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**AMENDED AND RESTATED  
DECLARATION OF ESTABLISHMENT OF  
COVENANTS, CONDITIONS  
AND RESTRICTIONS  
FOR  
COLONIA VERDE**

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**AMENDED AND RESTATED  
DECLARATION OF ESTABLISHMENT OF COVENANTS, CONDITIONS AND  
RESTRICTIONS OF COLONIA VERDE**

THIS AMENDED AND RESTATED DECLARATION OF ESTABLISHMENT OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR COLONIA VERDE (this "Declaration") is made this 26 day of FEBRUARY, 2006, by the owners (the "Owners") of the real property described as:

Lots 1 through 12 and the "Sites" thereof of COLONIA VERDE, a Pima County subdivision, according to the plat of record in the office of the Pima County Recorder in Book 19 of Maps and Plats at Page 32;

Lots 13 through 17 and the "Sites" thereof of COLONIA VERDE, a Pima County subdivision, according to the plat of record in the office of the Pima County Recorder in Book 19 of Maps and Plats at Page 85;

Lots 20 through 25 and the "Sites" thereof of COLONIA VERDE, a Pima County subdivision, according to the plat of record in the office of the Pima County Recorder in Book 26 of Maps and Plats at Page 12;

Lots 1 through 7 of COLONIA VERDE PLAZA, a Pima County subdivision, according to the plat of record in the office of the Pima County Recorder in Book 49 of Maps and Plats at Page 58;

(together, referred to herein as the "Property").

**W I T N E S S E T H:**

**WHEREAS**, the Declarant executed the *Declaration of Establishment of Covenants, Conditions and Restrictions*, recorded on April 15, 1968, in Docket 3223, Page 583 et seq., office of the Pima County Recorder (the "Original Declaration"); and

**WHEREAS**, the Declarant executed a *Supplementary Declaration of Establishment of Covenants, Conditions and Restrictions*, recorded on May 20, 1969, in Docket 3499, Page 467 et seq., office of the Pima County Recorder; and

**WHEREAS**, the Declarant executed a *Supplementary Declaration of Establishment of Covenants, Conditions and Restrictions*, recorded in 1972, in Docket 4181, Page 736 et seq., office of the Pima County Recorder; and

1       **WHEREAS**, the Owners adopted a *Third Amendment to Declaration of*  
2 *Establishment of Covenants, Conditions and Restrictions*, recorded on April 7, 2000, in  
3 Docket 11272, Page 1079 *et seq.*, office of the Pima County Recorder; and  
4

5       **WHEREAS**, the Owners adopted a *Fourth Amendment to Declaration of*  
6 *Establishment of Covenants, Conditions and Restrictions*, recorded on August 12, 2005, in  
7 Docket 12615, Page 2530 *et seq.*, office of the Pima County Recorder; and  
8

9       **WHEREAS**, this Declaration amends and restates in their entirety: the Original  
10 Declaration and all supplements and amendments thereto; and  
11

12       **WHEREAS**, at least two-thirds of the Owners of Lots within the Property have  
13 approved the adoption of this Declaration.  
14

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

## 26                                   **ARTICLE I DEFINITIONS**

27

28       1.1. "Articles" shall mean the Articles of Incorporation of the Association and  
29 amendments thereto which are or shall be filed in the office of the Arizona Corporation  
30 Commission.  
31

32       1.2 "Assessments" shall mean Annual Assessments, Special Assessments  
33 and/or Reimbursement Assessments.  
34

35       1.3 "Association" shall mean COLONIA VERDE HOME OWNERS  
36 ASSOCIATION, an Arizona non-profit corporation, its successors and assigns.  
37

38       1.4 "Board" shall mean the Board of Directors of the Association.  
39

40       1.5 "Bylaws" shall mean the Bylaws of the Association, together with any  
41 amendments thereto.  
42

43       1.6 "Common Area(s)" shall mean the real property and any improvements  
44 thereon, from time to time owned and controlled by the Association for the common use  
45 and enjoyment of the Owners.  
46

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1 1.7 "Declarant" shall mean Arizona Title Insurance and Trust Company, an  
2 Arizona corporation, as Trustee under Trust 8025, and its successors or assigns.  
3

4 1.8 "Declaration" shall mean this Declaration as it may be amended from time to  
5 time.  
6

7 1.9 "Dwelling Unit" shall mean the improvements placed upon a Site on or within  
8 the boundary of any Lot.  
9

10 1.10 "First Mortgage" shall mean any mortgage, deed of trust or other security  
11 instrument by which a Lot or any part thereof is encumbered, and which has first and  
12 paramount priority, subject only to the lien of general or ad valorem taxes and  
13 assessments.  
14

15 1.11 "First Mortgagee" shall mean the holder of any First Mortgage under which  
16 the interest of any Owner of a Lot is encumbered.  
17

18 1.12 "Governing Documents" shall mean this Declaration; the Articles of  
19 Incorporation and Bylaws of the Association; and any rules and regulations promulgated by  
20 the Board of Directors.  
21

22 1.13 "Improvement" shall mean buildings, roads, driveways, parking areas, fences,  
23 walls, rocks, hedges, plantings, planted trees and shrubs, and all other structures or  
24 landscaping improvements of every type and kind.  
25

26 1.14 "Lot" shall mean any of the numbered plots of land within Colonia Verde  
27 Plaza as shown on the plat recorded in Book 49 at Page 58 of Maps and Plats in the office  
28 of the Pima County Recorder, or the Sites located on the other Lots in Colonia Verde,  
29 together with any improvements constructed or under construction thereon (but without  
30 regard to whether or not there is any such structure thereon).  
31

32 1.15 "Member" shall mean every person who holds membership in the  
33 Association.  
34

35 1.16 "Owner" shall mean the record holder, whether one or more persons, of the  
36 fee simple title to any Lot, including a buyer under a contract for the conveyance of real  
37 estate pursuant to Title 33, Arizona Revised Statutes, and including Declarant, but  
38 excluding persons holding an interest merely as security for the performance of an  
39 obligation, and excluding buyers under sales agreements or deposit receipt and  
40 agreements.  
41

42 1.17 "Person" shall include a corporation, company, partnership, firm, association  
43 or society, as well as a natural person.  
44

45 1.18 "Plat" shall collectively mean the plats recorded in the office of the Pima  
46 County Recorder in Book 19 at Page 32, in Book 19 at Page 85, in Book 26 at Page 12,  
47 and in Book 49 at Page 58.  
48

1.19 "Property" shall mean the real property shown on the Plat.

1  
2 1.20. "Rules and Regulations" or "Rules" shall mean any and all policies and  
3 procedures adopted by the Board which govern the conduct and actions of Owners,  
4 tenants, visitors and guests on the Property.  
5

6 **ARTICLE II**  
7 **SCOPE OF DECLARATION**  
8

9 This Declaration is intended to regulate and control the use of the Property for the  
10 benefit of all Owners thereof, pursuant to the general plan of development set forth herein.  
11

12 **ARTICLE III**  
13 **COMMON AREAS**  
14

15 3.1 Management and Control. The Board shall control, maintain, manage and  
16 improve the Common Area as provided in the Governing Documents. Such right and  
17 power of control and management shall be exclusive. In managing the Common Area, the  
18 Association hereby accepts all responsibility for the control, maintenance, safety and  
19 liability of such Common Area. No Owner can make any changes to the Common Area  
20 without the prior written approval of the Board of Directors.  
21

22 3.2 Conditional Use of Common Area. Each Owner, his/her family, licensees,  
23 invitees and tenants, or contract purchasers of a Lot shall be entitled to use the Common  
24 Area subject to:  
25

26 3.2.1 The provisions of the Governing Documents: Each Owner shall  
27 comply with the provisions of the Governing Documents with respect to any use of the  
28 Common Area.  
29

30 3.2.2 The right of the Association to charge a reasonable security deposit  
31 and clean-up fee for the use of any recreational facility situated upon the Common Area.  
32

33 3.2.3 The right of the Association to suspend the right of an Owner, his/her  
34 family, licensees, invitees and tenants, or contract purchasers of a Lot, to use any  
35 recreational facility situated upon the Common Area, for any period during which any  
36 Assessment against his/her Lot remains unpaid.  
37

38 3.2.4 The right of the Association to suspend the right of an Owner, his/her  
39 family, licensees, invitees and tenants, or contract purchasers of a Lot, to use any  
40 recreational facility situated upon the Common Area, for a period not to exceed 30 days for  
41 any infraction of the Governing Documents.  
42

43 3.3 Delegation of Use. Any Owner may delegate his/her right of enjoyment in the  
44 Common Area to the members of his/her family, his/her tenants or lessees or contract  
45 purchasers who reside on the Lot, subject to such rules, regulations and limitations as the  
46 Association may, from time to time, establish. Such delegation shall not relieve said Owner  
47 of his/her obligations and responsibilities as an Owner under the By-Laws, Rules and this  
48 Declaration.





other Lots in the Property. Such encroachments caused incidentally by Declarant are permissible and each Owner, by acceptance of the Deed to his/her Lot, consents thereto and agrees that title to the land lying within such incidental encroachments, regardless of the boundary line of the Lot upon which such structure or other work of construction has been constructed, is conveyed to the Owner of the Lot upon which the majority of the encroaching structure is built.

4.3 Easement for Maintenance and Repair. The Owner of each Lot is granted an easement across adjacent Lots and Common Areas for purposes of accomplishing regular maintenance and repair of structures and improvements, including party walls.

4.4 Utility Easements. An easement and right of way in perpetuity is hereby reserved for the benefit of all Lots in the Property for the installation, construction and maintenance and operation of lines for the transmission of electrical energy, for telephone lines, and for laying and maintaining of pipes, mains and conduits for the furnishing of water, gas, sewer service, television services, or for other purposes. This easement and right of way includes the right of entry for the purpose of installing, maintaining or reading gas, electric and water meters, together with the further right of the Association to convey or lease the whole or any portion of such easement, right of way or right of entry to any person or persons or to any corporation or municipal body over, along, across, upon and through the land upon which said easements are delineated and shown on the Plat and controlled by these Restrictions. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each Lot shall be maintained continuously by the Owner of the Lot, except for those Improvements (if any) for which a public authority or utility company is responsible.

## ARTICLE V

### THE ASSOCIATION

5.1 Membership in the Association. Each Owner of a Lot, by virtue of being an Owner, shall automatically be a Member of the Association. Membership in the Association shall be appurtenant to each Lot owned and shall not be transferred, pledged, or alienated in any way, except upon the transfer of ownership of a Lot, and then only to the transferee thereof. Upon any transfer of ownership of a Lot, said membership shall automatically pass to the new Owner. Any attempted transfer of membership separate from the appurtenant Lot or Lots shall be void.

5.2 Voting Rights. Each Owner shall be entitled to one vote for each Lot owned. When more than one Person holds an interest in any Lot, all such Persons shall be Members. The vote for such Lot shall be exercised as the Owners may determine and in accordance with the Bylaws, but in no event shall more than one vote be cast with respect to any Lot owned. If the Owners of a Lot cannot agree as to how their vote shall be cast, the vote shall be prorated among them.

1           5.3   Suspension of Voting Rights. The Association may suspend the voting rights  
2 of any Owner for any period during which any Assessment against his/her Lot remains  
3 unpaid and delinquent, and for a period when the Board determines that Owner is in  
4 violation of the Governing Documents, provided that any such Owner has been given  
5 reasonable notice and an opportunity to cure said violation as well as an opportunity to be  
6 heard by the Board of Directors.

7  
8           5.4   Purpose of Association. The Association is a non-profit corporation which will  
9 serve as the governing body for all Owners for the protection, improvement, alteration,  
10 maintenance, repair, replacement, administration and operation of the Common Area, the  
11 assessment of expenses, and other matters as provided in the Governing Documents.

