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AMENDED AND RESTATED
DECLARATION OF ESTABLISHMENT OF
CONDITIONS, COVENANTS AND RESTRICTIONS
FOR CANOA VISTAS

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**AMENDED AND RESTATED
DECLARATION OF ESTABLISHMENT OF
CONDITIONS, COVENANTS AND RESTRICTIONS
FOR CANOA VISTAS**

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**AMENDED AND RESTATED
DECLARATION OF ESTABLISHMENT OF
CONDITIONS, COVENANTS, AND RESTRICTIONS
FOR CANOA VISTAS**

This Amended and Restated Declaration of Establishment of Conditions, Covenants, and Restrictions for Canoa Vistas (this "Declaration") is made this 30th day of November, 2018, by the owners (the "Owners") of the real property described as:

Lots 1 through 48, and Common Areas A (private streets) and B (open space) of Canoa Vistas, a Pima County subdivision, as recorded in Book 39 at page 60 of Maps and Plats, Pima County Recorder's Office (the "Properties").

RECITALS

WHEREAS, the Declarant executed the Declaration of Establishment of Conditions, Covenants, and Restrictions for Canoa Vistas, recorded on March 24, 1986 in Book 7747, Pages 912 – 960, office of the Pima County Recorder (the "Original Declaration"); and

WHEREAS, the Declarant executed the First Amendment to the Original Declaration, recorded on February 5, 1987 in Book 7967, Pages 717 – 718, office of the Pima County Recorder; and

WHEREAS, the Declarant executed the Second Amendment to the Original Declaration, recorded on October 6, 1987 in Book 8136, Pages 574 – 576, office of the Pima County Recorder; and

WHEREAS, the Declarant executed the Third Amendment to the Original Declaration, recorded on May 16, 1989 in Docket 8540, Page 769; and

WHEREAS, this Declaration amends and restates in their entirety the Original Declaration and all amendments thereto; and

WHEREAS, the Owners holding more than fifty percent (50%) of the total votes held by Owners in Canoa Vistas, Inc., an Arizona non-profit corporation, have approved the adoption of this Declaration.

NOW THEREFORE, the Owners hereby declare that the Properties are and shall be held, conveyed, encumbered, leased, and used subject to the following covenants, conditions, uses, permissions, restrictions, limitations, obligations, easements, equitable servitudes, charges and liens (hereinafter collectively referred to as the "Restrictions"), all of which are for the purpose of enhancing and protecting the value, desirability, and attractiveness of the Properties. The Restrictions set forth herein shall run with the Properties, shall be binding upon all Persons having or acquiring any right, title or

1 Properties, shall be binding upon all Persons having or acquiring any right, title or
 2 interest therein, and shall inure to the benefit of, be binding upon and enforceable by all
 3 Owners, the Association and their successors and assigns in interest.
 4
 5

6 ARTICLE 1: DEFINITIONS 7

8 **1.1. Association** means Canoa Vistas, Inc., an Arizona non-profit corporation, its
 9 successors and assigns.

10
 11 **1.2. Assessments** means Annual Assessments, Special Assessments, and
 12 Reimbursement Assessments as set forth in Article 6 below.
 13

14 **1.3. Board** means the Board of Directors of the Association.
 15

16 **1.4. Common Areas** means to the real property designated on the Plat as Common
 17 Areas A and B.
 18

19 **1.5. Community Documents** means this Declaration, the Association's Amendment
 20 and Restatement of Articles of Incorporation, the Amended and Restated Bylaws, the
 21 Rules and Regulations document, and all other Rules adopted by the Board.
 22

23 **1.6. Declarant** means Lawyers Title of Arizona, an Arizona corporation, as Trustee
 24 under Trust Number 6486-T, and its successors or assigns if such successors or
 25 assigns acquired all of the owned Lots from Declarant for the purpose of development.
 26 Declarant was the original owner of the Properties.
 27

28 **1.7. Declaration** means this Declaration as may be amended from time to time.
 29

30 **1.8. Developer** means Fairfield Green Valley, Inc., and any and all assignees who
 31 may have purchased a bulk portion of Lots for future development thereon.
 32

33 **1.9. Dwelling Unit** means the real property and improvements placed upon or within
 34 the boundary of any Lot.
 35

36 **1.10. Lot** means an individual numbered plot of land shown on the Plat, including any
 37 improvements constructed or under construction thereon.
 38

39 **1.11. Member** means every Person who holds a membership in the Association.
 40

41 **1.12. Mortgage** shall include not only mortgages but also deeds of trust which
 42 encumber a Dwelling Unit. The "Mortgagee" shall include a beneficiary under a Deed of
 43 Trust, and the term "First Mortgagee" shall mean the holder of any mortgage under
 44 which the interest of any Owner of a Dwelling Unit is encumbered and which mortgage
 45 has first and paramount priority, subject only to the lien of general or ad valorem taxes
 46 and assessments.

1
2 **1.13. Owner** means the record owner, whether one or more Persons, of the fee simple
3 title to any Lot, including a buyer under a contract for the conveyance of real estate
4 pursuant to Title 33, Arizona Revised Statutes, but excluding Persons holding an
5 interest merely as security for the performance of an obligation, and excluding buyers
6 under sales agreements or deposit receipt and agreements.

7
8 **1.14. Person** means a corporation, company, partnership, firm, association or society,
9 as well as a natural person.

10
11 **1.15. Plat** means the map or plat of record in the office of the County Recorder of Pima
12 County, Arizona, in Book 39 of the Maps and Plats on page 60 and any amendments
13 thereto.

14
15 **1.16. Properties** means the real property described in the Plat consisting of all
16 Common Areas and Lots.

17
18 **1.17. Rules and Regulations** means all policies and procedures adopted by the
19 Board that govern the conduct and actions of Owners, tenants, visitors and guests on
20 the Properties.

21
22 **1.18. Single Family** means any number of persons that are related by blood, adoption
23 or marriage or not more than three persons not so related.

24 25 26 **ARTICLE 2: COMMON AREAS**

27
28 **2.1. Ownership Vested in Association.** Ownership of the Common Areas is vested
29 in the Association, subject to the easements created in this Declaration to facilitate the
30 full use and enjoyment of the Properties. Common Areas are intended for use as public
31 utility easements, drainageways, streets, open areas, and other facilities, and are for the
32 common use and enjoyment of the Members of the Association and their invitees.
33 Notwithstanding any other provision in this Declaration, the Common Areas and
34 facilities owned by the Association, may not, by act or omission, be abandoned,
35 partitioned, subdivided, encumbered, sold or transferred without approval of more than
36 fifty percent (50%) of the Owners, casting one vote per Lot.

37
38 **2.2. Conveyance of Owner's Rights.** Any sale, lease, or sublease of a Lot by its
39 Owner or transfer of a Lot by operation of law, shall serve to transfer, convey, lease or
40 sublease to the same extent all of the Owner's right to use the Common Areas.

41
42 **2.3. Conveyance of Easements and Right-of-Way.** Notwithstanding any other
43 provision in this Declaration, the Board, at all times, shall have the right to grant and
44 convey to any Person, easements or rights-of-way, in, on, over, or under any Common
45 Areas, for the purpose of construction, erecting, operating or maintaining: roads, streets,
46 sidewalks, pathways, driveways, temporary overhead or permanent underground lines,

1 cables, wires, conduits, or other devices for the transmission of electricity for lighting,
 2 heating, power, telephone, cable television, security, sewers, storm drains, pipes &
 3 conduits, drainage easements, water systems, water, heating and gas lines or pipes,
 4 and any similar public or quasi-public improvements or facilities, and for such other
 5 purposes as may be deemed proper by the Board.

8 **ARTICLE 3: EASEMENTS, LICENSES and ENCROACHMENTS**

10 **3.1. Easement for Encroachments in Original Construction.** Each Owner hereby
 11 acknowledges and agrees that Dwelling Units, or privately owned patio walls,
 12 improvements or fixtures, which were initially constructed on the Properties by the
 13 Developer or its assigns in the course of original construction, may encroach upon the
 14 Common Areas or other Lots in the Properties. Such encroachments caused
 15 incidentally by the Developer are permissible and each Owner, by acceptance of the
 16 Deed to the Lot consents thereto.

