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RESTATED AND AMENDED  
DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS  
FOR  
WESTERN WINDS TOWNHOUSES

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THE UNIVERSITY OF CHICAGO



NOW, THEREFORE, Western Winds Homeowners Association hereby declares as follows:

## ARTICLE I

### DEFINITIONS

- 1.1 "Architectural Committee" refers to the committee established by the Board pursuant to this Declaration.
- 1.2 "Architectural Committee Rules" refer to the rules adopted by the Architectural Committee.
- 1.3 "Articles" means the Articles of Incorporation filed with the Arizona Corporation Committee together with any amendments to such Articles.
- 1.4 "Assessments" means Regular, Special, Reimbursement assessments as determined from time to time by the Board. The term "Assessment" includes late charges, collection charges, lien fees, attorney fees, and court costs. A reimbursement assessment or supplemental assessment refers to an assessment levied by the Association against any Owner and the Lot arising out of the Owner's failure to comply with the Association's Governing Documents.
- 1.5 "Association" means the WESTERN WINDS HOMEOWNERS ASSOCIATION, an Arizona non-profit corporation, its successors and assigns. All owners shall have a membership interest as described below, provided that membership shall be limited to Owners.
- 1.6 "Association Lien" means the lien created and imposed by this Declaration.
- 1.7 "Association Property" means any real or personal property owned or leased by the Association.
- 1.8 "Board" shall mean and refer to the Board of Directors of the Association elected in accordance with the Association's By-Laws and this Declaration.
- 1.9 "By-Laws" means the By-laws of the Association, as amended from time to time, which By-Laws constitute the operating procedures of the Association.
- 1.10 "Common Areas" means all real property, whether improved or unimproved, owned by the Association for the common use and enjoyment of the Owners. The Common Areas consist of all of the real property, and the improvements located thereon, which is designated as Common Areas on the Plat.
- 1.11 "Common Expenses" means expenditures made by or financial liabilities of the Association, together with any allocations to reserves.

- 1.12 "Declaration" means the Declaration of Covenants, Conditions and Restrictions applicable to the Property, which is recorded in the Office of the Pima County Recorder, Arizona, as amended from time to time.
- 1.13 "Eligible Mortgage Holder, Insurer or Governmental Guarantor" means a First Mortgagee, insurer or governmental guarantor who has requested notice of certain matters from the Association.
- 1.14 "Exterior Alteration" means any construction installation, additional alteration, repair, change, change of color, landscaping, removal, demolition or other work that alters the exterior appearance of a Lot or the Improvements located thereon.
- 1.15 "Fines and Penalties" refers to sanctions imposed by the Board for violations of the Governing Documents, after it has provided notice of the violation and opportunity for a hearing to the Owner.
- 1.16 "First Mortgage" means any mortgage or deed of trust on a Lot which has priority over all other mortgages and deeds of trust on the same Lot.
- 1.17 "First Mortgagee" means the holder or beneficiary of any First Mortgage.
- 1.18 "Improvement" means any building, fence, wall or other structure or any swimming pool, tennis court, road, driveway, parking area or any trees, plants, shrubs, grass or other landscaping improvements of every type and kind.
- 1.19 "Governing Documents" refers to this Declaration, the Articles of Incorporation, the By-Laws and any rules adopted by the Association, the Board of Directors and the Architectural Committee.
- 1.20 A "Guest" of an Owner means any employee, tenant, guest (whether or not for hire) licensee or invitee of such Owner or Resident, including any transient guest.
- 1.21 "Lessee" means a third-party lessee, sublessee, tenant or subtenant under a lease, oral or written, of any Lot. As used herein a "third party" is any Person who is not an Owner.
- 1.22 "Lot" means any parcel of real property designated as a Lot on the Plat, and where the context indicates or requires, shall include any Residential Unit, building, structure or other improvements situated on the Lot.
- 1.23 "Member" means the Owner of a Lot who is entitled to membership in the Association and has the right to use and enjoy the Common Areas.
- 1.24 "Mortgage" means any mortgage, deed of trust or other security instruments by which a Lot is encumbered.

- 1.25 "Owner" refers to the record Owner, whether one or more persons, of the fee simple title to any Lot, which is part of Western Winds Townhouses, but excluding person holding an interest merely as security for the performance of any obligation. An Owner also includes a person taking equitable title as a vendee under a contract for sale. The Owner is responsible for the actions of their family members, guests, invitees and/or tenants.
- 1.26 "Person" means a natural person or any other legal or commercial entity with the legal right to hold title to real property.
- 1.27 "Plat" refers to the subdivision plat for Common Areas A and B as shown on said subdivision plat of WESTERN WINDS TOWNHOUSES.
- 1.28 "Property" or "Properties" means the real property described in the Plat.
- 1.29 "Rules and Regulations" refers to the policies and procedures adopted by the Board to govern the conduct and actions of Owners, occupants, tenants, visitors and guests on the Lots and the Common Areas and which are not otherwise covered in this Declaration. Such Rules and Regulations, when adopted by the Board, have the same force and effect and shall be enforceable in the same manner as the provisions of this Declaration. All Rules and Regulations adopted by the Board shall be published and distributed to the members on an annual basis.
- 1.30 "Self-help Rule" refers to the right of the Association, after notice to the Owner and an opportunity to cure, to enter upon any Lot, correct any violation of the Governing Documents and charge the Owner for the costs thereof, which becomes a Reimbursement Assessment against the Lot and the personal obligation of the Owner of the Lot.
- 1.31 "Single Family" refers to a group of one or more persons each related to the other by blood, marriage or legal adoptions; or a group of two or less persons who are not married but who maintain a common household on any one Lot, together with those persons who reside on the Lot and are related to either party by blood. The terms "persons related to each other by blood" and "related to either party by blood" refers to a person, his/her father and mother, siblings, children and/or grandchildren. It does not apply to family relationships which are not directly linear such as cousins, uncles and aunts or other distant relatives. The number of unrelated persons residing on a Lot shall be approved at the sole discretion of the Board upon application by the Owner of the Lot to the Board of Directors and upon a showing of good cause.
- 1.32 "Single Family Residential Use" means the occupation or use of any residence on the Lot by only a Single Family in conformity with this Declaration and the requirements of all applicable governmental agencies.



Any transfer of ownership to a Lot shall operate to transfer the Membership appurtenant to said Lot to the new Owner thereof. Each Purchaser of a Lot shall be subject to all of the terms, conditions and obligations set forth in this Declaration upon becoming the Owner of a Lot.