12  
13           5.5   Rights and Responsibilities of Association. The Association, through the  
14 Board of Directors, unless specifically provided otherwise, shall have the right of  
15 enforcement of the Governing Documents and shall be responsible for the proper and  
16 efficient management and operation of the Common Area. The Association, through its  
17 Board of Directors is authorized to enter into such agreements and take such actions as  
18 are reasonably necessary and convenient for the operation and maintenance of the  
19 Properties.

20  
21           5.6   Rules and Regulations of the Association. The Board is empowered to  
22 adopt, amend, or repeal such rules and regulations as it deems reasonable and  
23 appropriate (collectively, the "Rules"), which shall be binding upon all persons subject to  
24 this 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, the use of the Common Area. The Rules may be  
27 adopted, amended, or repealed at any special or regular meeting of the Board upon a vote  
28 of a majority of all the Directors, and shall take effect after 30 days' written notice to the  
29 Owners, unless the rule(s) being adopted, amended or repealed has a compelling health or  
30 safety purpose, in which case seven days' notice to the Owners is required.

31  
32           The Rules are deemed incorporated herein by this reference, and shall have  
33 the same force and effect as if they were set forth in and were part of this Declaration, and  
34 shall be binding upon all persons having any interest in, or making any use of, any part of  
35 the Properties, whether or not copies of the Rules are actually received by such persons.  
36 References to the covenants and restrictions contained herein shall be deemed to refer  
37 also to the Rules (except to the extent the Rules are in conflict herewith). The Rules, as  
38 adopted, amended or repealed, shall be available for review by each person reasonably  
39 entitled thereto, upon written request to the Board. It shall be the responsibility of each  
40 person subject to the Rules to review and keep abreast of any changes in the provisions  
41 thereof.

42  
43           5.7   Conflict Among Governing Documents. In the event of any dispute or  
44 disagreement between any Owners or any other persons subject to this Declaration  
45 relating to the Properties, or any question of interpretation or application of the provisions  
46 of this Declaration and any of the other Governing Documents, this Declaration shall  
47 control. In the event of any conflict between the Articles and the Bylaws of the  
48 Association, the Articles shall control. In the event of any conflict between any provision of

1 the Rules and any provisions of the other Governing Documents, the provisions of the  
2 Rules shall be deemed to be superseded by the provisions of any other Governing  
3 Document, to the extent of any such conflict.  
4

5       5.8 Indemnification and Limitation of Liability. The Association shall indemnify to  
6 the fullest extent allowed by law, every officer, director, and committee member, against  
7 any and all expenses, including attorneys' fees, reasonably incurred by or imposed upon,  
8 any officer, director, or committee member, in connection with any action, suit or other  
9 proceeding (including settlement of any suit or proceeding if approved by the then Board of  
10 Directors) to which he or she may be made a party by reason of being or having been an  
11 officer, director or committee member. This provision shall not be deemed to include travel  
12 expenses to attend Association meetings or legal proceedings, and shall only include  
13 reasonable actual expenses. Neither officers, directors nor committee members shall be  
14 liable for any mistake of judgment, negligent or otherwise, unless they acted intentionally,  
15 with gross negligence, or with fraudulent or criminal intent in the matter that gave rise to the  
16 legal action. The officers, directors and committee members shall have no personal  
17 liability with respect to any contract or other commitment made by them, in good faith, on  
18 behalf of the Association (except to the extent that such officers, directors, or committee  
19 members may also be members of the Association), and the Association shall indemnify  
20 and forever hold each such officer, director and committee member free and harmless  
21 against any and all liability to others on account of any such contract or commitment. Any  
22 right to indemnification provided for herein shall not be exclusive of any other rights to  
23 which any officer, director or committee member, or former officer, director, or committee  
24 member may be entitled. The Association shall, as a common expense, maintain  
25 adequate general liability and officers' and directors' liability insurance, to also include  
26 committee members, to fund this obligation. The Association has the right to refuse to  
27 indemnify any person to whom indemnification would otherwise be provided if that person  
28 unreasonably refuses to permit the Association, at its own expense and through counsel of  
29 its own choosing, to defend him/her in the action, or if he or she does not reasonably  
30 cooperate with such defense or with reasonable settlement of the case.  
31

## 32                                   **ARTICLE VI** 33                                   **COVENANTS FOR MAINTENANCE ASSESSMENTS** 34

35       6.1. Creation of the Lien and Personal Obligation to Pay Assessments. Each  
36 Owner, upon the recordation of a deed to any Lot, whether or not it shall be so stated in  
37 such deed, agrees and covenants to pay to the Association: (A) annual assessments or  
38 charges, (B) special assessments, and (C) reimbursement assessments. These  
39 Assessments shall be established and collected as provided in this Article. All  
40 Assessments levied against a Lot, together with interest from the date of delinquency until  
41 paid, late fees, costs and reasonable attorneys' fees, shall be charged against the Lot and  
42 shall be a continuing lien upon the Lot. Such lien shall be deemed to have attached as of  
43 the date of recordation of the Original Declaration, and shall be senior to all matters other  
44 than tax liens for real property taxes on the Lot, assessments on the Lot in favor of any  
45 municipal or other governmental assessing unit, reservations in patents, and the lien of any  
46 First Mortgage. Upon the voluntary conveyance of a Lot, the selling Owner and the buyer  
47 shall be and remain jointly and severally liable for the payment of all Assessments levied

against the Lot prior to the closing of said sale and unpaid at the time of the conveyance, subject to the provisions of this Article.

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

6.2 Purpose of Assessments. The Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, welfare, and enjoyment of the residents in the Property, for the improvement and maintenance of the Common Area, enforcement of the Governing Documents, and the establishment of reasonable reserves for anticipated future expenditures for such purposes.

### 6.3 Annual Assessment.

6.3.1 Annual Assessment. The Board shall determine the amount of the annual assessment, based upon the operating budget of the Association, including appropriate reserves. The amount of the annual assessment may not be increased more than five percent of the previous year's assessment without the approval of 2/3rds of the Members voting in a duly-held Association election (where the quorum requirement is met as set forth in the Bylaws). The Board of Directors may fix the annual assessment at an amount not in excess of the maximum referred to above. Except as otherwise set forth in this Section, the rate set for the annual assessment for any particular year may be revised periodically by the Board of Directors based on actual operating costs of the Association.

6.3.2 Advance Payment Upon Purchase. Each new Owner shall pay one-fourth of the annual assessment upon his/her purchase of a Dwelling Unit, so that all Owners' annual assessment account shall have a 90-day advance payment. The Board of Directors may discontinue this practice at any time, by adopting a resolution, which will detail how restitution will be made for the advance payments. Once the advance payments are discontinued, they cannot be reinstituted.

6.3.3 Notification to Owners of Annual Assessments. The Board shall provide notice to the Owners of the amount of the annual assessment with the annual budget, as provided in 6.3.4 below.

6.3.4 Budgeting. Each year the Board shall prepare, approve and make available to each Member, a budget containing: (A) estimated revenue and expenses; (B) the amount of total cash reserves of the Association currently available for replacement or repair of the Common Area or other areas within the Property which the Association is responsible to repair and maintain, and for contingencies; and (C) a general statement setting forth the procedures used by the Board in the calculation and establishment of reserves to defray the costs of repair, replacement or additions to major components of the Common Area. The total amount needed to fund the annual budget shall be charged equally against all Lots as annual assessments, subject to any limitations set forth in the

1 Governing Documents. The Board shall prepare and approve the annual budget and  
2 distribute a copy to each Lot Owner, together with written notice of the amount of the  
3 annual assessment to be levied against the Owner's Lot, not less than 15 days nor more  
4 than 60 days prior to the beginning of the Assessment Period (March 1 through February  
5 28 or 29 of each year).

6  
7 6.3.5 Non-Waiver of Assessments. If before the expiration of any  
8 Assessment Period, the Association fails to fix the annual assessments for the next  
9 Assessment Period, the annual assessment established for the preceding Assessment  
10 Period shall continue until a new annual assessment is fixed.

11  
12 6.4 Special Assessments. Special Assessments may be recommended by the  
13 Board of Directors, in addition to the annual assessment for (A) constructing capital  
14 improvements; (B) correcting an inadequacy in the current operating account; (C)  
15 defraying, in whole or in part, the cost of any construction, reconstruction, unexpected  
16 repair or replacement of improvements in the Common Area; or (D) paying for such other  
17 matters as the Board may deem appropriate for the Property or the good and welfare of the  
18 Members. Special Assessments require the approval of 2/3rds of the Members who are  
19 voting in person or by absentee ballot at an Annual Meeting or at a Special Meeting duly  
20 called for this purpose (at which a quorum is present). The vote also may be by mail ballot  
21 in place of a meeting. Monies collected as a Special Assessment shall be used only for  
22 the purpose(s) stated to the Members during the approval process.

23  
24 6.5 Reimbursement Assessments. The Association shall levy a Reimbursement  
25 Assessment if (A) Any Owner, his/her family member, tenant, guest or invitee, has failed to  
26 comply with the Association's Governing Documents, which failure has necessitated an  
27 expenditure of money by the Association to bring the Owner or his/her Lot into compliance;  
28 or (B) Any Owner, his/her family member, tenant, guest or invitee has caused damage to  
29 the Common Area. A Reimbursement Assessment shall not be levied by the Association  
30 until notice and an opportunity for a hearing has been given to the Owner. Reimbursement  
31 Assessments may be enforced in the same manner as annual assessments, except as  
32 provided in any superseding law.<sup>1</sup>

33  
34 6.6 Special Service Assessments. In addition to the annual assessments,  
35 special assessments, and reimbursement assessments, the Association may levy, in any  
36 assessment year, individual non-uniform assessments related to special services or to the

1

A.R.S. §33-1803 (Planned Communities Act) provides that penalties imposed for  
infractions of the Governing Documents are not part of the Assessment Lien and  
are enforceable only by a civil suit against the pertinent Owner.

1 construction, development, installation, maintenance or repair of certain unique amenities,  
2 improvements or facilities on Common Area(s), which benefit only specific Lots within the  
3 Property. These Special Service Assessments may be levied non-uniformly so as to affect  
4 only those certain Lots which are deemed by the Association, to benefit from such  
5 additional services or improvements. The Board of Directors may designate, by written  
6 notice, Lots subject to Special Service Assessments based upon particular factors or  
7 characteristics unique to such Lots including, but not limited to, proximity to facilities  
8 contained on Common Areas, or the size, location or topography of such Lots, or any  
9 additional feature unique to such Lots. No such Special Service Assessments may be  
10 levied unless the Lots so assessed share common or unique features warranting special  
11 treatment, all such affected Lots are treated equally, and the Board of Directors votes to  
12 create such Special Service Assessments for the assessment year in question. The Board  
13 of Directors' decision to levy Special Service Assessments against particular Lots shall be  
14 directly attributed to special services or unique amenities which benefit such Lots.

#### 15 16 6.7 Reserve Fund.

17  
18 6.7.1 Requirement for Reserve Fund. The Association shall maintain a  
19 separate reserve account with the funds therein being used for the periodic maintenance,  
20 repair and replacement of the Common Area, and any other property that is the  
21 maintenance obligation of the Association, as required hereunder.

22  
23 6.7.2 Funding the Reserves. To the greatest extent possible, this reserve  
24 fund shall be funded by a portion of the annual assessments of Owners rather than by  
25 Special Assessments; provided however, that this provision shall not be deemed to limit  
26 the power of the Association to levy any Assessment or charge authorized by this  
27 Declaration. Board shall develop and periodically update a long range capital maintenance  
28 plan (the "Plan") on which to base reserve funding. Except in cases of emergency,  
29 reserve funds may be used only in accordance with the Plan.