18 **3.2. Blanket, Nonexclusive Easements.** There is hereby created a blanket,
 19 nonexclusive easement on all of the Common Areas for the use and enjoyment of all
 20 Members, their guests, invitees, and licensees, subject to reasonable regulations of the
 21 Association; and for ingress, egress, installation, replacement, operation, repair and
 22 maintenance of all utilities, including but not limited to water, sewer, gas, telephone,
 23 electricity and any equipment, cabling, or facilities for the installation of a cable
 24 communications system.

26 **3.3. Perpetual Exclusive Easements and Right-of-Way.** There is hereby reserved
 27 in Fairfield Communications, Inc., an Arizona corporation, and its assigns, a perpetual
 28 exclusive easement and rights-of-way across and upon all Common Areas owned by
 29 the Association in fee simple for the maintenance, construction and repair of a Cable
 30 T.V. system and/or security system and appurtenant facilities. Fairfield
 31 Communications, Inc. shall have the right to excavate for, place, lay, construction,
 32 operate, use, maintain, repair, replace, reconstruct, enlarge, alter, improve, add to,
 33 relocate, and/or remove at any time and from time to time, underground structures with
 34 required appurtenances necessary for the operation of said Cable T.V. system and/or
 35 security system and all miscellaneous equipment, and material connected therewith.
 36 Fairfield Communications, Inc. shall have the right to ingress and/or egress from said
 37 easement by a practical route or routes in, upon, over, and across any portion of the
 38 Common Areas, together with the right to clear and keep clear said easement and right-
 39 of-way from any and all obstructions. Without limiting the generality of the foregoing,
 40 Fairfield Communications, Inc. shall have the right to trim and cut trees, foliage, and
 41 roots upon and from within the above-described easement and rights-of-way whenever
 42 in Fairfield Communication, Inc.'s judgment the same shall be necessary for the
 43 convenient and safe exercise of the right herein granted, all Cable T.V. system
 44 equipment or security system equipment shall remain the personal property of Fairfield
 45 Communications, Inc. and shall not be deemed a part of the realty. Fairfield
 46 Communications, Inc. shall have the right directly or indirectly to assign its rights to this

easement. Neither the Declarant, the Association, nor Fairfield Communications, Inc. is obligated to provide a Cable T.V. system and/or security system in the Properties. If a Cable T.V. system and/or security system is built by Fairfield Communications, Inc., or its assigns, the type and quality of the system shall be under the absolute discretion of Fairfield Communications, Inc., or its assigns. Notwithstanding any other provision of this Declaration, this Section may not be amended without the prior written consent of Fairfield Communications, Inc., its successors or assigns.

ARTICLE 4: THE ASSOCIATION

4.1. Responsibilities of the Association. The Association, through the Board of Directors, is responsible for the improvement, alteration, maintenance, repair, replacement, administration, management, and operation of the Common Areas. More specifically, the Association is, to the extent applicable, responsible for:

- A) maintenance of the Common Area streets, roads, roadside curbs (gutters), and sidewalks located within the Common Areas;
- B) maintenance of the landscaped portion of the Common Areas;
- C) operation, maintenance, and if necessary, the replacement, restoration or reconstruction of street signs, walls, fences, and other improvements originally constructed by the Developer on the Common Areas;
- D) payment of real estate taxes, assessments, and other charges on those portions of the Common Areas owned by the Association;
- E) insurance of all improvements which the Association is obligated to maintain against damage by casualty with such companies and with such limits as the Board deems appropriate;
- F) hiring, firing, supervision and paying of employees and independent contractors, including, but not limited to, security personnel (if any), workmen, landscapers, attorneys, accountants, architects, and contractors to carry out the Association's obligations set forth herein;
- G) maintenance of such liability insurance as the Board deems necessary to protect the Members and the Board from liability for conditions existing and events occurring on or about the Common Areas including, but not limited to, errors and omission insurance for the directors and officers of the Association;
- H) maintenance of worker's compensation insurance for the employees, if any, of the Association;
- I) purchase of all goods, supplies, labor and services reasonably necessary for the performance of the Association's obligations set forth in this Declaration;
- J) enforcement, in its sole discretion, of the provisions of the Community Documents, including, but not limited to, the Use Restrictions in Article 11 below;
- K) establishment and maintenance of such cash reserves as the Board in its sole discretion deems reasonably necessary for the maintenance and repair

of the improvements for which it is responsible and for unforeseen contingencies;

L) payment for all utility services for Common Area facilities; and

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

4.2. Limitations of Association's Actions. More than fifty percent (50%) of the votes of all Owners, casting one vote per Lot, shall be required prior to any action being taken to accomplish any of the following:

A) an action to abandon, partition subdivide, encumber, sell or transfer any Common Areas owned, directly or indirectly, by the Association, provided that the granting of easements for public utilities or purposes deemed necessary for the full use, enjoyment, and development of the Properties shall not be deemed a transfer, sale or encumbrance within the meaning of this Section;

B) an action to change the method of determining the obligations, assessments, dues, or other charges which may be levied against an Owner;

C) an action to change, waive, or abandon any material scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of the Dwelling Units, the exterior maintenance of the Dwelling Units, and the maintenance of the Common Areas;

D) a decision not to maintain fire and extended insurance coverage on insurable improvements on the Common Areas on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value as based on current replacement costs;

E) a decision to use hazard insurance proceeds losses to any Common Areas and improvements thereon for other than the repair, replacement or reconstruction of such Common Areas and improvements thereon.

4.3. Bylaws, Articles of Incorporation, and Board of Directors. The manner in which the Association carries out its responsibilities shall be controlled by the provisions of its Articles of Incorporation, Bylaws, this Declaration and associated Rules and Regulations (collectively known as the Community Documents). The affairs of the Association shall be managed by a Board of Directors elected by the Members. The Board shall:

A) Exercise for the Association all powers, duties and authority vested in or delegated to the Association and not reserved to the membership by other provisions of this Declaration.

B) Carry out the business of the Association and its routine administration.

C) Enforce the provisions of the Community Documents.

1 **4.4. Rules and Regulations of the Association.** The Board is empowered to
 2 adopt, amend, or repeal such rules and regulations as it deems reasonable and
 3 appropriate, which shall be binding upon all Persons subject to this Declaration and
 4 shall govern the use or occupancy of the Properties. The rules and regulations shall
 5 govern such matters as the Board deems to be in furtherance of the purposes of the
 6 Association, including, without limitation, the use of Common Areas. The Rules and
 7 Regulations document may be adopted, amended, or repealed at any special or regular
 8 meeting of the Board upon a vote of a majority of all the Directors, and shall take effect
 9 after thirty (30) days' written notice to the Owners, unless the Rule and Regulations
 10 document being adopted, amended, or repealed has a compelling health or safety
 11 purpose, in which case seven (7) days' notice to the Owners is required.

12
 13 The Rules and Regulations document is deemed incorporated herein by this reference,
 14 and shall have the same force and effect as if they were set forth in and were part of
 15 this Declaration, and shall be binding upon all Persons having any interest in, or making
 16 any use of, any part of the Properties, whether or not copies of the Rules and
 17 Regulations document is actually received by such Persons. References to the
 18 Restrictions contained herein shall be deemed to refer also to these rules and
 19 regulations (except to the extent the rules and regulations are in conflict herewith). The
 20 Rules and Regulations document, as adopted, amended, or repealed, shall be available
 21 for review by each Person reasonably entitled thereto, upon written request to the
 22 Board. It shall be the responsibility of each Person subject to these rules and
 23 regulations to review and keep abreast of any changes in the provision thereof.

24 25 26 **ARTICLE 5: MEMBERSHIP**

27
 28 **5.1 Membership.** Every Person who is an Owner of a Lot shall be a Member of the
 29 Association. Membership shall be appurtenant to and may not be separated from
 30 ownership of a Lot. Only Persons who own Lots under recorded instruments, including
 31 deeds and contracts for sale, shall be Members of the Association.

32
 33 **5.2 Voting Rights.** There shall be one (1) vote for each Lot, which vote may be
 34 exercised by the Owner or Owners of the Lot. When more than one (1) Person holds
 35 an interest in any Lot, voting for that Lot shall be exercised as agreed upon by the
 36 Owners, but in no event shall more than one (1) vote be cast for any one (1) Lot. If the
 37 Owners of a Lot cannot agree on how to cast any vote, the vote shall be prorated
 38 among them. If any Owner casts a vote, it will conclusively be presumed for all
 39 purposes that the person casting the vote was acting with full authority and consent of
 40 all Owners of the Lot, unless an objection by any other Owner is made at the time the
 41 vote is cast. If more than the allocated votes are cast for a particular Lot, none of the
 42 votes shall be counted and all of the votes shall be deemed void.