2.5 Suspension of Voting Rights. If an Owner otherwise entitled to vote is delinquent in the payment of periodic or special assessments, fines, penalties, interest, late charges, transfer fees, refinance fees, costs of collection, lien fees, attorneys' fees or other monies owed to the Association or is not in compliance with the terms of the Governing Documents, the Board of Directors may, in its sole discretion, certify that such Owner is not in good standing and such Owner's right to vote shall be suspended until the delinquency, breach or violation is paid in full, cured or corrected.

### ARTICLE 3

#### PROPERTY RIGHTS

3.1 Owners Easement of Enjoyment. Every Owner has a right and easement to enjoy the Common Area and such easement is appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

a. The right of the Board to adopt reasonable rules and regulations governing the use of the Common Area and to require the payment of reasonable fees for the use of the Common Area and the facilities in the Common Area.

b. The right of the Association, in accordance with its Articles of Incorporation and By-laws to borrow money for the purpose of improving the Common Areas and constructing and maintaining the facilities thereon, and to mortgage said Common Areas, provided the rights of any such mortgagee in said Common Areas shall be junior and subordinate to the rights of the Lot Owners hereunder. No such borrowing of money or mortgaging of Common Areas shall be allowed unless approved by a minimum of 25 Owners.

c. The right of the Board of Directors to limit the number of guests of Occupants and Owners who may use the Common Areas.

d. The right of the Board of Directors to promulgate rules and to regulate the use of any recreational or common facility situated in the Common Areas.

e. The right of the Board of Directors to suspend the voting rights of an Owner, his family and guests, for any period during which any assessment against the Lot remains unpaid and during the time that any Owner is in violation of the Governing Documents.

3.2 Delegation of Use. Any Owner may delegate the right to enjoy the Common Areas to the members of his family, residing lawfully on the Lot and temporarily to his guests or tenants.

## ARTICLE 4

### ASSOCIATION RESPONSIBILITIES

4.1 Responsibilities of the Association. The Association through its Board of Directors is responsible for the proper and efficient management and operation of the Common Areas, including, but not limited to the following:

4.1.1 maintaining those portions of the common roadways located in the Common Areas which are not maintained by the City of Tucson, Arizona;

4.1.2 landscaping, maintenance and irrigation of the Common Areas;

4.1.3 operating, maintaining and rebuilding, if necessary, street signs, walls, lighting and fences and other improvements owned by the Association;

4.1.4 paying real estate taxes, assessments, utility and other costs imposed on the Common Areas;

4.1.5 insuring all improvements which the Association is obligated to maintain against casualty losses with such companies and with such limits as the Association deems appropriate;

4.1.6 hiring, firing, terminating, supervising and paying employees and independent contractors including, but not limited to, workers, landscapers, attorneys, contractors and property managers;

4.1.7 maintaining liability fire and extended coverage and other types of insurance which the Association deems necessary to protect the Association, the members and the Board of Directors of the Association;

4.1.8 obtaining and maintaining sufficient fidelity insurance on all persons who handle the funds belonging to the Association;

4.1.9 maintaining worker's compensation insurance for employees of the Association, if any;

4.1.10 purchasing all goods, supplies, labor and services reasonably necessary for the performance of the Association's obligations;

4.1.11 enforcing the provisions of the Governing Documents;

4.1.12 establishing a Reserve Account, at the option of the Board, to cover the repair and replacement of the capital items in the Common Areas and for contingencies. At least every 3 years, the Board of Directors shall determine the amount to be contributed to the fund. The Board of Directors shall determine the amount of the Annual Assessment which shall be deposited into the Reserve Account each month;

4.1.13 providing and paying for all utility service to the Common Areas;

4.1.14 provide for an annual financial audit, review or compilation of the Association pursuant to A.R.S. §33-1810.

4.1.15 entering into agreements and taking action which is reasonably necessary and convenient to accomplish the obligations of the Association and to maintain the Common Areas.

4.1.16 provide a potable water supply to each unit from Tucson Water Company. This supply of water is not metered individually to each unit and is funded from the regular assessment. Water use should be conserved by owners and occupants of each unit and not used for activities prohibited by the Covenants, Conditions and Restrictions.

4.2 Limitations of the Board of Directors' Actions. The Board of Directors shall be prohibited from taking any of the following actions without the vote or written consent of a majority of the Owners:

a. Entering into a contract with a third party where the third party will furnish goods or services for the Common Areas or the Association for more than 12 months, with the following exceptions:

(1) A management contract, the terms of which have been approved by the Board of Directors.

(2) A contract with a Public Utility, if the rates are regulated by the Arizona Corporation Commission.

(3) Prepaid casualty, fire, or liability insurance policies not to exceed 3 years duration, provided the policies permit short-rate cancellation by the Board of Directors.

b. Incurring aggregate expenditures for capital improvements (or demolition) to Common Areas in any fiscal year which exceeds 5% of the Association's budgeted gross expenses for that fiscal year.

c. Paying compensation to Directors or Officers of the Association for services performed in conducting the Association's business. The Board may approve reimbursement of legitimate expenses for Directors or Officers of the Association incurred in the performance of Association business, in the case of an emergency situation.

d. Filling a vacancy on the Board created by the removal of a Director.

e. Incurring litigation expenses, including attorneys' fees, where the Association initiates proceedings or is joined as a Plaintiff in proceedings.

Approval shall not be necessary if the proceedings are initiated for the following reasons:

(1) Enforcement of the CC&Rs;

(2) Enforcement of the Associations' Architectural Control provisions;

(3) Collection of unpaid assessments.

4.3 Manner in Which Responsibilities are Carried Out. The manner in which the Association carries out its responsibilities is controlled by the Governing Documents.

4.4 Adoption of Rules. The Board may, from time to time and subject to the provisions of the Governing Documents adopt, amend and repeal rules and regulations. The Rules may restrict and govern the use of any area by any Owner, provided however that the Rules shall be consistent with the Governing Documents and may not unreasonably discriminate among the Owners. The Rules may require that an Owner pay a Security Deposit established by the Board for the use of the Common Area and may limit the number of persons using the Common Area. A copy of the Rules in effect at any given time is available for inspection by any Owner at reasonable times.

4.5 Personal Liability. Members of the Board, committee members, or Officers appointed by the Board are not personally liable to any Owner or to any other party for any damage, loss or prejudice suffered or claimed as a result of any act, omission, error or negligence of the Board, any agent, representative, manager or employee of the Board or the Architectural Committee or any other committee appointed by the Board, provided that such person has, upon the basis of the information provided to him, acted in good faith without willful, wanton, malicious, grossly negligent or intentional misconduct.