30  
31 6.7.3 Management of Reserves. The reserves which are collected as part of  
32 the annual assessments shall be deposited by the Association in a separate bank account  
33 to be held in trust for the purposes for which they are collected or allocated. Such reserves  
34 shall be deemed a contribution to the capital account of the Association by the Owners  
35 and, once paid, no Owner shall be entitled to any reimbursement of those funds. The  
36 Board is only responsible for providing for such reserves as the Board, in good faith,  
37 deems reasonable, and no member of the Board is liable to any Owner or to the  
38 Association if the amount in the reserve account proves to be inadequate.

39  
40 6.8 Uniform Rate of Assessment and Due Dates. All annual assessments and  
41 special assessments must be fixed at a uniform rate for all Lots, except for those Lots with  
42 their own water meters. These Lot Owners pay for water directly to the City of Tucson and,  
43 therefore, the assessments for these Lots are reduced by the amount charged to other  
44 Lots for water usage. Annual assessments shall be collected on a monthly basis, and are  
45 due in the Association's office by the 1st of the month in which due, or on the first business  
46 day following the 1st of the month of any month in which the 1st is a weekend or holiday.



1       6.9 Certificate of Payment. The Association shall, upon demand, and for a  
2 reasonable charge, furnish a certificate signed by an officer of the Association setting forth  
3 whether the Assessments on a specified Lot have been paid. A properly executed  
4 certificate of the Association as to the status of the Assessments on a Lot is binding upon  
5 the Association as of the date of its issuance.  
6

7       6.10 Effect of Non-Payment of Assessments; Remedies of the Association. If any  
8 Assessment is not paid within fifteen (15) days of its due date, a late fee and interest may  
9 be charged, in an amount to be determined by the Board of Directors. If a check tendered  
10 for any Assessment is returned as unpaid for any reason, a charge shall be assessed, as  
11 determined by the Board of Directors. In the event the Association employs an attorney to  
12 collect a delinquent assessment, whether by foreclosure of the lien created herein or  
13 otherwise, the delinquent Owner shall pay, in addition to the Assessments and interest  
14 accrued thereon, such reasonable attorneys' fees and all other costs and expenses  
15 incurred by the Association as a result of such delinquency. In addition to all other  
16 remedies provided by law, the Association, or its authorized representative, may enforce  
17 the obligations of any Owner to pay the Assessments in any manner provided by law or in  
18 equity, or without any limitation to the foregoing, or by either or both of the following  
19 procedures:  
20

21       6.10.1 Civil Action. The Board may cause a civil action to be commenced  
22 and maintained in the name of the Association against any Owner who is personally  
23 obligated to pay delinquent Assessments. Any judgment obtained in the Association's favor  
24 shall include the amount of the delinquent Assessments, interest and late fees; any  
25 additional charges incurred by the Association; and any other amounts the court may  
26 award, including reasonable attorneys' fees and court costs. A proceeding to recover a  
27 judgment for unpaid Assessments may be maintained without the necessity of foreclosing  
28 or waiving the Association's lien.  
29

30       6.10.2 Enforcement of Lien. As provided in 6.1 above, all Assessments, plus  
31 late fees, interest and costs connected therewith, shall be a continuing lien upon the Lot  
32 assessed.  
33

34       6.10.2.1 Notice and Perfection of Lien. As more fully provided in  
35 A.R.S. §33-1807, the recording of the Original Declaration constitutes record notice and  
36 perfection of the Association's lien. The Association is not required to record a notice of  
37 lien, but may do so to provide notice to third parties of its interest in a Lot. The  
38 Association's lien is senior to all matters other than tax liens for real property taxes on the  
39 Lot, Assessments on the Lot in favor of any municipal or other governmental assessing  
40 unit, reservations in patents, and the lien of any First Mortgage. Except for the transfer of a  
41 Lot pursuant to a foreclosure of a First Mortgage, the sale or transfer of a Lot does not  
42 affect the Association's lien.  
43

44       6.10.2.2 Foreclosure of Lien. The Association's lien may be  
45 foreclosed by appropriate action in court or in the manner provided by law for the  
46 foreclosure of a realty mortgage, as set forth by the laws of the State of Arizona, as the  
47 same may be changed or amended. The lien provided for herein shall be in favor of the  
48 Association and shall be for the benefit of all other Owners. The Association shall have the



1 power to bid at any foreclosure sale and to purchase, acquire, hold, lease, mortgage, and  
2 convey any Lot. In the event such foreclosure is by action in court, reasonable attorneys'  
3 fees, court costs, title search fees, interest and all other costs and expenses shall be  
4 allowed to the extent permitted by law. Each owner hereby expressly waives any objection  
5 to the enforcement and foreclosure of this lien.  
6

7       6.11 No Offset and No Exemption of Owner. No offset against any Assessment  
8 shall be permitted for any reason, including, without limitation, any claim that the  
9 Association is not properly discharging its duties. No Owner is exempt from liability for  
10 payment of Assessments because he/she does not use or enjoy the Common Area, or has  
11 abandoned his/her Lot, or for any other reason, including (but not limited to) any allegation  
12 that the Board of Directors is not performing its obligations under the Association's  
13 Governing Documents. Payment of Association Assessments shall not be contingent on  
14 the performance by the Association of any obligations under the Governing Documents.  
15

16       6.12 Subordination of the Lien to First Mortgages; Sale or Transfer of Lots. The  
17 lien for Assessments provided for herein, including without limitation any fees, costs, late  
18 charges, or interest which may be levied by the Association in connection with unpaid  
19 Assessments, shall be subordinate to the lien of any First Mortgage. Sale or transfer of any  
20 Lot pursuant to foreclosure of any such First Mortgage or any proceeding in lieu thereof,  
21 including deed in lieu of foreclosure, or cancellation or forfeiture of such executory land  
22 sales contract, shall extinguish the lien of Assessments or charges which became due  
23 prior to any such sale or transfer, or foreclosure, or any proceeding in lieu thereof, including  
24 deed in lieu of foreclosure, or cancellation or forfeiture of any such executory land sales  
25 contract; provided, however, that any such delinquent Assessments or charges, including  
26 interest, late charges, costs, and reasonable attorneys' fees, which are extinguished as  
27 provided herein, may be reallocated and assessed to all Lots as a common expense or  
28 may be expressly assumed by a Successor Owner. No such sale, transfer, foreclosure, or  
29 any proceeding in lieu thereof, including deed in lieu of foreclosure, nor cancellation or  
30 forfeiture of such executory land sales contract, shall relieve any Owner of a Lot from  
31 liability for any Assessments or charges thereafter becoming due, nor from the lien thereof.  
32 In the event of foreclosure of a First Mortgage or the taking of a deed in lieu thereof, such  
33 First Mortgagee shall not be liable for unpaid Assessments or other charges which accrued  
34 prior to the acquisition of title to the Lot in question by such First Mortgagee.  
35

36       6.13 Mortgage Protection and Additional Assessment as Common Expense.  
37 Notwithstanding and prevailing over any other provisions of this Declaration, or the  
38 Association's Articles or Bylaws, or the Rules, the following provisions shall apply to and  
39 benefit each First Mortgagee of a Lot:  
40

41       6.13.1 First Mortgagees shall not be personally liable for the payment of  
42 any Assessment or charge, nor for the observance or performance of any covenant,  
43 restriction, regulation, Rule, Article or By-Law, except for those matters which are  
44 enforceable by injunctive or other equitable actions, not requiring the payment of money,  
45 nor shall a First Mortgagee be liable for any violation of the Restrictions that occurred prior  
46 to such First Mortgagee acquiring title.  
47

1           6.13.2 During the pendency of any proceeding to foreclose the first  
2 mortgage, including any period of redemption, the mortgagee (or receiver appointed in  
3 such action) may, but is not required to, exercise any or all of the rights and privileges of  
4 the Owner of the mortgaged Lot, including (but not limited to) the exclusion of the Owner's  
5 exercise of such rights and privileges.  
6

7           6.13.3 At such time as the first mortgagee becomes the record Owner of a  
8 Lot, he, she or it shall be subject to all of the terms and conditions of this Declaration,  
9 including but not limited to, the obligation to pay for all Assessments and charges accruing  
10 thereafter, in the same manner as any Owner.  
11

12           6.13.4 The first mortgagee, or any other party acquiring title to a mortgaged  
13 Lot through foreclosure suit or through any equivalent proceeding arising from said first  
14 mortgage, such as, but not limited to, the taking of a deed in lieu of foreclosure, shall  
15 acquire title to the mortgaged Lot free and clear of any lien authorized by or arising out of  
16 any of the provisions of this Declaration or Bylaws which secured the payment of any  
17 Assessment for charges accrued prior to the final conclusion of any such foreclosure suit  
18 or equivalent proceeding, including the expiration date of any period of redemption.  
19

20           6.13.5 First mortgagees are entitled to pay taxes or other charges which  
21 are in default and which may or have become a charge against any Common Area owned  
22 by the Association, and such first mortgagees may pay overdue premiums on hazard  
23 insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for  
24 such Common Area, and any first mortgagees making such payment may be owed  
25 immediate reimbursement from the Association.  
26

27           6.13.6 Nothing in this Declaration shall in any manner be deemed to give  
28 an Owner, or any other party, priority over any rights of a first mortgagee of a Lot pursuant  
29 to the terms of such first mortgagee's mortgage in the case of a distribution to an Owner of  
30 insurance proceeds or condemnation awards for losses or to a taking of any Lot or any part  
31 of the Common Area owned by the Association. Each first mortgagee shall be entitled to  
32 timely written notice of such loss or taking.  
33

## 34                           **ARTICLE VII** 35                           **INSURANCE** 36

37           7.1 Common Area Insurance. The Board of Directors shall secure policies of  
38 insurance and shall maintain the same so that a policy is in force at all times providing, to  
39 the extent that the same is available at reasonable cost, liability insurance coverage for the  
40 Common Areas and all insurable facilities and improvements thereon. Such insurance  
41 shall have a minimum of One Million Dollars coverage, insuring against liability for bodily  
42 injury and property damage resulting from the use of the Common Areas or the  
43 maintenance or operation thereof, and any liability arising from a contract of employment  
44 between the Association and another person or entity. The Association also shall secure  
45 fire and extended coverage, together with a standard "all risk" endorsement and, to the  
46 extent the same can be obtained, "agreed amount" and "inflation guard" endorsements,  
47 and any construction code endorsements required under law, which coverage shall be in  
48 an amount to be determined by the Board of Directors of the Association, but in no event

1 less than 100% of the current replacement value of Common Areas and facilities so that  
2 the same will adequately and properly insure all structures, equipment and improvements  
3 on the Common Areas. The cost of such insurance shall be paid by the Association. The  
4 Board of Directors shall have authority to negotiate with the insurance carrier and to adjust  
5 losses, make settlements and give releases to the insurance carrier. Each policy of  
6 insurance provided for under this Section shall recite that the same may not be canceled or  
7 benefits hereunder be alterable without ten days notice in writing to the Association.  
8

9       7.2 Damage or Destruction of Common Area. In the event of damage to or the  
10 destruction by fire or other casualty of Common Area facilities or Improvements covered by  
11 the described insurance policies, the Board of Directors shall, upon receipt of the insurance  
12 proceeds, contract to rebuild or repair such damaged or destroyed property to as good a  
13 condition as formerly existed. However, in the event that the proceeds of such insurance  
14 shall be insufficient to substantially restore or repair the damaged or destroyed facilities,  
15 the Board of Directors of the Association shall call a meeting for the purpose of levying a  
16 special assessment as provided in Section 6.4, for the difference between the sum  
17 received as insurance proceeds and the reasonable cost of repair or replacement of the  
18 damaged or destroyed Common Area facilities. In the event that the Members do not  
19 consent to the special assessment, no such assessment shall be made and the Board of  
20 Directors of the Association may determine to only partially restore or replace the damaged  
21 or destroyed facilities or to make some other use of the affected Common Area(s).  
22