43
 44 **5.3. Voting Procedures.** Members may not vote by proxy in any Association matter.
 45 All other voting procedures are set forth in the Amended and Restated Bylaws for
 46 Canoa Vistas, Inc.

ARTICLE 6: ASSESSMENTS

6.1. Creation of a Lien and Personal Obligation to Pay Assessments. Each Owner, upon the recordation of a deed to any Lot, whether or not it shall be so stated in such deed, agrees and covenants to pay to the Association:

- A) Annual Assessments;
- B) Special Assessments; and
- C) Reimbursement Assessments.

These Assessments shall be established and collected as provided in the Article 6. All Assessments levied against a Lot, together with interest from the date of delinquency until paid, late fees, costs and reasonable attorneys' fees, shall be charged against the Lot and shall be a continuing lien upon the Lot. Such lien shall be senior to all matters other than tax liens for real property taxes on the Lot, assessments on the Lot in favor of any municipal or other government assessing agency, reservations in patents, and the lien of any First Mortgage.

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 a successor in title unless expressly assumed by him or her.

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 Properties, for the improvement and maintenance of the Common Areas, enforcement of the Community Documents, and the establishment of reasonable reserves for anticipated future expenditures for such purposes.

6.3. 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 ten percent (10%) over the previous year's Annual Assessment without the affirmative vote of more than fifty percent (50%) of the Members eligible to vote in the Association at an Annual Meeting or at a Special Meeting duly called for this purpose. The vote may be a written ballot in place of a meeting. Payment of said assessments shall become delinquent thirty (30) days after the due date. A late fee of \$15 or 10% of the Annual Assessment, whichever is greater, may be charged.

- A) Budgeting. Each year, the Board shall prepare, approve, and make available to each Member, a budget containing:
 - 1) Estimated revenue and expenses; and

- 2) The amount of total cash reserves of the Association currently available for replacement or repair of the Common Areas or other areas within the Properties which the Association is responsible to repair and maintain, and for contingencies.

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 Community Documents. The Board shall prepare and approve the annual budget and distribute a copy to each Lot Owner, together with written notice of the amount of the Annual Assessment to be levied against the Owner's Lot, not less than fifteen (15) days nor more than sixty (60) days prior to the beginning of the fiscal year. The Association operates a fiscal year that runs from January 1st to December 31st of each year.

- B) Non-Waiver of Assessments. If the Board fails to fix the Annual Assessments for the next fiscal year before the expiration of a current fiscal year, the Annual Assessment established for the current year shall continue until a new Annual Assessment is fixed.

6.4. Special Assessments. The Board shall determine and levy Special Assessments in addition to the Annual Assessments for:

- A) constructing capital improvements;
- B) correcting an inadequacy in the current operating budget;
- C) defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of improvements in the Common Area; or
- D) paying for such other matters as the Board may deem appropriate for the Properties or the good and welfare of the Members.

6.5. Reimbursement Assessments. The Association may levy a Reimbursement Assessment if:

- A) any Owner, his/her family member, tenant, guest, or invitee, has failed to comply with the Association's Community Documents, which failure has necessitated an expenditure of money by the Association to bring the Owner or his Lot into compliance; or
- B) any Owner, his/her family member, tenant, guest, or invitee has caused damage to the Common Areas on the Properties.

A Reimbursement Assessment shall not be levied by the Association until notice and an opportunity for a hearing has been given to the pertinent Owner. Reimbursement Assessments may be enforced in the same manner as Annual Assessments.

6.6. Reserve Fund. The Association shall maintain a separate reserve account with funds therein being used for the periodic maintenance, repair, and replacement of the Common Areas.

1 A) Funding the Reserve Fund. To the greatest extent possible, the Reserve
 2 Fund shall be funded by a portion of the Annual Assessments of Owners
 3 rather than by Special Assessments; provided that this provision shall not be
 4 deemed to limit the power of the Association to levy any Assessment or
 5 charge authorized by this Declaration.

6 B) Management of the Reserve Fund. The reserves which are collected as part
 7 of the Annual Assessments shall be deposited by the Association in a
 8 separate bank account to be held in trust for the purposes for which they are
 9 collected or allocated. Such reserves shall be deemed a contribution to the
 10 capital account of the Association by the Owners and, once paid; no Owner
 11 shall be entitled to any reimbursement of those funds. The Board is only
 12 responsible for providing for such reserves as the Board, working in good
 13 faith, deems reasonable, and no member of the Board is liable to any Owner
 14 or to the Association if the amount in the reserve account proves to be
 15 inadequate.

16
 17 **6.7. Uniform Rate of Assessment and Due Dates.** All Annual Assessments and
 18 Special Assessments must be fixed at a uniform rate for all Lots. Annual Assessments
 19 shall be due and payable on or before January 31st of each year, or as otherwise
 20 determined by the Board.

21
 22 **6.8. Remedies of the Association for Non-Payment of Assessments.** If any
 23 Assessment is not paid within thirty (30) days after its due date, a late fee of \$15 or 10%
 24 of the assessed amount, whichever is greater, and interest may be charged (in
 25 accordance with Arizona Revised Statutes, Title 33 Property Section 33-1803). Interest
 26 shall accrue from the date of default until paid at two percent (2%) above the prime rate
 27 of interest customarily charged by the Association's bank for short-term loans to its most
 28 creditworthy customers as of the date of default. If a check tendered for any
 29 Assessment is returned as unpayable for any reason, a charge shall be assessed as
 30 determined by the Board.

31
 32 If the Association employs an attorney to collect a delinquent assessment, whether by
 33 foreclosure of the lien created herein or otherwise, the delinquent Owner shall be
 34 responsible to pay, in addition to the Assessments, late fees, and interest accrued
 35 thereon, all reasonable attorneys' fees and all other costs and expenses incurred by the
 36 Association as a result of the delinquency.

37
 38 In addition to all other remedies provided by law, the Association, or its authorized
 39 representatives, may enforce the obligations of any Owner to pay the Assessments by
 40 pursuing either or both of the following:

41
 42 A) Civil Action. The Board may cause a Civil Action to be commenced and
 43 maintained in the name of the Association against any Owner who is
 44 personally obligated to pay delinquent Assessments. Any judgement
 45 obtained in the Association's favor shall include the amount of the delinquent
 46 Assessments; interest and late fees; any additional charges incurred by the

Association; and any other amounts the court may award, including reasonable attorneys' fees and court costs. The proceeding to recover a judgement for unpaid Assessments may be maintained without the necessity of foreclosing or waiving the Association's lien.

B) Enforcement of Lien. As provided in Section 6.1 above, all Assessments, plus late fees, interest and costs connected therewith, shall be a continuing lien upon the Lot assessed.

1. Notice and Perfection of Lien. As more fully provided in Arizona Revised Statutes, Title 33 Property Section 33-1807, the recording of the Original Declaration constitutes record notice and perfection of the Association's lien. The Association is not required to record a notice of lien, but may do so to provide notice to third parties of its interest in a Lot. The Association's lien is senior to all matters other than tax liens for real property taxes on the Lot, assessments on the Lot in favor of any municipal or other governmental assessing agency, reservations in patents, and the lien of any First Mortgage. Except for the transfer of a Lot pursuant to a foreclosure of a First Mortgage, the sale or transfer of a Lot does not affect the Association's lien.

2. Foreclosure of Lien. The Association's lien may be foreclosed by appropriate action in court or in the manner provided for the foreclosure of a realty mortgage, as set forth in the laws of the State of Arizona, as the same may be changed or amended. The lien provided for herein shall be in favor of the Association and shall be for the benefit of all other Owners. The Association shall have the power to bid in at any foreclosure sale and to purchase, acquire, hold, lease, mortgage, and convey any Lot. If such foreclosure is by action in court, reasonable attorneys' fees, court costs, title search fees, interest and all other costs and expenses shall be allowed to the extent permitted by law. Each Owner hereby expressly waives any objection to the enforcement and foreclosure of this lien.