4.6 Delegation of the Board of Directors' Duties. The Board has the right to delegate any or all of its rights and duties under the Governing Documents to any agent. In the event of any such delegation, the act of the agent shall constitute the act of the Board with respect to the rights and duties delegated to the agent.



## ARTICLE 5

### ASSESSMENTS

5.1 Creation of the Lien and Personal Obligation to Pay Assessments: At the time of recordation of a deed in favor of any Owner of a Lot, Owner agrees to pay to the Association: (1) regular assessments (2) special assessments for capital improvements and (3) reimbursement assessments. All Assessments, together with interest, costs, late charges, collection charges, lien fees and reasonable attorneys' fees and costs incurred by the Association in collecting or attempting to collect delinquent assessments, fees, charges, fines or penalties, whether or not suit is filed, are a lien on the Lot from the date that the Assessment became due. Each Assessment is the personal obligation of the Owner of such Lot at the time when the assessment became due. No Lot shall be sold, transferred or conveyed by any Owner without all Assessments being paid in full, regardless of whether a lien was recorded against the Lot.

5.2 Purpose of the Assessments: The Assessments as determined by the Board, shall be used for the upkeep, maintenance, repair and replacement of the Common Areas for promoting the recreation, health and welfare of the Owners and for paying the necessary and reasonable operating expenses of the Association.

5.3 Regular Assessments: At least sixty (60) days prior to the beginning of each calendar year, the Board shall create and publish an annual budget and shall determine the amount of the regular assessment for each Lot. The Board shall consider the following in determining the amount of the Regular Assessment: current maintenance, and repair and replacement costs for the Common Area, maintenance costs to the Lots, insurance premiums for insurance on the Common Area, operating costs of the Association and funds for the reserve account; taxes, assessments and other governmental charges incurred in connection with the Common Areas; any other charge, cost or expense which the Board of Directors, in its sole discretion, incurs in improving and maintaining the Property and which is related to the use and enjoyment of the Common Areas. Written notice of the amount of regular assessment shall be sent to every Owner by January 1 of each year. If the amount of the regular assessment for any calendar year has not been determined by the Board by November 1, then the amount of the regular assessment will continue until the Board determines the new assessment amount. The Board will then provide thirty (30) days written notice of the amount of the assessment and the due date has been furnished to each Owner.

5.4 Special Assessments: In addition to the Regular Assessments the Board may levy Special Assessments for any of the following purposes: (1) constructing capital improvements (2) correcting an inadequacy in the current operating account (3) defraying in whole or in part the cost of any construction, reconstruction, unexpected

repair or replacement of improvements in the Common Area, or (4) paying for such other matters as the Board may deem appropriate. The Board shall determine the due date of any Special Assessment.

5.5 Reimbursement Assessments: The Association shall levy a Reimbursement Assessment against any Owner if a failure to comply with the Governing Documents has (1) necessitated an expenditure of money by the Association to bring the Owner or his/her Lot into compliance, including any attorneys' fees and costs which were incurred by the Association, or (2) resulted in the imposition of a fine or penalty by the Board, after notice of the violation and an opportunity for a hearing has been given to the Owner. Reimbursement Assessments may be collected in the same manner as Annual Assessments.

5.6 Fines and Penalties: The Board will establish and enforce reasonable fines and penalties against any Owner after written notice and an opportunity to be heard is given to that Owner. Once imposed, fines and penalties become an assessment against the Lot. An Owner is responsible for the payment of any penalty which is imposed against a Resident of the Owner's Lot or by any Guest.

5.7 Uniform Rate of Assessment: Regular and Special assessments must be uniformly assessed against all Lots. The Board, in its sole discretion, may permit the Annual Assessment to be paid monthly, quarterly, semi-annually or annually. In the event that any installment of the annual assessment becomes delinquent, the Board has the right to accelerate the balance of the annual assessment.

5.8 Effect of Nonpayment of Assessments: Any assessment or any installment of an assessment which is not paid within thirty (30) days after it first became due shall be deemed delinquent, in addition to all other remedies provided by law, the Association may enforce the obligations of any Owner to pay the assessments in any manner provided by law or by either or both of the following procedures:

a. By Suit: The Association may file a lawsuit against any Owner who is personally obligated to pay delinquent assessments. Any judgment obtained in the Association's favor shall include the amount of the delinquent assessments, any additional charges incurred by the Association, attorneys' fees and court costs and any other amounts which the court may award. A proceeding to obtain a judgment for unpaid assessments may be maintained without the necessity of foreclosing or waiving the Association's lien.

b. By Lien: The Association's lien for any unpaid assessments arises when any assessment is not paid within thirty (30) days of its due date. As more fully provided for in A.R.S. 33-1807, the recording of the Declaration constitutes record notice and perfection of the Association's lien. Except for the transfer of a Lot pursuant to a foreclosure proceeding, the sale or transfer of a Lot does not affect the

Association's lien. The Association may commence and maintain proceedings to foreclose its lien in the same manner as the foreclosure of mortgages.

5.9 Priority of the Association's Lien: The lien for assessments is prior and superior to all other liens, except (1) all taxes, bonds, assessments and other levies which, by law, would be superior thereto; and (2) the lien of any mortgage or deed of trust which is recorded before December 11, 1978, which is the date the original Declaration of Covenants, Conditions and Restrictions for Western Winds Townhouses was recorded.

5.10 Additional Charges: In addition to any other amounts due or any other relief or remedy obtained against an Owner who is delinquent in the payment of any assessments, each Owner agrees to pay such additional costs, fees, charges and expenditures ("Additional Charges") as the Association may incur in the process of collecting funds from that Owner. All additional charges shall be included in any judgment in any suit to collect delinquent assessments or may be levied against a Lot as a reimbursement assessment. Additional charges shall include, but not be limited to, the following:

a. Attorneys' Fees: Reasonable attorneys' fees and costs incurred in the event an attorney is employed to collect any assessment or sum due, including the placement of the lien, or the filing of a suit or enforcement of the Governing Documents, or otherwise;

b. Late Charges: A late charge, limited to the greater of \$15.00 or 10% of the unpaid assessment, to be determined by the Board in accordance with the provision of the Arizona Planned Communities Act, as may be amended from time to time. An assessment is deemed to be delinquent if it is not paid within thirty (30) days from the date it is due.

c. Costs of Suit: Reasonable and necessary litigation expenses and court costs incurred;

d. Interest: Reasonable and customary interest on all sums due from the Owner, including delinquent assessments, costs of collection, attorneys' fees and late charges, at an annual percentage rate to be established by the Board; and

e. Other Charges: Any other reasonable charge, cost or expense which the Board of Directors, in its sole discretion, incurs in improving and maintaining the Property and which is related to the use and enjoyment of the Common Areas.