23       7.3 Insurance of Lots. Each Owner of a Lot within the Property is responsible to  
24 insure said Lot and Improvements thereon against any and all hazards, in an amount  
25 sufficient to cover the full replacement cost or any repair or reconstruction work in the event  
26 of damage or destruction. The Association shall in no event be required to replace or  
27 restore real or personal property located upon any Lot. In the event of damage to an  
28 Improvement on a Lot, the Owner thereof shall promptly repair or rebuild the Improvement  
29 to the same standards and specifications of the original Improvement, unless otherwise  
30 permitted by the Architectural Committee. If the Owner desires construction changes or is  
31 required to make changes in accordance with applicable building codes, he or she shall be  
32 responsible for all costs that exceed insurance proceeds and for obtaining all required  
33 approvals from the Architectural Committee for exterior modifications. If the Owner of a  
34 damaged or destroyed structure fails to repair or rebuild the structure, then the Owner must  
35 remove the remaining portion of the damaged or destroyed structure, and maintain the Lot  
36 in a clean and orderly condition. Each Owner also is responsible to insure his/her Lot for  
37 liability and for protection of personal property and other interior damage or loss. Each Lot  
38 Owner must provide to the Association, a Certificate of Insurance evidencing the foregoing  
39 required coverage on an annual basis.  
40

## 41                   **ARTICLE VIII** 42                   **LOT MAINTENANCE**

43  
44       8.1 Lot Maintenance. Each Owner shall be solely responsible for all costs and  
45 expenses relating to the maintenance, repair, upkeep, taxation and assessment of his/her  
46 Lot(s) and any Improvements thereon, including but not limited to, the payment of utility  
47 costs, ad valorem taxes, roof maintenance and repair, maintenance and repair of building  
48 exteriors, fences and walls, walks and other exterior portions of and structures on his Lot,

1 unless otherwise provided herein. All exterior repairs shall be made in conformance with  
2 the original architectural design and style of the structure being repaired. Except as  
3 otherwise provided herein, each Owner is solely responsible for maintenance of  
4 landscaping within the patio on his/her Lot (including, but not limited to, upkeep of trees,  
5 shrubs, and other plantings), and shall keep the landscaping and patio areas in a neat,  
6 clean and well-maintained condition. The Association is responsible for landscaping  
7 maintenance, control and replacement on all other areas of the Property. See Article X  
8 for further provisions pertaining to landscaping on a Lot.

9  
10 8.2 Utilities. Each Owner is responsible for maintenance, repair, replacement,  
11 etc. of all plumbing, electrical, gas, water, and sewer lines on his/her Lot.

12  
13 8.2.1 Electric and Gas Lines. Outside the boundaries of each Owner's  
14 Lot, he/she is responsible for maintenance, repair, replacement, etc. of all electric and gas  
15 lines from the pertinent meter to the Unit, no matter where the meter is located.

16 8.2.2 Water and Sewage Lines. Outside the boundaries of each Owner's  
17 Lot, he/she is responsible for maintenance, repair, replacement, etc. of all water lines from  
18 the Unit to the nearest connection valve for water, and from the Unit to the nearest  
19 cleanout access point for sewage. This provision does not apply to Owners of Colonia  
20 Verde Plaza Units which have individual water and sewer meters.

21  
22 8.2.3 Telephone and Cable. Telephone and cable services, including all  
23 wiring and other equipment that is not maintained and repaired by the service provider, are  
24 the responsibility of Unit Owners.

25  
26 8.3 Failure to Maintain. Each Owner shall be responsible for assuring that all  
27 construction, alteration, modification or addition to the Lot itself, or to buildings, walls,  
28 fences, copings, roads, driveways, or other structures on the Lot, including but not limited  
29 to the addition of improvements such as antennas, satellite dishes and landscaping,  
30 conform to the use restrictions of Article XI herein. If an Owner fails or refuses to remove  
31 or repair any nonconforming Improvement, the Board of Directors may, in its sole  
32 discretion, have the nonconforming Improvement repaired or removed after notice to the  
33 Lot Owner, and the cost of removal or repair shall be added to and become a  
34 Reimbursement Assessment and shall be collected in accordance with Section 6.10, if  
35 delinquent.

## 36 37 **ARTICLE IX** 38 **ARCHITECTURAL REVIEW** 39

40 9.1 Architectural Committee. The Board of Directors may appoint an  
41 Architectural Committee, which shall be composed of a minimum of three Members. The  
42 Board of Directors may act as the Architectural Committee, in which case all references to  
43 the Architectural Committee in this Declaration shall mean the Board.

44  
45 9.2 Architectural Guidelines. All architectural matters within the Property shall be  
46 subject to the discretionary review of the Architectural Committee, except as otherwise  
47 provided herein. The Architectural Committee may promulgate and amend written rules  
48 and regulations concerning the construction, alteration, repair, modification or addition of

1 any exterior Improvement ("Architectural Improvement"), subject to the approval of the  
2 Board of Directors. Such rules and regulations shall be promulgated in accordance with  
3 Section 5.6 of this Declaration.  
4

5       9.3 Architectural Review. Prior to the construction, installation or modification of  
6 any Architectural Improvement upon a Lot, the Owner is required to obtain the written  
7 approval of the Architectural Committee, which approval may be given in the sole  
8 discretion of the Architectural Committee. For purposes of this Article, Architectural  
9 Improvements shall be deemed to include, but are not limited to, buildings, fixtures, radio  
10 antennae, television antennae, satellite stations or dishes, walls, fences, copings, awnings,  
11 sunshades, flagpoles, or any similar structures, and any and all other related matters.  
12 Improvements may be made within the enclosed boundaries of a Lot without approval of  
13 the Architectural Committee only if said Improvements are not visible from any Common  
14 Area.  
15

16       9.3.1 Required Submittal. The Owner shall submit to the Architectural  
17 Committee two complete sets of plans for the proposed Architectural Improvements,  
18 specifications (including exterior color schemes); plot plans, which shall include the location  
19 of all major structures; and a construction schedule.  
20

21       9.3.2 Approval by Committee. Approval of the plans and specifications  
22 shall be evidenced, if at all, by the written endorsement of the Architectural Committee  
23 made on the plans and specifications. One set of the endorsed plans shall be returned to  
24 the Owner of the Lot proposed to be improved prior to the beginning of any construction.  
25 One set of plans and specifications shall be retained by the Architectural Committee.  
26

27       9.3.3 Nonconforming Architectural Improvements. In the event that an  
28 Owner makes unapproved Architectural Improvements upon his/her Lot, or Architectural  
29 Improvements that do not conform to the plans and construction schedule submitted to and  
30 approved by the Architectural Committee, the Committee shall give written notice to the  
31 Owner of the property upon which such Architectural Improvements have been made.  
32 Such notice shall specify the nature of the nonconformity of the Architectural Improvements  
33 and shall grant the Owner an opportunity for a hearing before the Board of Directors. If the  
34 matter is not resolved, the Association has the right to avail itself of all applicable legal and  
35 equitable remedies (see Article XIII, Enforcement).  
36

37       9.4 Standards of Review. In reviewing plans for Architectural Improvements or  
38 other exterior changes upon a Lot, the Architectural Committee shall exercise its discretion  
39 in deciding whether or not the proposed modification is in harmony with the overall scheme  
40 of the subdivision development. The Architectural Committee shall have the right to deny  
41 alterations or modifications for purely aesthetic reasons, if (A) the Architectural Committee  
42 considers the alteration or modification to be unattractive in relation to the overall scheme  
43 of development; (B) the Committee considers the alteration or modification to be a  
44 nuisance or upset of design; or (C) the Committee considers the alteration or modification  
45 to be in contrast to or out of harmony with the style of existing structures. The Architectural  
46 Committee may elicit the opinion of other Owners, including the neighbors of the Owner  
47 submitting the plan for alteration or modification, as to the conformity and harmony of the  
48 proposed plan with the overall scheme of development, and the effect that the proposed

1 plan might have on the physical views of other Owners. After eliciting these opinions, the  
2 Architectural Committee may, but need not, take them into account in making its final  
3 decision. While the opinion of no single Lot Owner will control a decision of the  
4 Architectural Committee, within its own discretion, the Architectural Committee may, but  
5 need not, attach whatever significance it deems appropriate to the statements of residents  
6 and/or neighbors of the Owner submitting the proposed alteration or modifications to an  
7 existing structure.  
8

9       9.5   Requirements for Plans and Specifications: All plans must meet the following  
10 minimum criteria and such further criteria as the Architectural Committee promulgates:  
11

12           9.5.1   The plans shall be in accordance with the provisions of this  
13 Declaration and written rules and regulations of the Architectural Committee, and shall not  
14 involve material changes to models designed or built by Declarant without specific waiver  
15 of this sub-Section by the Architectural Committee, such waiver being at the absolute  
16 discretion of the Architectural Committee;  
17

18           9.5.2   The plans shall be in sufficient detail to permit the Architectural  
19 Committee to make its determination; and  
20

21           9.5.3   The plans, as submitted to the Architectural Committee, shall be  
22 complete and ready for submittal to obtain a building permit from Pima County or other  
23 competent jurisdiction. The Architectural Committee shall review and shall either approve  
24 or disapprove all plans and specifications within 45 days after submission and issuance by  
25 the Association of a receipt indicating the date received. Any plans not so approved or  
26 disapproved shall be deemed approved, and the provisions of this Section shall be  
27 deemed waived.  
28

29       9.6   Cost Recovery. If the Association incurs any costs for review of submitted  
30 plans and specifications due to the need for professional services, the Association may  
31 charge a reasonable fee to a petitioning Owner for the review of the plans and  
32 specifications. This fee shall be paid in advance at the time the plans and specifications  
33 are submitted for approval.  
34

35       9.7   Limitation of Liability. Although the Architectural Committee shall have the  
36 right to reject plans and specifications for reasons which may include their failure to comply  
37 with zoning or building ordinances or other governmental regulations or restrictions, or on  
38 the basis that such plans and specifications are defective or not prepared in accordance  
39 with sound engineering practices, the approval of plans and specifications shall not  
40 constitute a representation, warranty or guarantee that such plans and specifications  
41 comply with proper engineering or design principles, with zoning or building ordinances or  
42 with other governmental regulations or restrictions. By approving plans and specifications,  
43 neither the Board of Directors, the Architectural Committee, nor any of its members  
44 assumes any liability or responsibility therefor, or for any defect in the structure constructed  
45 from such plans and specifications.  
46

47           Neither the Board of Directors, the Architectural Committee, nor any of their  
48 members shall be liable for damages or otherwise to any person submitting requests or

1 plans for approval, or to any Owner of land subject to these covenants, by reason of any  
2 action, mistake in judgment, negligence, failure to act, approval, disapproval or failure to  
3 approve or disapprove with respect to any matter within their jurisdiction under the terms of  
4 this Declaration. Any Owner submitting plans to the Architectural Committee, and any  
5 Owner, by acquiring title to any Lot, waives his/her claim for damages or other relief arising  
6 under the architectural review process established in this Declaration or by the Board of  
7 Directors.

8  
9 9.8 Submittal by Member of Committee. In the event a conflict of interest arises  
10 wherein a member of the Architectural Committee wishes to alter, remodel, and/or add to  
11 his existing structure, a substitute member shall be appointed by the Board of Directors to  
12 the Architectural Committee to, in conjunction with the remaining members of the  
13 Committee, approve or disapprove said plans and specifications.