6.9. Subordination of Lien to First Mortgage. The lien from Assessments provided for herein, including without limitation any related fees, costs, late charges, or interest, shall be subordinate to the lien of any First Mortgage. Sale or transfer of any Lot pursuant to foreclosure of a First Mortgage or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation, or forfeiture of an executory land sales contract, shall extinguish the Association's lien for Assessments or charges which became due prior to the sale, or transfer, or foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation, or forfeiture of any executory land sales contract. No such sale, transfer, foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure, nor cancellation, nor forfeiture of an executory land sales contract, shall relieve any Owner of a Lot from liability for any Assessments or charges thereafter becoming due, nor from the lien thereof. In the event of foreclosure of a First Mortgage or the taking of a deed in lieu thereof, such First

Mortgagee shall not be liable for unpaid Assessments or other charges which accrued prior to the acquisition of title to the Lot by such First Mortgagee.

6.10. No Offset and No Exemptions of Owner. No offset against any Assessment shall be permitted for any reason, including, without limitation, any claim that the Association is not properly discharging its duties. No Owner is exempt from liability for payment of Assessments because he/she does not use or enjoy the Common Area, or has abandoned his/her Lot, or for any other reason, including but not limited to, any allegation that the Board is not performing its obligations under the Association's Community Documents.

6.11. Joint and Several Liabilities. Upon the voluntary conveyance of a Lot, the selling Owner and the buyer 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 6.

ARTICLE 7: MORTGAGEE'S PROTECTION PROVISIONS

7.1. Definition. Notwithstanding and prevailing over any other provisions of the Community Documents, the following terms and provisions shall apply solely to and for the benefit of each First Mortgagee holding a Mortgage interest in any Lot.

The term "First Mortgagee" as used for purposes of this Article shall mean any holder of a First Mortgage, except that in the case of necessary notices or consents as specified below it shall mean only those holders of First Mortgages ("Eligible Mortgage Holders") who have requested in writing of the Association that they be notified of proposed actions requiring notice to or approval of such First Mortgagees as set forth below.

7.2. No Personal Liability. No First Mortgagee shall in any manner be personally liable for the payment of any Assessment or charge, nor for the observance or performance of any covenant, restriction, regulation, rule, Article or Bylaw, except for those matters which are enforceable by injunctive relief or other equitable actions not requiring the payment of money, except as hereinafter provided.

7.3. Trustee's Sale and Foreclosure. During the pendency of any trustee's sale or with respect to any proceeding to foreclose a First Mortgage, including any period of redemption, the First Mortgagee (or receiver appointed in such action) may, but need not, exercise any or all of the rights and privileges of the Owner of the mortgaged Lot including, but not limited to, the right to vote as a Member of the Association to the exclusion of the Owner's exercise of such rights and privileges.

7.4. Obligation to Pay Assessments. As such time as a First Mortgagee becomes record Owner of a Lot, said First Mortgagee shall be subject to all of the terms and conditions of the Declaration, including, but not limited to, the obligation to pay as and

when due any and all Assessments and charges accruing thereafter and assessable against the Lot acquired, in the same manner as any Owner.

7.5. Title Acquired through Foreclosure or Default. The First Mortgagee, or any other party acquiring title to a Lot through foreclosure suit or through any equivalent proceeding arising from the default under a First Mortgage, including, but not limited to, the taking of a deed in lieu of foreclosure, shall acquire title to the Lot free and clear of any lien authorized by or arising out of any provision of the Declaration, which secured the payment of any Assessment for charges accrued prior to the final conclusion of any such foreclosure suit or equivalent proceeding, including the expiration date of any period of redemption. Any such unpaid Assessment shall nevertheless continue to exist as the personal obligation of the defaulting Owner of the Lot. There shall be a lien upon the interest of the First Mortgagee or other party acquiring title to a Lot by foreclosure or by equivalent procedure for all Assessments authorized by this Declaration which accrue and are assessed after the date the First Mortgagee or other acquirer has acquired title to the Lot free and clear of any right of redemption.

7.6. Material Changes by Association. The Association shall not, without first, obtaining the approval of more than fifty percent (50%) of the votes of the Lot Owners and fifty-one percent (51%) of the Eligible Mortgage Holders, amend this Declaration or Bylaws of the Association in any fashion so as to materially affect the following matters:

- A) Voting rights of Members;
- B) Assessments, assessment liens, or subordination of assessment liens;
- C) The establishment and maintenance of reserves for maintenance, repair and replacement of Common Areas and facilities related thereto;
- D) The responsibility for maintenance and repairs;
- E) The reallocation of interests in the general or limited common areas, or rights to their use;
- F) The delineation of the boundaries of any Lot;
- G) The convertibility of Lots into Common Areas or vice versa;
- H) The expansion or contraction of the Properties or the construction projects related thereto, or the addition, annexation or withdrawal of real Property to or from the Properties;
- I) The issuance of fidelity bonds with respect to the Properties;
- J) The imposition of any restriction on an Owner's right to sell or transfer his or her Lot;
- K) A decision by the Association to establish self-management when professional management had been previously required by a First Mortgagee;
- L) The restoration or repair of the Properties after a hazard or partial condemnation in a manner other than that specified in this Declaration or in the Bylaws of the Association;
- M) Any action to terminate the legal status of the Properties after substantial destruction or condemnation thereof; or
- N) Any provision based on such Bylaws that expressly benefit Mortgage holders, insurers, or guarantors.

1
2 **7.7. Termination of Legal Status of Properties.** Notwithstanding the foregoing, if
3 the required percentage of Owners of Lots determines to terminate the legal status of
4 the Properties for reasons other than substantial destruction or condemnation, fifty-one
5 percent (51%) of the Eligible Mortgage Holders need to provide written consent.
6

7 **7.8. Right to Pay Charges in Default.** First Mortgagees are hereby granted the right
8 but shall not be obligated to jointly or severally pay such taxes or other charges as are
9 in default and which may or have become a charge against any Common Areas owned
10 by the Association. First Mortgagees may also, jointly or severally, pay overdue
11 premiums on hazard insurance policies or secure hazard Insurance coverage on the
12 lapse of a Policy covering the Common Areas. First Mortgagees making such
13 payments shall be owed immediate reimbursement therefor from the Association.
14

15 **7.9. Precedence of First Mortgage.** Nothing in this Declaration shall in any manner
16 be deemed to give an Owner, or any other party, priority over any rights of a First
17 Mortgagee under the terms of such First Mortgagee's Mortgage in the case of a
18 distribution to an Owner of insurance proceeds or condemnation awards for losses or a
19 taking of any Dwelling Unit or any part of the Common Areas owned by the Association.
20 Each First Mortgagee, upon written notice to the Association, is entitled to a written
21 notice from the Association of such loss or taking.
22

23 **7.10. Written Notification of Default.** Each First Mortgagee shall, upon written notice
24 to the Association, be entitled to a written notification from the Association of any default
25 in the performance by an Owner of a Lot encumbered by the pertinent Mortgage which
26 default is not cured within sixty (60) days.
27

28 **7.11. Inspection of Books and Records.** Each First Mortgagee shall, upon written
29 request to the Association, be entitled to:
30

- 31 A) inspect the books and records of the Association during normal business
- 32 hours;
- 33 B) receive a financial statement of the Association within ninety (90) days
- 34 following the end of any fiscal year of the Association; and
- 35 C) receive written notice of all meetings of the Association, and designate a
- 36 representative to attend such meetings.
37

38 **7.12. Notice.** Each First Mortgagee shall, upon written request to the Association, be
39 entitled to written notice from the Association at least thirty (30) days prior to:
40

- 41 A) Abandonment or termination of the Association; and
- 42 B) any material amendment to the Articles of Incorporation, Declaration, or
- 43 Bylaws of the Association.
44

ARTICLE 8: INSURANCE

8.1. Scope of Coverage. The Association shall secure and maintain at all times liability insurance coverage for the Common Areas and all insurable facilities or improvements thereon, to the extent that the same is available at reasonable cost. Said coverage shall be with policy limits of a minimum of Three Million Dollars (\$3,000,000), insuring against liability for bodily injury and property damage resulting from the use of the Common Areas or the maintenance or operation thereof, and any liability arising from a contract of employment between the Association and another person or entity. The Association shall also secure fire and extended coverage, together with a standard "all risk" endorsement and, to the extent the same can be obtained, "agreed amount" and "inflation guard" endorsements, and any construction code endorsements required under law, which coverage shall be in an amount to be determined by the Board of the Association, but in no event less than one hundred percent (100%) of the current replacement value of Common Areas. The cost of such insurance shall be paid by the Association. The Association shall have authority to negotiate with the insurance carrier and to adjust losses, make settlements and give releases to the insurance carrier. Each policy of insurance provided for under this Section 8.1 shall recite that the same may not be canceled or benefits thereunder be alterable without thirty (30) days prior notice in writing to the Association.