5.11 Application of Payments: All payments received by the Association shall be applied first to the principal amount due which includes the late charges and any collection costs and attorneys' fees incurred by the Association, and then to any interest which has accrued on these sums.

5.12 No Exemption of Owner: No Owner is exempt from liability for the payment of assessments because he/she does not use or enjoy the Common Areas, or has abandoned his/her Lot, or for any other reason, including any allegation that the Board is not performing its obligations under the Governing Documents.

5.13 Funds Held in Trust: The assessments collected by the Association shall be held by the Association for and on behalf of each Owner and shall be used solely for the operation, care and maintenance of the Common Areas and for the performance of the Association's duties and obligations as provided for in the Association's Governing Documents. Upon the sale or transfer of any Lot, the Owner's interest in the funds shall remain in the Association's operating account to defray future expenses.

## ARTICLE 6

### PERMITTED USES AND RESTRICTIONS

6.1 Scope. Except as otherwise specified, the provisions of this Article applies to Owners and their use and occupancy of the Lots.

6.2 Residential Use: All Lots shall be used, improved and devoted exclusively to residential use by a Single Family.

6.3 Business Activities: No trade or business may be conducted in or from any Lot, except that an Owner or occupant residing in any Lot may conduct business activities so long as (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Lot; (b) the business activity conforms to all zoning and other governmental requirements applicable to the Properties; (c) the business activity does not involve any person conducting such business who does not reside on the Properties or door-to-door solicitation of residents of the Properties; (d) the existence or operation of the business does not use any Common Area; (e) the existence or operation of the business does not require customers or delivery trucks to visit the residence, and (f) the business activity does not constitute a nuisance, or a hazardous or offensive use, or cause the owners to violate any other provisions 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. Garage sales, carport sales, rummage sales, yard sales, offering vehicles for sale, estate sales, or activities of a similar nature are prohibited, unless prior written approval is obtained from the Board; (g) no part of any lot is converted to or utilized for storage, warehousing, assembly or manufacturing space or any other uses prohibited by any governmental body for this class of real estate.

6.4 Leases:

6.4.1 An Owner may lease his/her Lot for Single Family residential purposes only.

6.4.2 All provisions of the Governing Documents which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all occupants of any Lot. Any monetary sanction which is imposed against any Lessee for violations of the Governing Documents shall also be imposed against the Owner of the Lot and shall be collected in the same manner as the Annual Assessments.

6.4.3 No lease may be for less than a period of six (6) months. Owners must contact the Board prior to entering into any lease to assure that the lease of the Lot will not violate any of the provisions of this Declaration and the Owner must provide notice to the Board of the length of the lease.

6.4.4 All leases and subleases shall be in writing and shall specifically provide: (a) the lease is subject in all respects to the provisions of the Governing Documents; and (b) the failure of the Lessee to comply with the terms and conditions of the Governing Documents constitutes a material default of the lease.

6.4.5 If an Owner leases the Lot, that Owner shall provide the Association with the name of the Lessee of the Lot and such other information as the Board of Directors may reasonably require.

6.4.6 All leases which do not contain these provisions are null and void at the option of the Board of Directors which may require the Owner to immediately evict the Lessee or submit a lease which contains the required provisions.

6.4.7 All Owners are required to provide the Lessee with copies of the Governing Documents. If an Owner fails to provide these documents to the Lessee, the Association may provide the documents to the Lessee and charge the Owner for the cost of doing so; such cost may be collected in the same manner as assessments.

## 6.5 Animals:

6.5.1 The Board of Directors may promulgate rules pertaining to animals on the Lots. The Board of Directors, in its sole discretion may, if it determines that any animal is affecting the community as a whole and not just the adjacent neighbors, find that an animal is a nuisance and must be removed from the Lot. These rules may also provide for sanctions against any Owner in violation of these rules. The Occupant of any Lot on which a pet is located is required to immediately remove and hygienically dispose of any animal waste on any Lot or on any Common Area. No Owner may keep any animals for commercial or breeding purposes.

6.5.2 No more than 2 domestic animals may be kept on any Lot without the prior written approval of the Board. Existing Owners who may already own more than 2 domestic animals may keep said domestic animals, but in the event the number of said domestic animals is reduced to 2, for whatever reason, said Owner shall not be

permitted to keep more than 2 domestic animals without the prior written approval of the Board.

6.5.3 No structure for the care, housing or confinement of any animal shall be visible from neighboring property. All animals must be kept on leashes when outside the confines of the home or enclosed yard area.

6.6 Antennae and Satellite Dishes: Subject to those antennas permitted under the Telecommunications Act of 1996, no exterior antennas or other devices for transmission or reception of television or radio signals, including satellite dishes, shall be erected or maintained if they are Visible to Adjoining Lots or from the Common Areas. No exterior devices or additions, including solar energy devices, shall be constructed on the exterior of a Lot (including the roof) without the written authorization of the Architectural Committee, except for the replacement of existing rooftop A/C units with similar apparatus.

6.7 Utility Lines: Electric power, telephone, water, sewer, cable television and other utility or service lines used for the general benefit of Lot Owners and other utility or service lines of every kind or character whether now or hereafter invented or used shall be placed and kept underground to the walls of the buildings on the property (except to the extent, if any, such underground placement may be prohibited by law, or by nature of the services to be rendered, such underground placement prevents the lines from being functional). This restriction shall apply to the service and utility lines for each and every Lot and Common Areas as well as the distribution lines located in the streets and elsewhere within the Property.

6.8 Walls and Fences: Walls and fences on the Lot line beyond the rear perimeter wall of the house on any Lot shall not exceed six feet (6') in height and shall be of masonry construction or termite resistant sturdy wood mounted on steel posts.

6.9 Ornaments and Attachments: A single American Flag holder may be placed on any single Lot pursuant to A.R.S. §33-1808. Plants in containers may be included as part of the landscaping but must be immediately removed if they die. Reasonable holiday decoration (i.e. Christmas, Chanukah, etc.) may be displayed during the appropriate season and removed within nine (9) days after the respective holiday.

6.10 Trailers and Motor Vehicles: No vehicle, mobile home, motor home, trailer, truck with camper shell, recreational vehicle or truck of any kind, camper, boat, or permanent tent or similar structure shall be kept, placed, maintained, constructed, reconstructed, or repaired on any Lot or street (public or private), or carport. This section shall not apply to emergency vehicle repairs, provided such repairs are completed and any disabled vehicle is removed within forty-eight (48) hours or as provided in A.R.S. §33-1809.

