have the right to enter upon and inspect any Lot  
5 within the subdivision (not including the interior of any Dwelling Units erected thereon) for the  
6 purpose of ascertaining whether or not the provisions of this Declaration have been or are being  
7 complied with, and such persons shall not be deemed guilty of trespass by reason of such entry.  
8

9       SECTION 11: Entrance Monument.

10       The entrance monument (corner of Camino del Sol and Camino del Pato) and adjacent  
11 landscaping shall be maintained so that it presents a pleasing appearance consistent with other  
12 entrance monuments on Camino del Sol.  
13

14                                   **ARTICLE XIV**  
15                                   **AGE RESTRICTIONS [REVISED]**  
16

17       It is intended that the Properties shall be considered as housing for older persons as  
18 defined in the Fair Housing Amendments Act of 1988 and all subsequent applicable amendments  
19 to the Federal Fair Housing Act.  
20

21           A.       Unless otherwise provided in this Declaration, each Lot shall be occupied  
22 by at least one person 55 years of age or older. Notwithstanding the foregoing, if an  
23 Owner who is 55 years of age or older dies, the underage surviving spouse or co-habitant  
24 may remain in the Dwelling Unit so long as the Properties can still be considered as  
25 housing for older persons.  
26

27           B.       No person who has not yet reached his/her 18<sup>th</sup> birthday shall reside  
28 permanently in the Properties. However, this restriction shall not apply to individuals that  
29 are merely visiting for a temporary period of time, not to exceed 30 days, during any  
30 calendar year.  
31

32           C.       The occupancy regulations of this Section pertaining to minimum age  
33 restrictions and the prohibition of minors apply to all occupants, whether Owners or  
34 tenants, and to all leases as well as sales.  
35

36           D.       The Board of Directors has the exclusive right to determine who is a  
37 resident or occupant for the purposes of determining compliance with this Section.  
38

39           E.       The Association shall have the right to verify date of birth of Dwelling Unit  
40 occupants. The Association may request acceptable proof of age, including driver license,  
41 passport, immigration card, birth certificate or other government-issued document.  
42

1 F. The Board of Directors shall establish procedures to insure compliance  
2 with the State and Federal Fair Housing Acts, and any other legislation or governing  
3 regulations pertaining to this Section.  
4

5 **ARTICLE XV**  
6 **PARTY WALLS**  
7

8 SECTION 1: General Rules of Law Apply.

9 Each wall, whether a patio yard wall or bearing wall of a Dwelling Unit, which is built as a  
10 part of the original construction of a building upon the Properties and placed on or immediately  
11 adjacent to the dividing line between Lots shall constitute a party wall, and, to the extent not  
12 inconsistent with the provisions of this Article, the general rules of law regarding party walls and  
13 liability for property damage due to negligence or willful acts or omissions shall apply. Each  
14 Owner is deemed to acknowledge that some portions or all of the Properties were developed  
15 with structures having common lot lines and common party walls. In many instances, this will be  
16 the case for both rear yards and common Dwelling Unit walls. Each Owner, therefore, in the case  
17 of such a structure, consents to the placement of the walls of the Dwelling Unit on the dividing  
18 lines between Lots as set forth above.  
19

20 SECTION 2: Alterations.

21 No Owner may alter the appearance or structure of a party wall (except that landscaping  
22 shall not be precluded) without the consent of the Architectural Committee and such Committee  
23 may, but need not, deny approval if all Owners having an interest in the party wall have not  
24 consented to the alteration.  
25

26 SECTION 3: Sharing of Repair and Maintenance.

27 The cost of ordinary repair and maintenance of a Party wall shall be shared equally by the  
28 Owners of the Lots which are divided by the wall.  
29

30 SECTION 4: Destruction by Fire or Other Casualty.

31 If a party wall is destroyed or damaged by fire or other casualty, an Owner who has used  
32 the wall may restore it and is hereby granted a permanent access easement across adjoining  
33 Lot(s) for such restoration. The Owners of the Lots which are divided by the wall shall share  
34 equally in the cost of such restoration.  
35

36 SECTION 5: Weatherproofing.

37 Notwithstanding any other provision of this Article, an Owner who by his negligent or  
38 willful act causes a party wall to be exposed to the elements shall bear the whole cost of repairing  
39 all damage resulting from such exposure.  
40

41 SECTION 6: Right to Contribution - Runs with Land.

42 The right of any Owner to contribution from any other Owner sharing a party wall under  
43 this Article shall be appurtenant to and shall run with the land.  
44

1  
2 SECTION 7: Arbitration.