8.2. Repair and Replacement of Damaged and Destroyed Property. In the event of damage to or the destruction by fire or other casualty of Common Areas facilities or improvements that are covered by the insurance policies described in Section 8.1, the Board shall, upon receipt of the insurance proceeds, contract to rebuild or repair such damaged or destroyed property to as good a condition as formerly existed. In the event that the insurance proceeds are insufficient to substantially restore or repair the damaged or destroyed facilities, the Board shall poll the Members, and upon the approval of Members holding more than fifty percent (50%) of the total votes in the Association, may specially assess the Owners for the difference between the insurance proceeds received and the reasonable cost of repair or replacement of the damaged or destroyed Common Area facilities. If Member approval is not received for the special assessment of the Owners, the Board may determine to only partially restore or replace the damaged or destroyed facilities or to make some other use of the affected Common Area(s).

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

8.4. Mortgagee's Insurance. Notwithstanding any provision of the Declaration to the contrary, in the event any improvement constructed on the Common Areas is the

subject of a Mortgage, then each policy of insurance procured pursuant to Section 8.1 shall contain or have attached thereto a standard mortgagee or beneficiary coinsurance and loss payable clause which provides that all proceeds paid thereunder shall be paid to the Association for the use and benefit of all Mortgagees under Mortgages encumbering any such improvements, as their interests may appear. Such policy or policies shall further provide that the insurance carrier issuing the policy shall notify each First Mortgagee identified as such to such carrier at least thirty (30) days in advance of the effective date of any reduction in or cancellation of the policy. Policy or policies shall further provide that the interest of each Mortgagee holding a Mortgage encumbering such improvements shall not be invalidated by any action, neglect, or inaction of the Board, Owners, or their tenants or agents. Insurance policy or policies shall further provide for waiver by the insurer of any policy provisions which would render the mortgagee or beneficiary clause invalid by reason of the failure of such mortgagee or beneficiary to notify the insurer of any hazardous use of such improvements and any policy requirement that the mortgagee or beneficiary pay the premium thereof.

ARTICLE 9: MAINTENANCE

9.1. Association's Maintenance Responsibilities. As set forth in Section 4.1, the Association is responsible for the maintenance and repair of all Common Areas owned by the Association and the improvements thereon. Such maintenance includes landscaping, erosion control, and weed eradication.

9.2. Owners' Maintenance Responsibilities. All exterior repairs shall be made in conformance with the original architectural design and style of the structure being repaired. Owners' maintenance responsibilities are as follows:

- A) Maintenance and Repairs. Each Owner shall be responsible for the maintenance and repair of his/her Dwelling Unit and any other improvements made on the Lot, including, but not limited to, water service lateral piping (main line) to the water main valve (at street), sewer service lateral piping (sewer line) to the sewer main (at street), utility costs, ad valorem taxes, appliance repairs, HVAC units (Heating and Air Conditioning), roof maintenance, painting, and all other exterior and interior repairs and maintenance.
- B) Landscaping and Lot Appearance. Each Owner is responsible for landscaping and maintaining the appearance of his/her Lot. The maintenance responsibility includes, but is not limited to, landscape plantings, trees, shrubs, driveways, and walkways. Owners shall be responsible throughout the calendar year for the control of weeds on their lots to prevent any unsightly appearance and the dissemination by wind or water of weed seeds to Common Areas and neighboring Lots. No shrubs, trees or obstructions of any kind shall be placed in such places as to cause a traffic hazard.

1
2 **9.3. Destruction of Dwelling Unit.** If any Dwelling Unit is destroyed in whole or in
3 part as the result of fire or any other cause whatsoever, the Owner must repair or
4 promptly rebuild the structure. After written notice, if the Owner of such damaged or
5 destroyed building fails to take the necessary steps to repair or rebuild the Dwelling
6 Unit, then the Owner shall remove the remaining portion of the damaged or destroyed
7 Dwelling Unit, and maintain the Lot in a clean and sanitary condition. The Owner further
8 shall repair or restore any sewers, shared patio walls, sidewalks, or Common Area
9 damaged as a result of the fire or by any other cause whatsoever.

10
11 **9.4. Failure to Maintain.** If any Owner fails to fulfill his obligations under this Article
12 9, after majority approval vote of the Board, and written notification to the Owner, the
13 Association, through its Committee(s), agents, contractors, and assigns, shall have the
14 right to enter upon the Lot and to repair or maintain whatever is needed in the sole
15 discretion of the Board. The cost of such maintenance or repair shall be a
16 Reimbursement Assessment, and an invoice shall be sent to the Owner, which shall be
17 due and payable within thirty (30) days of the date of the invoice.

18
19 **9.5. Entrance Monument.** The entrance monument (corner of Camino del Sol
20 and Via De La Gloria) and adjacent landscaping shall be maintained so that it presents
21 a pleasing appearance consistent with other entrance monuments for Canoa Hills
22 subdivisions on Camino del Sol.

23 24 25 **ARTICLE 10: ARCHITECTURAL REVIEW**

26
27 **10.1. Architectural Committee.** The Architectural Committee shall be appointed by
28 the Board at its first meeting following the Annual Meeting for a one (1) year term. The
29 number of Architectural Committee members is determined by the Board as per the
30 Amended and Restated Bylaws for Canoa Vistas, Inc. The Chair of the Architectural
31 Committee shall be a member of the Board. All architectural matters within the
32 Properties (those items that relate to an individual Lot or multiple Lots) shall be subject
33 to the discretionary review of the Architectural Committee.

34
35 **10.2. Architectural Rules and Regulations.** The Architectural Committee may adopt
36 and amend written rules and regulations concerning the construction, alteration, repair,
37 modification or addition of any Dwelling Unit, garage, walls, fences, or any other
38 improvement on the Lot ("Architectural Improvement"), subject to the approval of the
39 Board. Such rules and regulations shall be promulgated in accordance with Section 4.4
40 of this Declaration, and shall be published to all Owners as the Rules and Regulations
41 document. For purposes of this Article, Architectural Improvements shall be deemed to
42 include, but not be limited to, landscaping revision, fixtures, exterior paint color and
43 finish, copings, gates, awnings, sunshades, pergola or patio enclosures, detached
44 accessory buildings, satellite dish or TV antenna, radio antenna, solar energy devices,
45 or any and all other related items.

10.3. Architectural Review. Prior to the construction, installation, or modification of an Architectural Improvement upon a Lot, the Owner may be required to submit a written request to the Architectural Committee and receive a written approval. Said approval may be given or denied in the sole discretion of the Architectural Committee.

A) Approval by Committee. The Architectural Committee shall review and either approve or disapprove all submitted plans and specifications within thirty (30) calendar days after receipt of a completed Architectural Request Form. If no action is taken by the Committee within thirty (30) days after Form submittal, the plan and specifications shall be deemed approved, and the provisions of this Section shall be deemed waived. Returned Architectural Request Forms will indicate one of the following status: Approved, Approved with conditions or changes, or Disapproved with reasons for disapproval.

B) Nonconforming Architectural Improvements. If an Owner makes unapproved Architectural Improvements upon his/her Lot, or makes Architectural Improvements that do not conform to the plans and construction schedule submitted to and approved by the Architectural Committee, the Committee shall give written notice to the Owner of the Lot upon which such Architectural Improvements have been made. Such notice shall specify the nature of the nonconformity and shall grant the Owner an opportunity to cure the nonconformity or request a hearing before the Board. If the matter is not resolved, the Association has the right to avail itself of all applicable legal and equitable remedies.

10.4. Standards of Review. In reviewing plans for Architectural Improvements or other exterior changes upon a Lot, the Architectural Committee shall exercise its discretion in deciding whether or not the proposed modification is in harmony with the overall scheme of the Properties. The intent is to preserve the integrity and homogeneity of the southwest style, design, and color scheme of the Properties.