6.10.1 Overnight parking of recreational and similar vehicles is permitted solely for the purpose of loading and unloading, but not to exceed one (1) night or twenty-four (24) hours.

6.10.2 Vehicle washing and detailing is prohibited anywhere on the Property.

6.10.3 The Board has the right to establish parking regulations.

6.10.4 All vehicles of Owners and guests shall be parked in the respective carport or in parking slots on Western Winds Drive and on areas designated by the Board and not otherwise. Vehicles parked in areas designated by the Board should not extend over sidewalks or obstruct access to Owner carports at any time.

6.10.5 The Board has the right to have any type of vehicle, including, but not limited to recreational vehicles, automobiles, motorcycles, etc., which is parked in violation of the Governing Documents towed away at the sole cost and expense of the Owner of the vehicle. Any reasonable expenses incurred by the Association in connection with the towing of any vehicle shall be paid to the Association by the Owner within ten (10) days from the date of demand by the Association and if not paid, shall be collected in the same manner as assessments. No inoperative, abandoned, unlicensed, uninsured or commercial vehicles are permitted in the Property.

6.10.6 At no time shall any vehicle fall into a state of disrepair so that is it unsightly to other Lot Owners or in the opinion of the Board likely to adversely affect property values in the Property.

6.11 Nuisances: No Owner shall place or accumulate any rubbish or debris of any kind on the Lot or adjacent to any Lot or other property. All Owners must maintain the Lot so there are no odors or loud noises to arise or emanate from the Lot. No Owner may do anything on the Lot which causes it to be unsanitary, unsightly, offensive or detrimental to any other Lot or Owner. No other nuisances shall be permitted to exist or operate upon any Lot or other property so as to be offensive or detrimental to any other property in the vicinity thereof or to its occupants. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices, except security devices used exclusively for security purposes, shall be located and/or used on any Lot. No Owner may store or keep any of that Owner's personal belongings on any portion of the Common Areas.

6.12 Diseases and Insects: No Person shall permit any thing or condition to exist upon any Lot or other property which shall induce, breed or harbor infectious plant diseases, noxious insects or rodents, etc.

6.13 Repair of Buildings: No building or structure on any Lot property shall fall in to a state of disrepair, and all improvements and landscaping on the Lot shall be kept in good condition and repair, including the painting and maintenance of any of the exterior surfaces. If the Board determines, in its sole discretion, that any Owner has failed to maintain the Lot, it shall provide written notice to the Owner stating the work which needs to be done and a date and time for performance. If the Owner fails to comply with the Association's request, the Board may, in its sole discretion, take whatever action is appropriate to bring the Lot into compliance, including entering upon the Lot and making the necessary repairs, maintenance, rehabilitation or restoration of the Lot, including the exterior of any improvements. The Association shall provide the Owner with an invoice for the work performed. In the event such invoice is not paid within thirty (30) days of the date of such invoice that amount shall be assessed against the Owner as a Reimbursement Assessment.

6.14 Trash Containers and Collection: To the extent feasible, all rubbish, trash or garbage shall be kept in closeable containers. All other rubbish, garbage or trash which cannot be kept in the closeable container shall not be visible from any other Lot or from the Common Areas and streets until the date it is picked up by trash collection service. No rubbish, trash or garbage or other materials shall be burned on any Lot in the Property. The use of incinerators of every kind are prohibited.

6.15 Clothes Drying Facilities: Outside clothes lines or other outside facilities for drying or airing clothes visible from any street or to any neighbor shall not be erected, placed or maintained on any Lot.

6.16 Encroachments: No Owner may permit any tree, shrub or planting of any kind on any Lot to encroach upon any sidewalk, street, pedestrian way or other area from ground level to a height of twelve (12) feet without the prior approval of the Architectural Committee.

6.17 Machinery and Equipment: No machinery or equipment of any kind shall be placed, stored, repaired, operated or maintained upon or adjacent to any Lot, except for machinery or equipment which is customarily used in the maintenance or construction of a residence or any improvements on the Lot, and except that which the Association may use in performing its obligations under the Governing Documents.

6.18 Restriction of Further Subdivision and Time Shares: No Owner may subdivide or separate the Lot in to smaller parcels. Interval Ownership of any Lot is not permitted. "Time Share" as used in this section means owning a right to occupy the Lot, coupled with an interest in the real estate. For purposes of this Section, purchasing the right to occupy a Lot or any one of several Lots during five (5) or more separated time periods over a period of five (5) years, including any renewable options, is a Time Share. See ARS 32-2197 which defines a "Time Share".



6.19 Signs: Only one (1) "For Sale/Rent" sign is permitted on a Lot. All such signs must be removed within twenty-four (24) hours of the date of transfer of the title, or occupancy of the residence by the Lessee. Signs must not exceed four (4) square feet. No other signs are allowed on a Lot. Temporary signs indicating an "Open House" must be removed at the close of the Open House. The Association has the right to erect whatever signs are necessary for the operation of the Property. The Board has the right to remove any unauthorized sign, the costs of which shall be a Reimbursement Assessment. Political signs may be displayed as provided in A.R.S. §33-1808.

6.20 Lights and Reflective Material: Spotlights and other lights which may reflect or cause a glare on neighboring Lots are not permitted. Foil or other light reflective material may not be placed or maintained in the windows or other glass areas. Other reflective materials, including reflective house sidings and roofing material are prohibited.

6.21 Paint Colors: Exterior paint for stucco, roof trim, gutters, chimney, garage doors, wood structures and wrought iron must be the same color as originally used when the Property was constructed. Any proposed changes must be approved by the Architectural Committee.

6.22 Other Uses, Activities and Facilities: The Association Rules may contain restrictions, limitations, rules and regulations governing any additional uses, activities, improvements or facilities on a Lot or within the Property that are (i) visible from neighboring property, (ii) visible from any Common Areas or streets, or (iii) that are deemed by the Association to be a nuisance or to adversely affect the health, safety or welfare of Owners, Lessees and Residents. The following are some, but not all of the uses, activities, Improvements or facilities that may be governed by the Association Rules: animals, construction and maintenance activities, antennas, trash containers and collection, clothes drying facilities, signs, flags and flagpoles, basketball, tetherball and volleyball standards, motor vehicles, recreational vehicles, parking trucks, trailers, campers and boats, towing of vehicles, garages and driveways, solar energy devices, sport courts, lighting, use of Common Areas, amplifiers, window treatments, garage sales, and noise. The foregoing list is not intended to be exhaustive. The Association Rules are intended to be responsive to the changing needs of the Property and the desires of the Association's Members.