14  
15 9.9 Appeal. Any Owner whose proposal has been disapproved or has received a  
16 decision that he or she considers adverse, may appeal the decision to the Board of  
17 Directors within 30 calendar days of receipt of the original decision. The appeal must be in  
18 writing and state the reasons for the request for reconsideration or appeal of the  
19 Architectural Committee's decision and the relief requested. The Board shall set the appeal  
20 for a public hearing and give the applicant and any interested party or parties, notice of  
21 said hearing. The applicant and any other interested party or parties may testify and  
22 present evidence at the hearing. The date of the hearing shall not be sooner than 10 days  
23 nor later than 20 days following the receipt by the Board of the appeal. The Board shall  
24 issue a written decision within seven days after the hearing has been completed. Failure to  
25 do so shall mean that the original decision is affirmed. Decisions of the Board in this regard  
26 shall be binding and conclusive.

27  
28 9.10 Inspection. In order to inspect the Architectural Improvements being  
29 constructed or recently completed on a Lot (to ascertain that such Improvements have  
30 been, or are being built in compliance with the Rules, plans and specifications approved in  
31 accordance with this Article, and any other pertinent provision of this Declaration), any  
32 authorized officer, director, employee or agent of the Association, may at any reasonable  
33 time and without being deemed guilty of trespass, enter on any Lot, after reasonable notice  
34 to the Owner of such Lot.,

35  
36 9.11 Building Requirements. In addition to the requirements in the Architectural  
37 Guidelines, the following restrictions shall apply:

38  
39 9.11.1 No improvement or structure whatever, other than one first-class  
40 private Dwelling Unit, patio walls, and customary outbuildings (including garage or carport)  
41 may be erected, placed or maintained on any Lot. No free-standing sheds that are visible  
42 from the street or from any Common Area, are allowed on any Lot. First-class materials  
43 and workmanship are required. No pre-fabricated or mobile homes may be erected or  
44 maintained on the Property. No swimming pools have been allowed to be constructed  
45 after April 7, 2003; however Owners of pools existing on Lots prior to this date may retain  
46 their pools. These Owners are still liable for their share of assessments for the swimming  
47 pools on Common Area and may be subject to any Special Service Assessment for their  
48 increased water use .



1  
2 9.11.2 No fence or wall may exceed the height approved by the  
3 Architectural Committee. Any planting used to form a hedge will be subject to the same  
4 setback and height requirements as applied to a fence or wall. In determining the height of  
5 a wall or other such item, the natural ground level shall be used. Bare concrete walls,  
6 woven metal, and chain link fences are prohibited on individual Lots.

7  
8 9.11.3 Patio walls and other additions and modifications shall be  
9 constructed of the same materials as used in the construction of the principal residence  
10 and original improvements placed on the Lot, unless waived in writing by the Architectural  
11 Committee.

12  
13 9.11.4 Mechanical and electrical equipment to be installed by an Owner,  
14 other than Declarant in the original construction, shall, where possible, be concealed from  
15 the view of any adjoining street front or Lot, as required by the Architectural Committee.  
16 Included within this restriction are air conditioning, evaporative coolers and pool pump or  
17 heating equipment. No such equipment shall be permitted to remain exposed at the side  
18 or rear of any Lot unless reasonably concealed by planting or fence. Notwithstanding the  
19 above, equipment or other improvements originally installed by Declarant, or later replaced  
20 or repaired, shall be acceptable without the necessity of screening.

21  
22 9.11.5 All exterior lights must be located and maintained so as not to be  
23 directed toward or interfere with surrounding Property or the Common Areas, including  
24 streets.

25  
26 9.11.6 No garage or other building or structure shall be erected, placed or  
27 maintained on any Lot until the construction and completion of the principal residence  
28 thereon, except that the necessary outbuildings, garage or other structures relating to the  
29 principal residence may be simultaneously constructed, and nothing herein shall be  
30 construed to prevent the incorporation and construction of a garage in and as part of such  
31 residence. The Architectural Committee may require that any garages and other accessory  
32 buildings be incorporated as a part of and attached to the Dwelling Unit, in a manner  
33 approved by the Architectural Committee, rather than located apart from the Dwelling Unit.

34  
35 9.11.7 No building of any nature shall be constructed or removed from  
36 within or without the Property to any Lot within the Property, without the consent of the  
37 Architectural Committee, and in the event a building shall be so placed from without on any  
38 Lot, said building shall comply in all respects with each and every provision of this  
39 Declaration relating thereto.

40  
41 9.11.8 No mobile home, manufactured or prefabricated home shall be  
42 permitted or placed upon any Lot or anywhere else in the Property. No residence placed or  
43 erected on any Lot shall be occupied in any manner at any time prior to its being completed  
44 in accordance with approved plans, as hereinafter provided, nor shall any residence, when  
45 completed, be in any manner occupied until made to comply with all requirements,  
46 conditions and restrictions set forth herein; provided that, during the actual construction or  
47 alteration of a building or buildings on any Lot, necessary temporary buildings for storage  
48 of materials and equipment may be erected and maintained by the person doing such



1 work. The work of constructing, altering or remodeling any building on any part of the  
2 Property shall be prosecuted diligently from the commencement thereof until the  
3 completion thereof, which shall be within six months from the start. The Architectural  
4 Committee may extend this time limit if, in its discretion, conditions warrant such an  
5 extension of time.  
6

7 9.11.9 The Architectural Committee shall determine the location, color,  
8 size, design, lettering and all other particulars, of all mail and paper delivery boxes,  
9 standards and brackets, name signs, and house number signs so that there shall be strict  
10 uniformity in appearance with respect thereto.  
11

12 9.11.10 Asphalt shingle roofs and siding are not permitted. The Association  
13 assumes no responsibility or liability for damages arising from an Owner's failure to  
14 maintain, repair or replace a roof. Unless approved by the Architectural Committee, no  
15 evaporative cooler or air conditioner shall be placed or installed unless concealed or  
16 architecturally blended with the Dwelling Unit. The pertinent Owner is responsible for the  
17 maintenance, repair and replacement of any enclosures constructed to conceal such units.  
18 In all cases, repair or change that constitutes a modification from original construction or  
19 installation, shall require the prior written approval of the Architectural Committee.  
20

21 9.12 Variances. Any or all of the restrictions of this Article and Articles 10 or 11,  
22 are subject to waiver by the Architectural Committee, and any such waiver may apply at the  
23 option of the Architectural Committee to fewer than all of the Lots without waiver of such  
24 restriction as to any other Lot(s).  
25

## 26 **ARTICLE X**

### 27 **LANDSCAPING REVIEW**

28

29 10.1 Landscaping Committee. The Board of Directors may appoint a Landscaping  
30 Committee, which shall be composed of a minimum of three Members. The Board of  
31 Directors may act as the Landscaping Committee, in which case all references to the  
32 Landscaping Committee in this Declaration shall mean the Board.  
33

34 10.2 Landscaping Guidelines. All landscaping matters within the Property shall be  
35 subject to the discretionary review of the Landscaping Committee, except as otherwise  
36 provided herein. The Landscaping Committee may promulgate and amend written rules  
37 and regulations concerning the installation, alteration, modification and addition of  
38 plantings, pathways, decorative rocks and other landscaping Improvements (Landscaping  
39 Improvement"), subject to the approval of the Board of Directors. Such rules and  
40 regulations shall be promulgated in accordance with Section 5.6 of this Declaration.  
41

42 10.3 Landscaping Review. Prior to the installation, planting or other modification  
43 of any Landscaping Improvement on Common Area by a Lot Owner, or on a portion of a  
44 Lot that is visible from outside the patio walls of the Lot, the Owner is required to obtain the  
45 prior written approval of the Landscaping Committee, which approval may be given at the  
46 sole discretion of the Landscaping Committee. For purposes of this Article, Landscaping  
47 Improvements shall be deemed to include, but not be limited to, trees, shrubs, plants,  
48 flowers, cacti, succulents, concrete, brick, asphalt, gravel or otherwise un-surfaced

1 pathways, statues, benches, pots, fountains, garden ornaments, stones and rocks,  
2 landscape lights, and any and all other related matters.

3  
4 10.3.1 Required Submittal. The Owner shall submit to the Landscaping  
5 Committee two complete sets of plans for the proposed Landscaping Improvements, and  
6 specifications (including planting specifications consistent with water conservation  
7 requirements and plant selections currently approved for use by the Association). The  
8 plans shall include the location of all major paths, plantings and ornaments; and a  
9 construction and planting schedule as applicable.

10  
11 10.3.2 Approval by Committee. Approval of plans and specifications for  
12 Landscaping Improvements shall be evidenced by the written endorsement of an  
13 authorized representative of the Landscaping Committee made on the plans and  
14 specifications. One set of the endorsed plans shall be returned to the Owner of the Lot  
15 proposed to be improved, prior to the beginning of any construction or planting. One set of  
16 plans and specifications shall be retained by the Landscaping Committee.

17  
18 10.3.3 Nonconforming Landscaping Improvements. In the event that an  
19 Owner makes unapproved Landscaping Improvements upon his/her Lot or adjacent  
20 thereto, or makes Landscaping Improvements that do not conform to the plans,  
21 specifications, and construction schedule submitted to and approved by the Landscaping  
22 Committee, the Committee shall give written notice to the Owner of the property upon  
23 which or adjacent to which such Landscaping Improvements have been made. Such notice  
24 shall specify the nature of the nonconformity of the Landscaping Improvements and shall  
25 grant the Owner an opportunity for a hearing before the Board of Directors. If the matter is  
26 not resolved, the Association has the right to avail itself of all applicable and equitable  
27 remedies.

28  
29 10.4 Standards of Review. In reviewing plans for Landscaping Improvements or  
30 other changes upon the Lot or adjacent to it, the Landscaping Committee shall exercise its  
31 discretion in deciding whether or not the proposed modification is in harmony with the  
32 overall landscaping scheme of Colonia Verde. The Landscaping Committee shall have the  
33 right to deny alterations or modifications for purely aesthetic reasons, if: (A) the  
34 Landscaping Committee considers the plans or plantings to be unattractive in relation to  
35 the overall scheme of development in Colonia Verde; (B) the Committee considers the  
36 plans or plantings to be a nuisance or upset of design; (C) the Committee considers the  
37 plans or modifications to be in contrast to or out of harmony with the overall desert  
38 landscaping style of Colonia Verde; (D) the plans or plantings will cause an unreasonable  
39 increase in water use; or (E) the plans or plantings may impede storm water runoff or  
40 drainage. The Landscaping Committee may elicit the opinion of other Owners, including  
41 the neighbors of the Owner submitting the plan for landscaping alteration or modification,  
42 as to the conformity and harmony of the proposed plan with the overall scheme of  
43 landscaping, and the effect that the proposed plan might have on the physical views of  
44 other Owners. After eliciting these opinions the Landscaping Committee may, but need  
45 not, take them into account in making its final decisions. While the opinion of no single Lot  
46 Owner will control a decision of the Landscaping Committee, within its own discretion, the  
47 Landscaping Committee may, but need not, attach whatever significance it deems

1 appropriate to the statements of residents and/or neighbors of the Owner submitting the  
2 proposed alteration or modifications to existing landscaping.

3  
4 10.5 Requirements for Plans and Specifications. All plans must meet the following  
5 minimum criteria and such further criteria as the Landscaping Committee promulgates.

6  
7 10.5.1 The plans shall be in accordance with the provisions of this Declaration  
8 and written rules and regulations of the Landscaping Committee; and

9  
10 10.5.2 The plans shall be in sufficient detail to permit the Landscaping  
11 Committee to make its determination; and

12  
13 10.5.3 The Landscaping Committee shall either approve or disapprove all  
14 plans and planting specifications within 45 days after submission and issuance by the  
15 Association of a receipt indicating the date received. Any plans not so approved or  
16 disapproved within 45 days shall be deemed approved, and the provisions of this Section  
17 shall be deemed waived.