The Architectural Committee shall have the right to deny alterations or modifications for purely aesthetic reasons, if:

- A) the alteration or modification is considered to be unattractive in relation to the overall scheme of the Properties;
- B) the alteration or modification is considered to be a nuisance or upset of design;
- C) the alteration or modification is considered to be in contrast to or out of harmony with the style of existing structures.

The Architectural Committee may elicit the opinion of other Owners, including the neighbors of the Owner submitting the plan for alteration or modification, as to the effect that the proposed plan might have on the other Owners, including but not limited to the effect on the physical views from another Owner's Lot. The Architectural Committee after eliciting these opinions may, but need not, take them into account in making its final decision.

1
2 **10.5. Limitation of Liability.** Nether the Board, nor the Architectural Committee, nor
3 any of their members shall be liable for damages to any Person submitting requests or
4 plans for approval, or to any Owner of land subject to these Restrictions, by reason of
5 any action, mistake in judgement, negligence, failure to act, approval, disapproval or
6 failure to approve or disapprove with respect to any matter within their jurisdiction under
7 the terms of this Declaration. Any Owner submitting requests to the Architectural
8 Committee, and any Owner by acquiring title to any Lot, waives his/her claim for
9 damages or other relief arising from the architectural review processes.

12 **ARTICLE 11: USE RESTRICTIONS AND PERMISSIONS**

14 **11.1. Age Restriction.** It is intended that the Properties shall be considered as
15 housing for older persons as defined in the Fair Housing Amendments Act of 1988 and
16 all subsequent applicable amendments to the Federal Fair Housing Act.

- 17
18 A) Unless otherwise provided in this Declaration, each Lot shall be occupied by
19 at least one person fifty-five (55) years of age or older. Notwithstanding the
20 foregoing, if an Owner who is fifty-five (55) years of age or older dies and
21 leaves the Dwelling Unit to a surviving spouse or other co-habitant previously
22 residing with the deceased Owner, the surviving spouse or co-habitant may
23 remain in the Dwelling Unit so long as the Properties can still be considered
24 as housing for older persons. In addition, the Board is authorized to grant a
25 variance of the age restriction in this Section 11.1 in other special
26 circumstances so long as the Properties can still be considered as housing for
27 older persons.
- 28 B) No person who has not yet reached his/her 18th birthday shall reside
29 permanently in the Properties. However, this restriction shall not apply to
30 individuals that are merely visiting for a temporary period of time, not to
31 exceed six (6) months in any twelve (12) month period.
- 32 C) The age restrictions in this Section 11 apply to all occupants, whether Owners
33 or tenants, and to all leases as well as sales.
- 34 D) The Board has the exclusive right to determine who is a resident or occupant
35 for the purposes of determining compliance with this Section.
- 36 E) The Board has the right to verify the date of birth of the Dwelling Unit
37 occupants. The Association requires age verification at least every two (2)
38 years and may request acceptable proof of age by government issued
39 document (driver license, birth certificate, passport, or State identification
40 card).
- 41 F) The Board shall establish procedures to insure compliance with the State and
42 Federal Fair Housing Acts, and any other legislation or governing regulations
43 pertaining to this Section.

45 **11.2. No Temporary Building or Trailer.**

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

B) No garage or other building or structure shall be erected, placed or maintained on any Lot until the construction and completion of the principal residence thereof, except that the necessary out-buildings, garage or other structures relating to the main residence may be simultaneously constructed, and nothing herein shall be construed to prevent the incorporation and construction of a garage in and as part of such residence.

C) No building of any nature shall be removed from within or without the Properties to any Lot within the Properties without the consent of the Architectural Committee; and in the event a building shall be so placed from without on any Lot, said building shall comply in all respects with each and every provision of this Declaration of Conditions, Covenants and Restrictions relating thereto.

11.3 Derricks, Tanks, Heating and Cooling.

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

B) No elevated tanks of any kind shall be erected, placed or permitted upon any part of the Properties, and any tanks for use in connection with any Dwelling Unit on the Properties, including tanks for the storage of gas and fuel oil, gasoline or oil, must be buried or walled-in to conceal them from the neighborhood Lots, Roads or Streets.

11.4 Signs. No sign of any kind shall be on a Lot or Common Area, unless the sign has been approved by the Board, except "For Sale," "For Rent," security signs, and signs or other postings which may be required by legal proceedings; or "Open House" signs which are in place not more than two hours before and after the time of the event.

The placement of any sign shall not obstruct sidewalks or any other area of public access. If the Owner(s) of any Lot wishes to sell or rent, the Owner or his/her Realtor, with the Owner's permission, may erect one commercially-produced "For Sale" or "For Rent" sign of industry standard size (18" x 24") on the Lot. Said sign shall be removed within one week after close of escrow. The sign shall be the standard type used by real estate professionals without additional advertising or adornment, except one sign rider that does not exceed 6" x 24". Indoor and outdoor display of political signs are allowed no earlier than 71 days prior to an election, and no later than three days after an election day in accordance with A.R.S. §33-1808 and applicable Pima County ordinances.

11.5 Clotheslines, Rubbish and Wood Storage. Clotheslines shall be concealed from view of neighboring Lots and Streets. No Lot shall be used in whole or in part for any activity or for the storage of any personal property or item that causes unreasonable odor or that will be otherwise unsightly or obnoxious. No Owner shall engage in any activity or permit any activity to occur on the Properties which shall result in unusual, loud or obtrusive noises or sounds. No Lot shall be in an unclean or untidy condition. No dirt, clipping, pruning, trash or debris of any kind shall be swept, thrown, or transferred in any manner from the Lot onto another Lot or Common Area. There are no restrictions for the burning of wood in indoor fireplaces so designed by the Developer or in approved outdoor fireplaces.

11.6 Animal Restrictions.

- A) Livestock Restrictions. No livestock of any kind, including but not limited to goats, rabbits, pigs, poultry, wild or exotic animals or birds, are permitted on the Properties. This prohibition includes maintenance solely for the purpose of rehabilitation, or rescue and release.
- B) Kennels and Commercial Breeding Restrictions. Owners may keep a reasonable number of generally-recognized household pets in accordance with Pima County Ordinances, provided:
 - 1) They are not kept, bred, or maintained for any commercial purpose.
 - 2) Such pets do not create a nuisance for any other resident within the Properties.
 - 3) The Board, in its sole discretion, is authorized to determine whether there are a reasonable number of pets in a Dwelling Unit, whether the presence of a particular pet constitutes a nuisance, and whether a particular pet is generally-recognized as a household pet.
 - 4) Pets shall be confined within the limits of the Lot or restrained by a leash when the pet is outside the boundaries of the Lot. Voice control of pets is not permitted as a substitute for a leash.

5) Any droppings (i.e. waste or poop) left by the pet are picked up and disposed of in a closed trash receptacle including droppings on any Lot or Common Area.

6) No structure for the care, housing, confinement, or training of any animal or pet shall be maintained on any portion of the Properties. No kennels or runs are permitted.

11.7 Re-subdivisions. No Lot(s) shall be re-subdivided except for the purpose of combining the re-subdivided portions with another adjoining Lot or Lots; provided that, no additional Lot is created thereby. Any re-subdivision shall comply with State law and County ordinances.

11.8. Business Activities and Occupancy. All Lots shall be occupied by a Single Family and shall be used for single-family residential purposes only. The following applies with respect to home business activities within the Properties:

A) Pertinent Definitions. The terms "business" and "trade" as used in this provision, shall be construed to have their ordinary, generally accepted meanings.

B) Criteria for Home Business. An Owner or occupant residing in any Lot may conduct business activities as long as:

- 1) The existence or; operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Lot.
- 2) the business activity conforms to all zoning requirements and any other governmental requirements for the Properties;
- 3) the business activity does not involve any person conducting such business who does not reside in the Lot;
- 4) door-to-door solicitation, electronic mail (email) solicitation, telephone solicitation of Owners of the Properties is prohibited;
- 5) the existence or operation of the business does not increase that Lot's use of Common Areas over the standard for a single family dwelling;
- 6) the existence or operation of the business does not require more than a reasonable number of customers, customer vehicles, or delivery trucks to visit the Lot; and
- 7) the business activity does not constitute a nuisance, or a hazardous or offensive use, or cause the Owners to violate any other provision of this Declaration, or threaten the security or safety of other residents of the Properties, as may be determined in the sole discretion of the Board.