6.23 Variances: The Board may, at its option and in extenuating circumstances, grant variances from the restrictions, limitations, rules and regulations set forth in this Article, the Association Rules or the Architectural Rules if the Board determines in its discretion that (i) a restriction, limitation, rule or regulation would create an unreasonable hardship or burden on an Owner or Lessee and (ii) that the activity permitted under the variance will not have any substantial adverse effect on the other Owners or Lessees or the Property and is consistent with the high quality of life intended for residents of the Property.



sanctions in the event of a non-compliance. The Board shall not discriminate among Owners when making such decisions.

7.4 Organization, Power of Appointment and Removal of Members of the Architectural Committee:

The Architectural Committee shall be organized as follows:

a. Committee Composition: The Architectural Committee ("AC") shall consist of three (3) Members appointed by the Board. No Member of the AC is required to be an architect or to meet any other particular qualifications for membership.

b. Term of Office: The term of office for each Member of the AC shall be for a period of two (2) years or until the appointment of a successor. Any new Member appointed to replace a Member who has resigned, been removed or is deceased shall serve such Member's unexpired term. Members who have resigned, been removed or whose terms have expired may be reappointed.

c. Appointment and Removal: The right to appoint and remove any Member of the AC, at any time, is vested solely in the Board.

d. Resignations: Any Member of the AC may resign at any time from the Committee by giving written notice to the Board.

e. Vacancies: Vacancies on the AC shall be filled by the Board.

7.5 Duties: The AC shall consider and act upon any and all proposals or plans submitted to it, adopt Architectural Committee Rules, perform other duties delegated to it by the Board, and carry out all other duties imposed upon it by the Governing Documents.

7.6 Meetings and Compensation: The AC shall meet regularly to perform its duties and shall make reports to the Board. The vote or written consent of any two (2) Members, at a meeting or otherwise, constitutes an act of the AC, unless the unanimous decision of the AC is required by any other provision of this Declaration. The AC shall keep and maintain a written record of all actions taken by it. Members of the AC are not entitled to compensation for their services.

7.7 Architectural Committee Rules: The AC may adopt, amend and repeal rules and regulations by unanimous vote. These AC Rules shall be reviewed and approved by the Board and shall set the guidelines for architectural design, landscaping on individual Lots, color schemes, exterior finishes and materials and similar features which are mandated within the area.

7.8 Waiver: The approval by the AC of any plans, drawings or specifications for any work done or proposed, or for any other matter requiring the approval of the AC under the Governing Documents, is not a waiver of any right to withhold approval of any similar plan drawing specification or matter subsequently submitted for approval.

7.9 Liability: Neither the AC, Board or the Association, nor any Member thereof is liable to any Owner, or to any other party, for any damage, loss or prejudice suffered arising out of (a) the approval or disapproval of any plans, drawings, or specifications, whether or not defective, (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specification, (c) the execution and filing of any estoppel certificate, whether or not the facts therein are correct; provided, however, that with respect to the liability of a Member of the AC, Board or Association, such Member has acted in good faith based on the information which such Member possessed.

7.10 Inspection: Any Member of the Architectural Committee, or any authorized officer, director, employee or agent of the Association, may at any reasonable time and without being deemed guilty of trespass, enter on any Lot, after reasonable notice to the Owner of such Lot, in order to inspect the Improvements constructed or being constructed on such Lot to ascertain that such Improvements have been, or are being built in compliance with the Guidelines, and plans and specifications approved in accordance with the Governing Documents

7.11 Fee: The AC shall have the right to charge a fee for reviewing requests for approval of any exterior alteration pursuant to this Section, which fee shall be payable at the time the application for approval is submitted to the AC.

7.12 Approval: The approval required of the AC pursuant to this Section shall be in addition to, and not in lieu of, any approvals or permits which may be required under any federal, state or local law, statute, ordinance, rule or regulation.

7.13 Architectural Committee Rules Criteria: The AC Rules may include approval requirements and criteria that, unless specifically preempted, are more restrictive than those established by any federal, state or local law, statute, ordinance, rule or regulation. All work approved by the AC shall be completed within 12 months of the approval date. After 12 months, the original approval will expire and a new approval application shall be submitted. Fees may be established by the Board to defray any costs of considering any application including reasonable attorneys' fees and costs or other professional fees.

## ARTICLE 8

### EASEMENTS

8.1 Utility Easements: A blanket easement is created upon, across, over and under the Property within the area for ingress and egress, installation, replacing, repairing and maintaining all utility and service lines and systems, including but not limited to, water, sewer, gas, telephones, electricity, television cable or other communication lines and systems. By virtue of this easement, it is expressly permissible for the providing utility or service company to install and maintain facilities and equipment on the Property and to affix and maintain wires, circuits and conduits on, in, and under the roofs and exterior walls of houses within the area. Notwithstanding anything to the contrary contained in this Section, no sewers, electrical lines, water lines or other utilities or service lines may be installed or relocated on the property unless approved in writing by the Board. This easement shall in no way affect any other recorded easements on the Property.

8.2 Easement for Encroachments: Each Lot and any improvements on the Lot and the Common Areas and any Improvements in the Common Areas, are subject to an easement for encroachments created by construction, settling and overhangs, as originally designed or constructed including, but not limited to, an easement for footings of walls, fences and buildings and an easement for fireplaces. There is a valid easement for these encroachments and for the maintenance of same. In the event any encroachment is partially or totally destroyed, and then rebuilt, the Owners agree that minor encroachments of parts of the adjacent Lot due to such construction is permitted and that a valid easement for such encroachments and the maintenance thereof does exist.

8.3 Easements for Ingress and Egress: Easements for ingress and egress are reserved for pedestrian traffic over, through and across sidewalks, paths, walks and lanes located in the Common Areas.

8.4 Title to Common Areas: The Common Areas shall remain undivided and shall at all times be owned by the Association for the common use and enjoyment of all of the Owners. No Owner shall bring any action for partition of the Common Areas.