18  
19 10.6 Cost Recovery. If the Association incurs any costs for review of submitted  
20 plans and planting specifications due to the need for professional services, the Association  
21 may charge a reasonable fee to a petitioning Owner for the review of the plans and  
22 specifications. This fee shall be paid in advance at the time the plans and specifications  
23 are submitted for approval.

24  
25 10.7 Limitation of Liability. Although the Landscaping Committee shall have the  
26 right to reject plans and planting specifications for reasons which may include their failure  
27 to comply with zoning or other governmental regulations or restrictions, or on the basis that  
28 such plans and specifications are defective or not prepared in accordance with sound  
29 construction, drainage, or planting practices, the approval of plans and specifications shall  
30 not constitute a representation, warranty or guarantee that such plans and specifications  
31 comply with proper landscaping design and drainage principles, zoning or ordinances or  
32 with other governmental regulations or restrictions. By approving plans and planting  
33 specifications, neither the Board of Directors, the Landscaping Committee, nor any of their  
34 members assume liability or responsibility therefore, or for any defect in the landscaping  
35 design resulting from such plans and specifications.

36  
37 Neither the Board of Directors, the Landscaping Committee, nor any of their  
38 members shall be liable for damages or otherwise to any person submitting requests or  
39 plans for approval, or to any Owner of land subject to these covenants, by reason of any  
40 action, mistake, negligence, failure to act, approval, disapproval or failure to approve or  
41 disapprove with respect to any matter within their jurisdiction under the terms of this  
42 Declaration. Any Owner submitting plans to the Landscaping Committee, and any Owner,  
43 by acquiring title to any lot, waives his/her claim for damages or other relief arising under  
44 the landscaping review process established in this Declaration or by the Board of Directors.

45  
46 10.8 Submittal by Member of Committee. In the event a conflict of interest  
47 arises wherein a member of the Landscaping Committee wishes to alter, redesign, change  
48 planting specifications or make other landscaping modifications to his/her existing

1 landscaping, a substitute member shall be appointed by the Board of Directors to the  
2 Landscaping Committee to, in conjunction with the remaining members of the Committee,  
3 approve or disapprove said plans and specifications.  
4

5 10.9 Appeal. Any Owner whose proposal has been disapproved or has received  
6 a decision that he or she considers adverse, may appeal the decision to the Board of  
7 Directors within 30 calendar days of receipt of the original decision. The appeal must be in  
8 writing and state the reasons for the request for reconsideration or appeal of the  
9 Landscaping Committee's decision and the relief requested. The Board shall set the  
10 appeal for a public hearing and give the applicant and any interested party or parties notice  
11 of said hearing. The applicant and any other interested party or parties may testify and  
12 present evidence at the hearing. The date of the hearing shall not be sooner than 10 days  
13 nor later than 20 days following the receipt by the Board of the appeal. The Board shall  
14 issue a written decision within seven days after the hearing has been completed. Failure to  
15 do so shall mean that the original decision is affirmed. Decisions of the Board in this regard  
16 shall be binding and conclusive.  
17

18 10.10 Landscaping Requirements. In addition to the requirements in the  
19 Landscaping Guidelines, the following restrictions shall apply:  
20

21 10.10.1 No planting used to form a hedge may exceed the height approved  
22 by the Landscaping Committee. Any planting used to form a hedge will be subject to the  
23 same setback height requirements as specified in Article IX, Section 9.11.2. In determining  
24 the height of a wall or hedge or other such item, the natural ground level shall be used.  
25

26 10.10.2 Mechanical and electrical equipment to be installed by an Owner  
27 shall, within reason, be concealed from the view of adjoining street front or lot. Included  
28 within this restriction are irrigation system controls, fountain pumps, lighting controls or  
29 other such equipment. No such equipment shall be permitted to remain exposed at the  
30 side or rear of any Lot unless reasonably concealed by planting or other approved  
31 enclosure.  
32

33 10.10.3 All landscaping lights must be located and maintained so as not to  
34 be directed toward or interfere with surrounding Property and Common Areas, including  
35 streets.  
36

37 10.11 Landscaping Restrictions. No shrubs, trees or obstructions of any kind shall  
38 be placed on corner Lots in such places as to cause a traffic hazard. No grass shall be  
39 grown on any Lot. No grasses shall be grown on the Common Area or other areas  
40 maintained by the Association. All trees and other vegetation planted by an Owner on  
41 his/her Lot shall be kept trimmed to a height which will not materially interfere with views  
42 from neighboring Lots. The Landscaping Committee may forbid the planting or  
43 maintenance of certain plants, trees and shrubs, or restrict the propagation of such plants,  
44 trees and shrubs to native or indigenous species. See Section 8.1 for further provisions  
45 pertaining to landscaping on a Lot.  
46

47 10.12 Natural Vegetation. The natural growth on Common Area shall not be  
48 destroyed or removed by any Lot Owner, except as approved in writing by the Landscaping

1 Committee. In the event natural growth is removed without the approval of the  
2 Landscaping Committee, the Committee may require the replanting or replacement of  
3 same; the cost thereof to be borne by the person responsible for such removal.  
4

## 5 **ARTICLE XI**

### 6 **USE RESTRICTIONS**

7  
8 The Property shall be held, used and enjoyed, subject to the following restrictions:  
9

#### 10 **11.1 Animals.**

11  
12 **11.1.1 Animal Restrictions.** No animals, livestock or poultry of any kind shall  
13 be raised, bred or kept on any Lot, except that a reasonable number of dogs, cats or other  
14 generally-recognized household pets may be kept, provided that they are not kept, bred or  
15 maintained for any commercial purpose, and further provided that such pets do not create  
16 a nuisance for any other resident within the Property. A "reasonable number" as used in  
17 this Section shall ordinarily mean no more than two pets per household; however, the  
18 Board may determine that a reasonable number in any instance may be more or less.  
19 The Board of Directors, in its sole discretion, is authorized to determine whether the  
20 presence of a particular pet constitutes a nuisance and whether an animal is a "generally-  
21 recognized household pet."  
22

23 **11.1.2 Required Use of Leash and Clean-Up.** All pets shall be restrained on  
24 a hand-held leash when outside a Lot, and shall be directly under control at all times. An  
25 owner must clean up after his/her pet and dispose of excrement, bagged, in a trash  
26 receptacle. Any Lot where a pet is kept or maintained shall at all times be kept in a neat  
27 and clean condition.  
28

29 **11.1.3 No Structures for Animals.** No structure for the care, housing,  
30 confinement, or training of any animal or pet shall be maintained on any portion of the  
31 Property.  
32

33 **11.1.4 Rules and Regulations.** The Board of Directors shall have the right to  
34 adopt, amend and repeal rules and regulations governing the keeping of pets, and such  
35 rules and regulations may include an enforcement procedure. Such rules and regulations  
36 shall be promulgated in accordance with Section 5.6 of this Declaration.  
37

38 **11.2 Antennas and Exterior Devices.** Subject to the Telecommunications Act of  
39 1996 and any other applicable law, no exterior antennas or other devices for the  
40 transmission or reception of communication, television or radio signals, including satellite  
41 dishes, which are not in keeping with similar devices already present and approved within  
42 the Property, shall be erected or maintained without prior written authorization of the Board  
43 of Directors or the Architectural Committee. No other exterior devices, modifications, or  
44 additions, shall be constructed on the exterior of a Lot (including the roof) without the prior  
45 written authorization of the Board or the Architectural Committee. To the extent that  
46 reception of an acceptable signal would not be impaired, an antenna permissible pursuant  
47 to rules of the Association may only be installed in a side or rear yard location, not visible

1 from the street or (when reasonably feasible) from neighboring property or integrated with  
2 the Dwelling Unit and surrounding landscaping to prevent or limit such visibility.

3  
4 11.3 Business Activities. All Lots shall be used for single-family residential  
5 purposes only. The following applies with respect to home business activities within the  
6 Property;

7  
8 11.3.1 Criteria for Home Business. No trade or business may be conducted  
9 in or from any Lot, except that an Owner or occupant residing in any Lot may conduct  
10 business activities within the Lot so long as (A) the existence or operation of the business  
11 activity is not apparent or detectable by sight, sound or smell from outside the Lot; (B) the  
12 business activity conforms to all zoning requirements and any other governmental  
13 requirements for the Property; (C) the business activity does not involve any person  
14 conducting such business who does not reside in the Lot or door-to-door solicitation of  
15 residents of the Property; (D) the existence or operation of the business does not increase  
16 that Lot's use of Common Area facilities over the standard for a single family dwelling; (E)  
17 the existence or operation of the business does not require more than a reasonable  
18 number of customers or delivery trucks to visit the Lot; and (F) the business activity does  
19 not constitute a nuisance, or a hazardous or offensive use, or cause the owners to violate  
20 any other provisions of this Declaration, or threaten the security or safety of other  
21 residents of the Property, as may be determined in the sole discretion of the Board.

22  
23 11.3.2 Pertinent Definitions. The terms "business" and "trade," as used in this  
24 provision, shall be construed to have their ordinary, generally-accepted meanings, and  
25 shall include, without limitation, any occupation, work or activity undertaken on an ongoing  
26 basis which involves the provision of goods or services to persons other than the provider's  
27 family and for which the provider receives a fee, compensation or other form of  
28 consideration, regardless of whether: (A) such activity is engaged in full or part-time; (B)  
29 such activity is intended to or does generate a profit; or (C) a license is required therefor.  
30 Notwithstanding the above, the leasing of a Lot shall not be considered a trade or business  
31 within the meaning of this Section.

32  
33 11.3.3 Yard Sales or Garage Sales. Yard sales and garage sales are  
34 prohibited. Estate sales are allowed only in accordance with guidelines that shall be set  
35 forth in the Rules.

36  
37 11.4 Clotheslines. Clotheslines shall be of a retractable type concealed from view  
38 of neighboring Lots and streets.

39  
40 11.5 Diseases and Insects. No Owner shall permit anything or any condition to  
41 exist upon the Property, which shall induce, breed or harbor infectious plant diseases or  
42 noxious insects.

43  
44 11.6 Drainage. No structure, planting or other material, except as installed by  
45 Declarant, shall be placed or permitted to remain within any drainage-way which may  
46 change the direction of flow or which may obstruct or retard the flow of water. In general,  
47 there shall be no interference with the established drainage pattern over any property  
48 within the Property, unless adequate provision is made for proper drainage conforming to

1 Pima County rules, regulations, ordinances and drainage criteria. For purposes hereof,  
2 "established drainage" is defined as the drainage which existed at the time the overall  
3 grading of the Property was originally completed, or which is shown on the Plat or on any  
4 plans conforming to Pima County rules, regulations, ordinances and drainage criteria,  
5 which are approved by Pima County Building Services or its duly appointed representative.  
6 Drainageways shall conform to the requirements of all lawful and applicable public  
7 authorities, including the Engineering Departments of the City of Tucson, County of Pima,  
8 and State of Arizona.  
9

10 11.7 Drilling. No derrick or other structure designed for use in drilling shall be  
11 erected, placed or permitted upon any part of the Property. No water, oil, natural gas,  
12 petroleum, asphaltum, hydrocarbon products or other mineral substances shall be  
13 produced or extracted therefrom.  
14

15 11.8 Inspection. During reasonable hours, any member of the Board of Directors  
16 of the Association, or any authorized representative, shall have the right to enter upon and  
17 inspect any Lot within the subdivision (not including the interior of any Dwelling Units  
18 erected thereon) for the purpose of ascertaining whether or not the provisions of this  
19 Declaration have been or are being complied with, and such persons shall not be deemed  
20 guilty of trespass by reason of such entry.  
21

22 11.9 Leases.