C) Patio Sales or Garage Sales. No commercial garage or patio sales shall be held within the Properties unless authorized by the Board in writing. An Individual Owner or occupant, or the executor of the estate of a deceased Owner or occupant, may hold an estate sale on the Lot for a period of not more than seventy-two (72) hours.

1
2 **11.9. Rentals.** Any Owner may rent his/her entire Dwelling Unit for a
3 minimum lease term of twenty-eight (28) days, subject to the following requirements and
4 conditions:

5
6 A) Rental to Single Family Only. No Lot shall be rented to other than a Single
7 Family.

8
9 B) Obligations of Tenants. All provisions of the Community Documents which
10 govern the conduct of Owners and which provide for sanctions against
11 Owners shall also apply to tenants. The Owner shall provide his/her tenant
12 with copies of the Community Documents. If the Owner fails to do so, the
13 Association will provide copies to the tenant and charge the Owner the cost of
14 doing so.

15
16 C) Requirements for Leases. All leases shall be in writing and shall specifically
17 provide the following:

18 1) The lease is subject in all respects to the provisions of the Community
19 Documents for Canoa Vistas.

20 2) Failure of the tenant to comply with the terms and conditions of the
21 Community Documents constitutes a material default of the lease, and the
22 Owner shall be entitled to reenter and retake possession of the premises
23 pursuant to the provisions of the Arizona Residential Landlord and Tenant
24 Act (Arizona Revised Statutes, Title 33 Property 33-1301 et seq.).

25
26 D) Notification to Association. Within seven (7) days after the lease inception, an
27 Owner leasing his or her Lot shall give the Board, in writing on the form
28 provided by the Association, the name of the tenant(s) of the Lot; contact
29 information for the tenant(s); and the time period of the lease to include the
30 beginning and ending dates of the tenancy.

31
32 E) Enforcement of Leasing Restrictions. An Owner shall be responsible for any
33 violation of the Community Documents for the Association by his/her lessee
34 or tenant or any other persons residing in the Lot, and their guests or invitees.
35 In the event of any violation, the Owner, upon written notification from the
36 Board, shall immediately take all necessary actions to correct any such
37 violations.

38
39 **11.10. Purchase for Resale or Rental.** The buyer of a Lot with the primary intent of
40 rental or resale, be they an individual, business, or licensed real estate organization,
41 shall be bound by the Community Documents as if they were an individual Owner.

42
43 **11.11 Antennas and Exterior Additions.** No exterior antennas or other devices
44 for transmission or reception of television or radio signals shall be erected or
45 maintained, except as initially designed or installed by the Developer, without prior
46 written authorization of the Association. Further, no exterior devices or additions, other

than initially installed by the Developer, shall be constructed on the exterior of a Dwelling Unit (including the roof) without the written authorization of the Association.

11.12 Common Areas.

A) Within drainageways, no structure, planting or other material shall be placed or permitted to remain which may change the direction of flow or which may obstruct or retard the flow of water.

B) With regard to Common Areas, they shall be managed in compliance with the Pima County Zoning Ordinances.

11.13 Native Growth. The natural growth on the Properties shall not be destroyed or removed except as approved in writing by the Maintenance Committee. In the event growth is removed, except as stated above, the Maintenance Committee may require the replanting or replacement of same; the cost thereof to be borne by the Owner responsible for such removal.

11.14. Trash Storage and Collection. In order to protect the Common Area streets from damage by unnecessary truck traffic, the Board shall engage a single company for trash removal and recycling services. Each Dwelling Unit shall use only the single company selected. Each household shall contract with the single company selected and pay that company directly. Rules regarding the storage and collection of trash are contained in the Rules and Regulations document.

11.15. Vehicles. The use of all vehicles, including but not limited to trucks, automobiles, bicycles, motorcycles, golf carts, All Terrain Vehicles (ATV), shall be in accordance with the Association's Rules, which may prohibit or limit the use of said vehicles, provide parking regulations, or adopt other restrictions regarding the same. Parking and other vehicle use restrictions are detailed in the Rules and Regulations document.

11.16. Right of Inspection. During reasonable hours any member of the Board of Directors or Architectural Committee, or authorized representative of either, shall have the right to enter upon and inspect any Lot within the Properties (exterior inspection only, does not include the interior of any Dwelling Unit erected thereon) for the purpose of ascertaining whether or not the provisions of this Declaration and the Rules and Regulation documents have been or are being complied with. Inspections by the above listed persons on a Lot shall not be deemed trespass. Except in emergency situations, the Owner or occupant shall be contacted by reasonable efforts and advised in advance of such inspections.

ARTICLE 12: PARTY WALLS, RESIDENTIAL WALLS AND RETAINING WALLS

12.1. Definition. Notwithstanding and prevailing over any other provisions of the Community Documents, the following terms and provisions shall apply to this Article 12:

- A) Party Wall. A wall which is built as part of the original construction of a Dwelling Unit upon the Properties and placed on, or adjacent to, the property line shall constitute a Party Wall. A free-standing wall so placed, or a wall that simultaneously encloses interior spaces or rooms of both Lots on each side shall constitute a Party Wall.
- B) Residential Wall. A wall that is placed on or adjacent to the property line in which one side exhibits an exterior surface open to the elements and the other side encloses spaces or rooms within the adjoining Lot shall constitute a Residential Wall. Exterior walls that were built to enclose all or a portion of an adjacent Lot shall not be considered a Party Wall.
- C) Retaining Wall. A rigid structural wall that is used for supporting a soil mass at different levels on the two sides.

12.2. General Rules of Law Apply. Each wall whether a patio yard wall or bearing wall of a Dwelling Unit, which is built as a part of the original construction of a building upon the Properties and placed on or immediately adjacent to the dividing line between Lots shall constitute a Party Wall, and, to the extent not inconsistent with the provisions of this Article 12, the general rules of law regarding party walls and liability for property damage due to negligence of willful acts or omissions shall apply. Each Owner is deemed to acknowledge that some portion of each Lot in Canoa Vistas was developed with structures having common Lot lines and Party Walls.

12.3. Repair and Maintenance.

- A) Party Walls. The cost of ordinary repair and maintenance of a Party Wall shall be shared equally by the Owners of the Lots which are divided by that wall.
- B) Residential Walls. The cost of ordinary repair and maintenance of a Residential Wall is the responsibility of the Owner of the Lot where the wall is located.
- C) Retaining Walls. Modification, change, or elimination of Retaining Walls on the Common Area by an Owner is prohibited for any reason. Maintenance or replacement of a Common Area Retaining Wall is the responsibility of the Association. Maintenance or replacement of Retaining Walls that are part of a Residential Wall or fence is the responsibility of the pertinent Lot Owner.

12.4. Destruction by Fire or Other Casualty. If a Party Wall is destroyed or damaged by fire or other casualty, an Owner who has used the wall may restore it and is hereby granted a permanent access easement across adjoining Lot(s) for such

restoration. The Owners of the Lots which are divided by the wall shall share equally in the cost of such restoration.

12.5. Right to Contribution – Runs with Land. The right of any Owner to contribution from any other Owner sharing a Party Wall under this Article 12 shall be appurtenant to and shall run with the land.

12.6. Dispute Resolution. In the event any dispute arises concerning a Party Wall, or the provisions of the Article 12, the aggrieved party(s) may file a written appeal to the Board who will respond within thirty (30) days of receipt of the appeal and shall hold a hearing so the parties have the opportunity to present all facts and issues. The decision of the Board shall be final and binding.

12.7. Private Agreements. Private agreements between Owners may not modify the provisions of this Article 12.

12.8. Eaves, Steps, and Open Porches. For purposes of this Article 12, eaves, steps, and open porches shall not be considered to be part of a Dwelling Unit.

ARTICLE 13: GREEN VALLEY RECREATION

13.1. Green Valley Recreation, Inc. (GVR). GVR is a non-profit corporation organized under the laws of the State of Arizona to establish and maintain facilities and services for social and recreational activities and for the preservation and promotion of health, safety and welfare in the Green Valley community.