## ARTICLE 9

### MAINTENANCE OF PROPERTY

9.1 Maintenance of Common Areas: The Board is responsible for maintaining, repairing, irrigating, and replacing the Common Areas and all Improvements located thereon, any other property brought within the jurisdiction of the Association. With respect thereto, the Board may take any of the following actions without the approval of the Owners:

- a. construct, reconstruct, repair, replace or refinish any portion of the Common Areas;
- b. replace injured and diseased trees or other vegetation and plant trees, shrubs and ground cover to the extent that the Board deems necessary for the conservation of water and soil and for aesthetic purposes;
- c. place and maintain signs which the Board may deem appropriate for the proper identification, use and regulation thereof;
- d. do any and all other acts which the Board deems necessary to preserve and protect the property and the beauty thereof, in accordance with the general purposes specified in this Declaration;
- e. the Board is the sole judge as to the appropriate maintenance of all property within the Common Areas and other properties maintained by the Association. No planting or improvements shall be permitted in the Common Areas, unless and until approved in writing by the Board;

9.2 Damage or Destruction of Common Areas by Owners: No Owner shall in any way damage or destroy any Common Areas or interfere with the activities of the Association. Any expense incurred by the Association as a result of such acts shall be paid by the Owner and becomes a Reimbursement Assessment.

9.3 Landscaping Maintenance: The Association shall maintain and repair landscaping on each Lot with the exception of the patio areas. The expense to the Association in maintaining, repairing and replacing landscaping on each Lot is a common expense and is paid out of the Association's operating account. The Association has an easement over, under or across the Lots in order to perform its maintenance, repair and replacement obligations under this Section.

## ARTICLE 10

### COMMON WALLS

10.1 Rights and Duties: The rights and duties of Owners with respect to common walls are:

- a. The Owners of contiguous Lots who have a common wall (i.e., a wall which divides the two Lots) have the right to equally use such wall provided that such use by one Owner does not interfere with the use and enjoyment by the other Owner. When a wall extends beyond the property line of one of the Lots, it ceases to be a common wall and becomes the responsibility of the Owner on whose property the extension encloses.



b. Property insurance on all Areas of Association Responsibility insuring against all risk of direct physical loss, insured against in an amount equal to the maximum insurable replacement value of the Areas of Association Responsibility, as determined by the Board; provided, however, that the total amount of insurance after application of any deductibles shall not be less than one hundred percent (100%) of the current replacement cost of the insured property, exclusive of land, excavations, foundations and other items normally excluded from a property policy, but not less than \$3,000,000.00;

c. Workmen's compensation insurance to the extent necessary to meet the requirements of the laws of Arizona;

d. Directors and Officers liability insurance in an amount to be determined by the Board with a minimum amount of \$1,000,000.00 in 2009;

e. Such other insurance as the Association shall determine from time to time to be appropriate to protect the Association or the Owners.

f. The insurance policies purchased by the Association shall, to the extent reasonably available, contain the following provisions:

(i) That there shall be no subrogation with respect to the Association, its agents, servants, and employees, with respect to Owners and members of their household;

(ii) No act or omission by any Owner, unless acting within the scope of his authority on behalf of the Association, will void the policy or be a condition to recovery on the policy;

(iii) That the coverage afforded by such policy shall not be brought into contribution or proration with any insurance which may be purchased by Owners or their mortgagees or beneficiaries under deeds of trust;

(iv) A "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or other Owners;

(v) Statement of the name of the insured as the Association; and

(vi) For policies of hazard insurance, a standard mortgagee clause providing that the insurance carrier shall notify the first mortgagee named in the policy at least ten (10) days in advance of the effective date of any substantial modification, reduction or cancellation of the policy.



11.2 Insurance Policies and Certificates of Insurance. An insurer that has issued an insurance policy under this Article shall issue a certificate or a memorandum of insurance to the Association and to every Owner, mortgagee or beneficiary under a deed of trust. Any insurance obtained pursuant to this Article may not be canceled until thirty (30) days after notice of the proposed cancellation has been mailed to the Association, each Owner and each mortgagee or beneficiary under deed of trust to whom certificates of insurance have been issued. Upon the request of any Owner, the Board will provide a full copy of the Association's insurance policies. Normal postage and copying charges shall apply.

11.3 Payment of Premiums. The premiums for any insurance obtained by the Association pursuant to this Section of the Declaration shall be included in the budget of the Association and shall be paid by the Association.

11.4 Payment of Insurance Proceeds. With respect to any loss to any Area of Association Responsibility covered by property insurance obtained by the Association in accordance with this Article, the loss shall be adjusted with the Association, and the insurance proceeds shall be payable to the Association and not to any mortgagee or beneficiary under a deed of trust. Subject to the provisions of this Declaration, the proceeds shall be disbursed for the repair or restoration of the damage to the Area of Association Responsibility.

11.5 Repair and Replacement of Damaged or Destroyed Common Areas. Any portion of the Common Areas which is damaged or destroyed shall be repaired or replaced promptly by the Association unless (i) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (ii) Owners representing at least eighty percent (80%) of the total authorized votes in the Association vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves shall be paid by the Association. If all of the Common Areas are not repaired or replaced, insurance proceeds attributable to the damaged Common Areas shall be used to restore the damaged area to a condition which is not in violation of any state or local health or safety statute or ordinance and the remainder of the proceeds shall either (i) be retained by the Association as an additional capital reserve, or (ii) be used for payment of operating expenses of the Association if such action is approved by the affirmative vote or written consent, or any combination thereof, of Members representing more than fifty percent (50%) of the votes in the Association.

11.6 Owners' and Lessees' Insurance: Each Owner and/or Lessee of any Lot are responsible for providing additional insurance coverages that they may desire over and above the Association's Policies.

## ARTICLE 12

### RIGHTS OF FIRST MORTGAGEES

12.1 Notification to First Mortgagees. Upon receipt by the Association of a written request from a First Mortgagee or insurer or governmental guarantor of a First Mortgage informing the Association of its correct name and mailing address and the Lot number or address to which the request relates, the Association shall provide such Eligible Mortgage Holder or Eligible Insurer or Guarantor with timely written notice of the following:

12.1.1 Any condemnation loss or any casualty loss which affects a material portion of the Project or any Lot on which there is a First Mortgage held, insured or guaranteed by such Eligible Mortgage Holder or Eligible Insurer or Guarantor;

12.1.2 Any delinquency in the payment of Assessments or charges owed by an Owner of a Lot, subject to a First Mortgage held, insured or guaranteed by such Eligible Mortgage Holder or Eligible Insurer or Guarantor or any other default in the performance by the Owner of any obligation under the Project Documents, which delinquency remains uncured for the period of sixty (60) days;

12.1.3 Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;

12.1.4 Any proposed action which will require the consent of a specified percentage of Eligible Mortgage Holders as set forth in this Declaration

12.1.5 Any provisions which expressly benefit First Mortgagees, Eligible Mortgage Holders or Eligible Insurers or Guarantors.

12.1.6 Any addition or amendment to the Declaration, Articles or Bylaws shall not be considered material if it is for the purpose of correcting technical errors or for clarification only.