23  
24 11.9.1 Obligations of Tenants. All provisions of the Governing Documents  
25 which govern the conduct of Owners and which provide for sanctions against Owners shall  
26 also apply to tenants. The Owner shall provide his/her tenant with copies of the Governing  
27 Documents. In the event the Owner fails to do so, the Association shall provide copies to  
28 the tenant and charge the Owner the cost of doing so.  
29

30 11.9.2 Requirements for Leases. All leases shall be in writing and shall  
31 specifically provide:  
32

33 11.9.2.1 The lease is subject in all respects to the provisions of the  
34 Declaration and Rules.  
35

36 11.9.2.2 The failure of the tenant to comply with the terms and  
37 conditions of the Declaration and Rules constitutes a material default of the lease, and the  
38 Owner shall be entitled to reenter and retake possession of the premises pursuant to the  
39 provisions of the Arizona Landlord Tenant Act, A.R.S. Section 33-1301 *et seq.*  
40

41 11.9.3 Notification to Association. Within 15 days of lease inception, an  
42 Owner leasing his/her Lot, shall give the Association, in writing, the name of the tenant of  
43 the Lot and such other information as the Association may reasonably require.  
44

45 11.9.4 Enforcement of Leasing Restrictions. An Owner shall provide a  
46 copy of an operative lease within 10 days of the Association's written request therefor. An  
47 Owner shall be responsible for any violation of the Declaration and Rules by his/her lessee  
48 or tenant or any other persons residing in the Lot, and their guests or invitees. In the event

1 of any violation, the Owner, upon demand of the Association, shall immediately take all  
2 necessary actions to correct any such violations.

3  
4 11.10 Noise. No Owner shall engage in any activity or permit any activity to occur  
5 on the Property which shall result in unusual, loud or obtrusive noises or sounds.

6  
7 11.11 Nuisances and Offensive Activity. No nuisance shall be permitted to exist or  
8 operate upon the Property, nor shall any activity be conducted which is offensive or  
9 detrimental to any portion of the Property or any Owner, lessee or resident, or is an  
10 annoyance to any Owner, lessee or resident.

11  
12 11.12 Resubdivision. No Lot or Lots shall be subdivided except for the purpose of  
13 combining the re-subdivided portions with another adjoining Lot or Lots, provided that no  
14 additional Lot is created thereby. Any ownership or single holding by any Person  
15 comprising parts of two adjoining Lots, or of the whole of one Lot and part or parts of two  
16 adjoining Lots, shall, for all purposes of this Declaration, be deemed as constituting a  
17 single Lot.

18  
19 11.13 Rubbish, Garbage and Storage. No Lot shall be used in whole or part for the  
20 storage of construction materials, rubbish, or garbage of any character whatsoever, nor for  
21 the storage of anything which will cause the Lot to appear in an unclean or untidy condition  
22 or that will otherwise be obnoxious. No trash, yard waste, or rubbish of any kind may be  
23 dumped or otherwise discarded anywhere in the Property. No obnoxious or offensive  
24 activity shall be conducted on any Lot, nor shall anything be done, placed or stored thereon  
25 which may become an annoyance or nuisance to the neighborhood or occasion any noise,  
26 or odor which will or might disturb the peace, quiet, comfort or serenity of the occupants of  
27 surrounding Lots. No storage of any item or material is permitted outside the walls of a Lot.

28  
29 11.14 Sales of Lots. Each Owner shall notify the Association, not less than 10  
30 business days prior to the closing of any sale or transfer of his/her Lot, of the name and  
31 address of the purchaser or transferee, as well as the scheduled closing date for the sale,  
32 and any other information as may be reasonably required by the Association. The Board  
33 may charge a reasonable transfer fee to compensate the Association for changing its  
34 records and providing the new Owner with copies of all Association documents and other  
35 disclosure information required by applicable law.

36  
37 11.15 Security. The Association may, from time to time, provide measures of  
38 security on the Property; however, the Association is not a provider of security and shall  
39 have no duty to provide any security on the Property. The obligation to provide security lies  
40 solely with each Owner individually. The Association shall not be held liable for any loss or  
41 damage by reason of failure to provide adequate security or as a result of the  
42 ineffectiveness of security measure undertaken.

43  
44 11.16 Signs. No sign of any kind shall be on a Lot or Common Area, unless the  
45 sign has been approved by the Board, except signs from a security company indicating the  
46 house is protected by security devices, signs or other postings which may be required by  
47 legal proceedings, or "Open House" signs which are in place not more than two hours  
48 before and after the time of the event. No sign may exceed more than three square feet in



1 size. The placement of any sign shall not obstruct sidewalks or any other area of public  
2 access. A name and address sign, as designed and installed by the Association, shall be  
3 furnished to each Owner. Political signs are only allowed in accordance with City of  
4 Tucson sign ordinances. Final sign approvals rest with the Board of Directors or its  
5 designated representative or committee.  
6

7 11.17 Sports Courts or Facilities. No permanent basketball backboards with hoops  
8 or courts, tennis courts, golf backstops or other sports courts or facilities may be  
9 constructed on any Lot. Portable equipment must be concealed when not in use.  
10

11 11.18 Storage Tanks. No elevated tanks of any kind shall be erected, placed or  
12 permitted on any part of the Property. No tanks may be erected, placed or buried in the  
13 Lots for the storage of any flammable product (such as gas, oil, etc.), except small tanks,  
14 such as those containing flammable substances for use in outdoor grills, recreational  
15 vehicles or medical purposes which may be exempt from this restriction.  
16

17 11.19 Temporary Housing. No vehicle, trailer, camper, basement, tent, shack,  
18 garage, carport or outbuilding or any structure of a temporary character shall be used on  
19 any portion of the Property at any time as a residence either temporarily or permanently.  
20

21 11.20 Trash and Recycling. All equipment for the storage or disposal of garbage or  
22 other waste shall be kept in a clean and sanitary condition. All containers, except when set  
23 out for collection, shall be kept enclosed by an approved fence or other structure, out of  
24 view of any other Lot or street. The Board may adopt rules and regulations governing use  
25 and placement of trash receptacles. Such rules and regulations shall be promulgated in  
26 accordance with Section 5.6 of this Declaration.  
27

28 11.21 Unsightly Objects or Articles. No unsightly articles or objects shall be  
29 permitted which are visible from adjoining Lots or from the street or any public way. The  
30 Board shall have the sole discretion in determining if any activity by an Owner, his/her  
31 family, invitees or lessees is in violation of this Section.  
32

33 11.22 Vehicles and Parking. The use of all vehicles, including but not limited to  
34 trucks, automobiles, bicycles and motorcycles, shall be in accordance with the Rules,  
35 which may prohibit or limit the use of said vehicles, provide parking regulations or adopt  
36 other restrictions regulating the same.  
37

38 11.22.1 Parking. Street and cul-de-sac parking shall be on a "first come,  
39 first served" basis and there is no guarantee by the Association of parking spaces for any  
40 Owner.  
41

42 11.22.3 Off-Road Vehicles. Motorized vehicles may not be used on the  
43 Common Area (except streets) or in washes within or adjacent to any of the Property.  
44

45 11.22.4 Recreational Vehicles. Except as other provided in this Declaration,  
46 no recreational vehicle, or mobile or stationary trailers of any kind shall be permitted within  
47 the Property, unless approved in writing by the Board of Directors. This Section shall not  
48 exclude the placing of any of the foregoing types of vehicles in an enclosed portion of

1 Common Area, designated for such items, under written contract with the Association and  
2 upon payment of a reasonable fee in addition to any Assessments due from the Owner. All  
3 such vehicles must be licensed, insured, and roadworthy. For purposes of this Section, the  
4 term "recreational vehicle" shall not include: (1) pick-up trucks with no more than a 3/4 ton  
5 capacity with camper shells attached that are no more than seven feet in height as  
6 measured from ground level, or (2) mini-motorhomes that are no more than seven feet in  
7 height and no more than eighteen feet in length, so long as said pick-up or mini-  
8 motorhome is used on a regular and recurring basis for regular transportation and is  
9 parked in accordance with the provisions of this applicable to vehicles in general.  
10 Recreational vehicles may be parked on a driveway or street for loading and unloading for  
11 no more than 48 hours in any 30-day period.  
12

13 11.22.5 Prohibition Against Inoperable & Stored Vehicles. No inoperable,  
14 unlicensed, junked or wrecked vehicles shall be parked on any portion of the Property. Nor  
15 shall any repair or maintenance work be done to any vehicle except as provided in Section  
16 11.22.4. No vehicles shall be located on the Property or on any street within Colonia  
17 Verde, in any state of disrepair or disassembly. No motorized or non-motorized vehicle  
18 (whether for recreational use or otherwise), aircraft, motorcycle, trailer or boat may be  
19 stored anywhere upon the Property.  
20

21 11.22.6 Commercial Vehicles. Except as otherwise provided by applicable  
22 law, no commercial, construction or like vehicles (including, but not limited to, pickup-type  
23 vehicles in excess of 3/4-ton capacity, and vehicles bearing commercial signs, advertising  
24 or other business insignia, and any commercially licensed vehicle) shall be parked or  
25 stored on the Property or on any street within Colonia Verde, except with the permission of  
26 the Board of Directors. This restriction does not apply to delivery or service provider trucks  
27 that are parked on a temporary basis.  
28

29 11.22.7 Enforcement of Parking Restrictions. In the event any Owner,  
30 occupant, guest or lessee violates this Section regarding vehicle parking and storage, the  
31 Association may take any action which is necessary to obtain compliance of this Section,  
32 including the removal of vehicles in violation of this Section, the cost of which shall become  
33 the responsibility of the owner of the Lot where the vehicle owner resides or is visiting.  
34

35 11.22.8 Penalties for Non-Compliance with Parking Restrictions. After notice  
36 and an opportunity to be heard, the Association may impose a fine for each violation of  
37 these Restrictions pertaining to vehicle parking and storage.  
38

39 11.23 Variances. See Section 9.14.  
40

## 41 **ARTICLE XII**

### 42 **PARTY WALLS**

43 12.1 Definition of "Party Wall". Each wall, whether a patio yard wall or bearing  
44 wall of a Dwelling Unit, which is built as a part of the original construction of a building upon  
45 the Property and placed on or immediately adjacent to the dividing line between Lots, shall  
46 constitute a party wall. For purposes of this Article, eaves, steps and open porches shall  
47 not be considered to be part of a Dwelling Unit.  
48

1           12.2 Alteration of Party Walls. No Owner may alter the appearance or structure of  
2 a party wall (except that landscaping shall not be precluded) without the consent of the  
3 Architectural Committee. The Committee may, but is not obligated to, deny approval if all  
4 Owners having an interest in the party wall have not consented to the alteration. No Owner  
5 shall take any action which may destroy the integrity of a party wall or pose an unsightly  
6 appearance or threaten its strength, durability or lasting life. Without limitation, no Owner  
7 shall place any plants or shrubs close to a party wall in a fashion that watering of said  
8 plants will threaten the foundation of the party wall or cause the foundation to be  
9 undermined.

10  
11           12.3 Repair and Maintenance of Party Walls. The cost of ordinary repair and  
12 maintenance of a party wall shall be shared equally by the Owners of the Lots which are  
13 divided by the wall.

14  
15           12.4 Damage by Adjoining Owner. This Section applies in the event any party wall  
16 is damaged or destroyed through the act of one adjoining Owner, or any of his/her guests  
17 or agents or members of his/her family so as to deprive the other Owner of the full use and  
18 enjoyment of such wall. The Owner responsible for the damage shall immediately proceed  
19 to rebuild and repair the party wall, or cause it to be rebuilt or repaired, to as good condition  
20 as formerly without cost to the other Owner.