13.2. GVR Membership Requirement. Each Owner of a Lot within the Properties agrees for himself, his heirs, successors, and assigns, to become and remain a member of Green Valley Recreation, Inc. Cost for membership may include Initial Fees, Transfer Fees, and Annual Membership fees that may vary in amount from time to time.

13.3. Lien Placed by GVR on Lot. There is hereby created a lien, with power of sale, on each Lot to secure payment of the aforesaid GVR membership dues or assessments pursuant to the terms hereof; provided that no action shall be brought to foreclose such lien or proceed under the power of sale less than thirty (30) days after Notice of Claim of Lien is mailed to the Owner of said Lot, and a copy thereof is recorded in the Office of the Recorder in the County of Pima, State of Arizona.

13.4. Subordination of GVR Lien to Mortgagee. Any lien recorded in favor of Green Valley Recreation, Inc., its successor or assigns, as empowered by these conditions and restrictions, shall be subordinate to the lien of any First Mortgagee.

13.5. Runs with the Land in Perpetuity. The Restrictions in this Article 13 shall run with the land and continue in full force and effect at all time in perpetuity; provided the

GVR, its successors or assigns shall be granted full rights and powers for the release, termination, or amendment of such perpetual covenants and restrictions and provided further, that any release, termination, or amendment shall be made only by an instrument in writing signed by the officer(s) of GVR, its successors or assigns, and recorded in the Office of the Recorder of the County of Pima, State of Arizona.

ARTICLE 14: ENFORCEMENT

14.1. Right to Enforce. The Association or any Owner has the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens or charges now or hereafter imposed by this Declaration. This includes enforcement of Rules and Regulations adopted by the Board to carry out the Association's purposes and duties.

A) Attorney Fees. The prevailing party in any Court or administrative action shall be awarded reasonable attorneys' fees and costs. If no such action is brought, the Association shall be reimbursed by the non-compliant Owner(s) as a Reimbursement Assessment, all reasonable attorneys' fees and costs it incurs in enforcing the Community Documents.

B) Waiver. No delay or omission on the part of the Association or any Owner in exercising their right to enforcement hereunder shall be construed as a waiver of or acquiescence in any breach of any of the Restrictions or Rules, and no right of action shall accrue against the Board, the Association or any Owner for their neglect or refusal to exercise such right of enforcement. No right of action shall accrue against the Association for including herein conditions, covenants or restrictions which may be unenforceable.

C) Protection of Mortgagee. No breach of the Restrictions shall defeat or render invalid the lien of any mortgage or deed of trust made in good faith for value as to any portion of the Properties. The Restrictions shall be enforceable against any portion of the Properties acquired by any Person through foreclosure for any breach occurring after such acquisition.

14.2. Enforcement Procedures. At the Board's discretion, a violation of the Community Documents by an Owner, his/her guests, tenants, or family members, may be referred to the Association's attorney for enforcement action in Superior Court or any other court or agency of appropriate jurisdiction. Alternatively, the Board may levy a monetary penalty or other sanction against an Owner in accordance with the Community Documents, applicable law and procedures set forth by the Board of Directors.

14.3. Notice of Violation. If any Owner, his/her guests, tenants or family members are in violation of any of the provisions of the Community Documents, the Association after providing notice and an opportunity to cure the violation, has the right to record a

1 "Notice of Violation" with the Pima County Recorder's Office, stating the name of the
 2 Owner, the Lot and the nature of the violation, and the Association's intent not to waive
 3 any of its rights of enforcement. The Notice shall remain of record until the violation is
 4 cured.

5
 6 **14.4. No Obligation to Enforce.** The Association is not obligated to take any
 7 enforcement action if the Board determines, in its sole discretion, that because of
 8 considerations pertaining to the Association's finances, possible defenses, the time and
 9 expense of litigation or other enforcement action, the likelihood of a result favorable to
 10 the Association, or other facts deemed relevant by the Board, enforcement action would
 11 not be appropriate or in the best interests of the Association. The failure of the
 12 Association to take enforcement action with respect to a violation of the Community
 13 Documents shall not constitute or be deemed a waiver of the right of the Association to
 14 enforce the Community Documents in the future.

15
 16 **14.5. Cumulative Rights and Remedies.** All rights and remedies of the
 17 Association under the Community Documents or at law or in equity are cumulative, and
 18 the exercise of one right or remedy shall not waive the Association's right to exercise
 19 another right or remedy.

20
 21 **14.6 Violation of Law.** Each and every provision of this Declaration, as amended
 22 from time to time, is subject to any and all applicable federal, state, and local
 23 governmental rules and regulations, ordinances and subdivision regulations. Any
 24 violation of any federal, state, municipal or local law, ordinance or regulation pertaining
 25 to the ownership, occupation, or use of any property within the Properties may be
 26 declared to be a violation of the Declaration and subject to any and all enforcement
 27 procedures set forth herein or imposed by applicable law.

28 29 30 **ARTICLE 15: GENERAL PROVISIONS**

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 32 **15.1. Binding Effect.** By acceptance of a deed or acquiring any ownership interest
 33 in any Lot, each Person, for himself or herself, his or her, or their heirs, personal
 34 representatives, successors, transferees and assigns, agrees to all of the provisions,
 35 restrictions, covenants, conditions, rules and regulations now or hereafter imposed by
 36 this Declaration and amendments thereto. In addition, each such Person by so doing
 37 thereby acknowledges that this Declaration sets forth a general scheme for the
 38 development and maintenance of the Properties and hereby evidences his or her intent
 39 that all restrictions, conditions, covenants, rules and regulations contained herein shall
 40 run with the land and be binding on all subsequent and future owners, grantees,
 41 purchasers, assignees and transferees thereof

42
 43 **15.2. Severability.** Invalidation of any covenant, restriction, provision, or terms of this
 44 Declaration by judgement or court order shall not affect any other covenants,
 45 restrictions, provisions, or term thereof which shall remain in full force and effect.

1 **15.3. Captions.** All captions and titles used in this Declaration are intended solely
2 for convenience or reference purposes only and in no way define, limit or describe the
3 true intent and meaning of the provisions hereof.
4

5 **15.4. Interpretation of the Community Documents.** The Board of Directors has the
6 exclusive right to construe and interpret the provisions of this Declaration and all other
7 Community Documents. In the absence of any adjudication to the contrary by a court of
8 competent jurisdiction, the Board's construction or interpretation of the provisions hereof
9 or of any other Community Document, shall be final, conclusive, and binding as to all
10 Persons and Properties benefited or bound by the Declaration.
11

12 **15.5. Amendment.** Except as provided elsewhere in the Declaration, the terms
13 hereof may be amended by the affirmative vote of Owners holding more than fifty
14 percent (50%) of the total votes in the Association, and shall be made only by an
15 instrument in writing signed and acknowledged by the President and Secretary of the
16 Association and recorded with the County Recorder of Pima County, Arizona.
17

18 **15.6. Term.** The aforesaid provisions, conditions, restrictions, and covenants, and
19 each of them shall run with the land and continue to remain in full force and effect at all
20 times and against all Persons in perpetuity, unless terminated by an instrument in
21 writing signed and acknowledged by Owners holding more than fifty percent (50%) of
22 the votes in the Association.
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IN WITNESS WHEREOF, the undersigned certify that Owners holding more than fifty percent (50%) of the total votes in the Association approved this Amended and Restated Declaration of Establishment of Conditions, Covenants, and Restrictions, thereby superseding the Original Declaration and all amendments thereto.

CANOA VISTAS, INC.,
an Arizona non-profit corporation

By: _____

President

ATTEST:

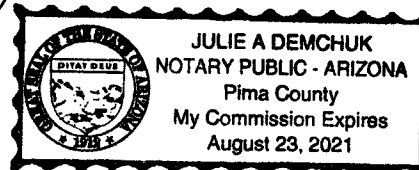
Secretary

STATE OF ARIZONA)
) ss.
County of Pima)

The foregoing instrument was acknowledged before me this 30th day of November, 2018, by Frank Michael Witz as President of Canoa Vistas, Inc., an Arizona non-profit corporation.

Notary Public

STATE OF ARIZONA)
) ss.
County of Pima)



The foregoing instrument was acknowledged before me this 30th day of November, 2018, by Brenda Carlson as Secretary of Canoa Vistas, Inc., an Arizona non-profit corporation.

Notary Public