3 In the event any dispute arises concerning a party wall, or the provisions of this Article,  
4 the parties may submit the dispute to binding arbitration if they can agree on an arbitrator and  
5 procedural rules. Otherwise, the dispute will be resolved by judicial action.

6  
7 SECTION 8: Private Agreements.

8 Private agreements between Owners may not modify the provisions of this Article.

9  
10 SECTION 9: Eaves, Steps and Open Porches.

11 For purposes of this Article, eaves, steps and open porches shall not be considered to be  
12 part of a Dwelling Unit.

13  
14 **ARTICLE XVI**  
15 **GENERAL PROVISIONS**

16  
17 SECTION 1: Enforcement.

18 The Association or any Member shall have the right, but not the duty, to enforce, by any  
19 proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens or  
20 charges now or hereafter imposed by the provisions of this Declaration. The prevailing party in  
21 any Court action shall be awarded reasonable attorney's fees and costs.

22  
23 SECTION 2: No Waiver.

24 No delay or omission on the part of the Association or any Member in exercising their  
25 right of enforcement hereunder shall be construed as a waiver of any breach of any of the  
26 Restrictions or acquiescence in any breach hereof. No right of action shall accrue against the  
27 Association or any Member for their neglect or refusal to exercise such right of enforcement, nor  
28 shall any right of action accrue against the Association for including herein provisions, conditions,  
29 restrictions or covenants which may be unenforceable.

30  
31 SECTION 3: Lien of Mortgages.

32 No breach of the provisions, conditions, restrictions or covenants contained within this  
33 Declaration shall defeat or render invalid the lien of any Mortgage made in good faith for value  
34 as to any portion of the Properties. Such provisions, conditions, restrictions and covenants shall  
35 be enforceable against any portion of the Properties acquired by any person through foreclosure  
36 or by deed in lieu of foreclosure or any breach occurring after such acquisition.

37  
38 SECTION 4: Severability.

39 Invalidity of any covenant, restriction provision or term of this Declaration by judgment  
40 or court order shall not affect any other covenant, restriction, provision or term hereof which  
41 shall remain in full force and effect.

42  
43 SECTION 5: Amendment.

1 Except as may be provided elsewhere in this Declaration, the terms hereof may be  
2 amended by the Association; provided, however, that any amendments made by the Association  
3 shall be approved by at least 67% of the votes cast by Owners at a meeting of the Members duly  
4 called for that purpose at which a quorum is present and shall be made only by an instrument in  
5 writing signed by the President and Secretary of the Association and recorded with the County  
6 Recorder of Pima County, Arizona.

7  
8 SECTION 6: Term.

9 The aforesaid provisions, conditions, restrictions and covenants, and each and all thereof,  
10 shall run with the land and continue and remain in full force and effect at all times and against  
11 all persons until January 1, 2025, at which time, they shall be automatically extended for  
12 successive periods of 25 years, unless terminated by Owners holding 75% of the votes in the  
13 Association.

14  
15 SECTION 7: Binding Effect.

16 By acceptance of a deed or acquiring any ownership interest in any Lot, each person or  
17 entity, for himself or itself, his or its heirs, personal representatives, successors, transferees and  
18 assigns, binds himself, his heirs, personal representatives, successors, transferees and assigns, to  
19 all of the provisions, restrictions, covenants, conditions, rules and regulations now or hereafter  
20 imposed by this Declaration and amendments thereof.

21  
22 SECTION 8: Captions.

23 All captions and titles used in this Declaration are intended solely for convenience or  
24 reference purposes only and in no way define, limit or describe the true intent and meaning of  
25 the provisions hereof.

26  
27 IN WITNESS WHEREOF, the undersigned certify that at least 67% of the votes cast by  
28 Owners at a meeting of the Members duly called for that purpose at which a quorum was present  
29 have voted to approve this Declaration.

30  
31  
32 CANOA HILLS TOWNHOMES, INC.,  
33 an Arizona non-profit corporation

34  
35  
36 By: \_\_\_\_\_  
37 Its: President

38  
39 ATTEST:

40  
41  
42 By \_\_\_\_\_  
43 Secretary

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STATE OF ARIZONA )  
 ) ss:  
County of Pima )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2022, by \_\_\_\_\_, President, of CANOA HILLS TOWNHOMES, INC., an Arizona non-profit corporation, on behalf of the corporation.

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

STATE OF ARIZONA )  
 ) ss:  
County of Pima )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2022, by \_\_\_\_\_, Secretary of CANOA HILLS TOWNHOMES, INC., an Arizona non-profit corporation, on behalf of the corporation.

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