21  
22           12.5 Damage by Outside Causes. In the event any party wall is damaged or  
23 destroyed by some cause other than the act of one of the adjoining Owners, his/her  
24 agents, guests or family (including ordinary wear and tear and deterioration from lapse of  
25 time), both adjoining Owners shall proceed immediately to rebuild or repair the common  
26 wall to as good condition as formerly, at their joint and equal expense.

27  
28           12.6 Dispute Resolution. In the event of a dispute between Owners with respect  
29 to the repair or rebuilding of a party wall or with respect to the sharing of applicable costs,  
30 then upon written request of one of such Owners delivered to the other such Owner, the  
31 matter shall be heard and determined by a mutually-selected arbitrator, under mutually-  
32 agreeable rules of procedure. If the parties cannot agree on an arbitrator or on rules of  
33 procedure, the American Arbitration Association shall provide an arbitrator and/or rules of  
34 procedure. The arbitrator's decision shall be final and binding on all parties.

35  
36           12.7 Private Agreements. Private agreements between Owners may not modify  
37 the provisions of this Article.

### 38 39                           **ARTICLE XIII** 40                           **ENFORCEMENT**

41  
42           13.1 Right of Association to Enforce. The Association or any Owner has the right  
43 to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants,  
44 reservations, liens or charges now or hereafter imposed by the provisions of this  
45 Declaration. This shall include enforcement of Rules and Regulations promulgated by the  
46 Association to carry out its purposes and duties under this Declaration.

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1           13.1.1 Attorney Fees. The prevailing party in any Court action shall be  
2 awarded reasonable attorneys' fees and costs. If no Court action is brought, the  
3 Association shall be reimbursed by the pertinent Owner(s), all reasonable attorneys' fees  
4 and costs it incurs in enforcing the Governing Documents.  
5

6           13.1.2 Waiver. No delay or omission on the part of the Association in  
7 exercising its right to enforcement of this Declaration shall be construed as a waiver of or  
8 acquiescence in any breach of any of the restrictions and covenants, and no right of action  
9 shall accrue against the Board of Directors, the Association or any Owner for their neglect  
10 or refusal to exercise such right of enforcement.  
11

12           13.1.3 Protection of Mortgagee. No breach of the foregoing provisions,  
13 conditions, restrictions or covenants shall defeat or render invalid the lien of any mortgage  
14 or deed of trust made in good faith for value as to any portion of the Property. Such  
15 provisions, conditions, restrictions and covenants shall be enforceable against any portion  
16 of the Property acquired by any person through foreclosure for any breach occurring after  
17 such acquisition.  
18

19           13.2 Fines and Penalties. If any Owner, his/her family, or any licensee, invitee,  
20 tenant or lessee violates the Governing Documents, the Board may levy a fine/penalty  
21 upon the Owner of the Lot for each violation and/or may suspend the right of such person  
22 to use the Common Area, under such conditions as the Board may specify, but for no  
23 longer than 30 days. Each day a violation continues after written notice to cease has been  
24 mailed shall be considered a separate violation and shall be subject to the imposition of a  
25 fine. Any fines which remain unpaid for a period of 10 days after notice to pay, including  
26 the imposition of late fees and interest, shall be deemed delinquent and subject to  
27 collection by the Association by any lawful means.  
28

29           13.3 Enforcement Procedures. Before a fine or penalty is levied, the following  
30 enforcement procedure will be followed:  
31

32           13.3.1 Notice. Written notice to cease and desist from an alleged violation  
33 shall be served upon the alleged violator specifying: (A) the provision of the Governing  
34 Documents that has been violated; (B) the date of the violation or the date the violation  
35 was observed; (C) the first and last name of the person(s) who observed the violation; (D)  
36 the action required to abate the violation, (E) the process the Owner must follow to contest  
37 the notice; and (F) if the violation is a continuing one, a time period of not less than 10  
38 days in which to cure the violation, unless the violation constitutes a safety or health  
39 hazard, or if the violation is not a continuing one, a statement that any further violation of  
40 the same provision of the Governing Documents may result in the imposition of sanctions  
41 after notice and hearing.  
42

43           13.3.2 Owner's Right to Respond. An Owner receiving notice of a violation  
44 may provide the Board of Directors with a written response by certified mail within 10  
45 business days after the date of the notice. The Owner's response must be sent to the  
46 Association's address of record. Within 10 business days after receipt of the Owner's  
47 response, the Association shall respond to the Owner's questions or assertions. Except as  
48 otherwise provided by applicable law, the Association may not proceed with any action to

1 enforce the Governing Documents against the violation, including the collection of attorney  
2 fees, before or during the time limits prescribed for the exchange of information between  
3 Board and the Owner.  
4

5 13.3.3 Notice of Hearing. If the violation continues past the period allowed  
6 in the Association's notice for abatement without penalty, or if the same provision of the  
7 Governing Documents is subsequently violated, the Board shall serve the violator with  
8 written notice of a hearing to be held by the Board in executive session. Service may be  
9 made personally or by first class mail to the violator's address of record. The notice shall  
10 contain: (A) the nature of the alleged violation; (B) the time and place of the hearing, which  
11 time shall be not less than ten days from the giving of notice; (C) an invitation to attend the  
12 hearing and produce any statement, evidence and witnesses on his/her behalf; and (D) the  
13 proposed sanctions to be imposed, which may include the imposition of a fine.  
14

15 13.3.4 Hearing. The hearing shall be held in executive session of the Board  
16 of Directors, pursuant to the aforesaid Notice, thereby affording the Owner a reasonable  
17 opportunity to be heard. Protocol of the hearing will be set by the Board of Directors. Prior  
18 to the effectiveness of any sanction hereunder, proof of notice and the invitation to be  
19 heard shall be placed in the minutes of the meeting. Such proof shall be deemed  
20 adequate if a copy of the notice together with a statement of the date and manner of  
21 delivery is entered into the minutes by the officer or director who delivered such notice. If  
22 the Owner does not appear at the hearing, the Board will presume the validity of the Notice  
23 of Violation and may levy a fine or penalty.  
24

25 13.4 Notice of Violation. In the event that any Owner, his/her guests, tenants or  
26 family members are in violation of any of the provisions of the Governing Documents, the  
27 Association, after providing notice and an opportunity to cure the violation, has the right to  
28 record a "Notice of Violation" with the Pima County Recorder's Office, stating the name of  
29 the Owner, the Lot and the nature of the violation, and the Association's intent not to waive  
30 any of its rights of enforcement. The Notice shall remain of record until the violation is  
31 cured.  
32

33 13.5 No Obligation to Enforce. The Association is not obligated to take any  
34 enforcement action if the Board determines, in its sole discretion, that because of  
35 considerations pertaining to the Association's finances, possible defenses, the time and  
36 expense of litigation or other enforcement action, the likelihood of a result favorable to the  
37 Association, or other facts deemed relevant by the Board, enforcement action would not be  
38 appropriate or in the best interests of the Association. The failure of the Association or an  
39 Owner to take enforcement action with respect to a violation of the Governing Documents  
40 shall not constitute or be deemed a waiver of the right of the Association or any Owner to  
41 enforce the Governing Documents in the future.  
42

43 13.6 Cumulative Rights and Remedies. All rights and remedies of the Association  
44 under the Governing Documents or at law or in equity are cumulative, and the exercise of  
45 one right or remedy shall not waive the Association's right to exercise another right or  
46 remedy.  
47

1        13.7 Violation of Law. Each and every provision of this Declaration, as amended  
2 from time to time, is subject to any and all applicable federal, state and local governmental  
3 rules and regulations, ordinances and subdivision regulations. Any violation of any federal,  
4 state, municipal or local law, ordinance or regulation pertaining to the ownership,  
5 occupation or use of any property within the Subdivision is declared to be a violation of the  
6 Governing Documents and subject to any and all enforcement procedures set forth in such  
7 Governing Documents.  
8

9  
10                                    **ARTICLE XIV**  
11                                    **GENERAL PROVISIONS**

12        14.1 Binding Effect. By acceptance of a deed or acquiring any ownership interest  
13 in any Lot, each person or entity, for himself or itself, his or its heirs, personal  
14 representatives, successors, transferees and assigns, binds himself, his heirs, personal  
15 representatives, successors, transferees and assigns, to all of the provisions, restrictions,  
16 covenants, conditions, rules and regulations now or hereafter imposed by this Declaration  
17 and amendments thereof. In addition, each such person by so doing thereby  
18 acknowledges that this Declaration sets forth a general scheme to the development of the  
19 Property and hereby evidences his intent that all restrictions, conditions, covenants, rules  
20 and regulations contained herein shall run with the land and be binding on all subsequent  
21 and future owners, grantees, purchasers, assignees and transferees thereof.  
22

23        14.2 Severability. Invalidation of any covenant, restriction, provision or term of this  
24 Declaration by judgment or court order shall not affect any other covenant, restriction,  
25 provision or term hereof which shall remain in full force and effect.  
26

27        14.3 Term. The aforesaid provisions, conditions, restrictions and covenants, and  
28 each and all thereof, as they are from time to time amended in accordance with the  
29 provisions of Section 14.4 hereof, shall run with the land and continue and remain in full  
30 force and effect at all times and against all persons, unless at least 2/3rds of the Lot  
31 Owners shall agree in writing to terminate them.  
32

33        14.4 Amendment. This Declaration may be amended at any time by the  
34 affirmative vote of 2/3rds of the Owners, casting one vote per Lot. Any amendment to this  
35 Declaration shall be evidenced by a written document signed by the President and  
36 Secretary of the Association, attesting that the requisite number of Owners consented to  
37 such amendment. Any such amendments shall be effective when duly recorded in the  
38 office of the Pima County Recorder, and no such amendment made pursuant to the  
39 provisions hereof shall be deemed void or ineffective merely because such amendment is  
40 non-uniform as to all Lots and Dwelling Units.  
41

42        14.5 Captions and Titles. All captions and titles used in this Declaration are  
43 intended solely for convenience or reference purposes only and in no way define, limit or  
44 describe the true intent and meaning of the provisions hereof.

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1  
2 IN WITNESS WHEREOF, the undersigned certify that at least 2/3rds of the Owners  
3 have voted to approve this Amended and Restated Declaration, thereby superseding the  
4 Original Declaration.

5  
6 COLONIA VERDE HOME OWNERS ASSOCIATION,  
7 an Arizona non-profit corporation  
8  
9

10  
11 By Jacy Carter  
12 President  
13

14 ATTEST:

15  
16 By Wanda Guebe  
17 Secretary  
18  
19  
20

13000104024

1 STATE OF ARIZONA )

2 : SS:  
3 County of Pima )  
4

5 The foregoing instrument was acknowledged before me this 28th day of  
6 FEBRUARY, 2007, by JOEY CURTIS,  
7 President, of COLONIA VERDE HOME OWNERS ASSOCIATION, an Arizona non-profit  
8 corporation, on behalf of the corporation.  
9



10 Notary Public State of Arizona  
11 Pima County  
12 Dona J. Malazian  
13 Expires October 05, 2007

Dona J. Malazian  
Notary Public

14 STATE OF ARIZONA )  
15

16 : SS:  
17 County of Pima )  
18

19 The foregoing instrument was acknowledged before me this 28th day of  
20 FEBRUARY, 2007, by DORINDA RUELAS, Secretary, of  
21 COLONIA VERDE HOME OWNERS ASSOCIATION, an Arizona non-profit corporation, on  
22 behalf of the corporation.  
23



24 Notary Public State of Arizona  
25 Pima County  
26 Dona J. Malazian  
27 Expires October 05, 2007

Dona J. Malazian  
Notary Public