12.2 First Mortgagee's Right of Inspection of Records. Any First Mortgagee will, upon written request, be entitled to (i) inspect the books and records of the Association during normal business hours, (ii) receive within ninety (90) days following the end of any fiscal year of the Association, a financial statement of the Association for the immediately preceding fiscal year of the Association, free of charge to the requesting party, and (iii) receive written notice of all meetings of the Members of the Association and be permitted to designate a representative to attend all such meetings.

12.3 Prior Written Approval of First Mortgagees. Unless at least two-thirds (2/3) of the Eligible Mortgage Holders (based upon one vote for each First Mortgage owned) or Owners (other than the sponsor, developer or builder) of at least two-thirds (2/3) of the Lots have given their prior written approval, the Association shall not be entitled to:

12.3.1 Seek to abandon, partition, subdivide, sell or transfer the Common Areas owned, directly or indirectly, by the Association for the benefit of the Lots. The granting of easements for public utilities or for other public purposes consistent with the intended use of such Common Areas shall not be deemed a transfer within the meaning of this Subsection;

12.3.2 Change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner;

12.3.3 Change, waive or abandon any scheme or regulation, or enforcement thereof, pertaining to the architectural design or the exterior appearance of Lots or the maintenance of the Common Areas;

12.3.4 Fail to maintain fire and extended coverage on insurance Common Areas on current replacement cost basis in an amount of at least one hundred percent (100%) of insurable value;

12.3.5 Use hazard insurance proceeds for losses to any Common Area(s), other than the repair, replacement or reconstruction of such Common Area(s).

12.4 No Priority Over First Mortgagees. No provision of this Declaration gives or shall be construed as giving any Owner or other Person priority over any rights of a First Mortgagee of a Lot in the case of the distribution to such Owner of insurance proceeds or condemnation awards for losses to or taking of the Common Areas.

12.5 Failure of First Mortgagees to Respond. Any First Mortgagee who receives a written request from the Board to respond to or consent to any action requiring the consent of the First Mortgagee shall be deemed to have approved such action if the Association has not received a negative response from such First Mortgagee within thirty (30) days of the date of the Association's request.

12.6 Approval Required for Amendment to Declaration, Articles or Bylaws.

12.6.1 The approval of Eligible Mortgage Holders holding First Mortgages on Lots the Owners of which have at least fifty-one percent (51%) of the votes in the Association allocated to Owners of all Lots subject to First Mortgages held by Eligible Mortgage Holders shall be required to add or amend any material provisions of the Declaration, Articles or Bylaws which establish, provide for, govern or regulate any of the following:

- (i) Voting rights;
- (ii) Assessments, assessment liens or subordination of assessment liens;
- (iii) Reserves for maintenance, repair and replacement of Common Areas;
- (iv) Insurance or fidelity bonds;
- (v) Responsibility for maintenance and repairs;
- (vi) Expansion or contraction of the Project, or the addition, annexation or withdrawal of property to or from the Project;
- (vii) Boundaries of any Lot;
- (viii) Reallocation of interests in the Common Areas or the rights to their use;
- (ix) Convertibility of Lots into Common Areas or of Common Areas into Lots;
- (x) Leasing of Lots;
- (xi) Imposition of any restrictions on an Owner's right to sell or transfer his Lot;
- (xii) Restoration or repair of the Project (after a hazard damage or partial condemnation) in a manner other than that specified in the Project Documents;
- (xiii) Any action to terminate the legal status of the Project after substantial destruction or condemnation occurs;

## ARTICLE 13

### GENERAL PROVISIONS

#### 13.1 Enforcement:

a. The Association may enforce the Governing Documents in any manner provided for herein, or by filing a lawsuit, including, but not limited to:

1) Imposing reasonable monetary penalties after notice and an opportunity to be heard is given to the Owner or other violator. An Owner is responsible for the payment of any fine or penalty which is imposed against a Lessee or Resident of the Owner's Lot or by any guest or invitee of the Owner, Lessee or Resident.

2) Suspending an Owner's right to vote,

3) Suspending any services provided by the Association to an Owner or the Owner's Lot if the Owner is more than thirty (30) days delinquent in paying any assessment or other charge owed to the Association.

4) Exercising self-help or taking action to abate any violation of the Governing Documents in a non-emergency situation;

5) Requiring an Owner, at the Owner's expense, to remove any structure or improvement on such Owner's Lot in violation of this Declaration and to restore the Lot to its previous condition. After Notice stating a time within which the Owner must perform, if the Owner fails to take action, the Board or its designee has the right to enter the Lot, remove the structure or other improvement in violation and restore the Lot to substantially the same condition as previously existed and any such action shall not be deemed a trespass.

6) Without liability to the Declarant, Association or Board, prohibiting any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provision of the Governing Documents, from continuing or performing any further activities in the Area; and

7) Filing a lawsuit to enjoin a violation of the Governing Documents to compel compliance with the Governing Documents, to recover fines or money damages or to obtain such other relief as to which the Association may be entitled.

b. Each Owner has the right to enforce this Declaration by filing a lawsuit against any other Owner and the successful party shall be entitled to an award of its attorney fees, litigation expenses and costs incurred.

c. The Association is not obligated to take any enforcement action if the Board determines, in its sole discretion, that by virtue of the Association's finances, possible defenses, the time and expense of litigation or other enforcement action, the likelihood of a result favorable to the Association, or other facts deemed relevant by the Board, enforcement action would not be appropriate or in the best interests of the Association.

d. All rights and remedies of the Association under the Governing Documents or at law or in equity are cumulative, and the exercise of one right or remedy shall not waive the Association's right to exercise another right or remedy. The failure of the Association or an Owner to take enforcement action with respect to a violation of the Governing Documents shall not constitute or be deemed a waiver of the right of the Association or any Owner to enforce the Governing Documents in the future.

e. No delay or omission on the part of the Association or any Owner in exercising its right to enforcement hereunder shall be construed as a waiver or breach of any of the provisions of the Governing Documents or an acquiescence in any breach of the Governing Documents and no claim or cause of action shall accrue against the Board, the Association or any Owner for their neglect or refusal to exercise such right of enforcement.

f. No breach of the foregoing provisions, conditions, restrictions or covenants 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. Such provisions, conditions, restrictions and covenants shall be enforceable against any portion of the Properties acquired by any person through foreclosure for any breach occurring after such acquisition. The Association (through its Board) or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of the Governing Documents. Failure by the Association or by any Owner to enforce any covenant or restriction contained in the Governing Documents shall in no event be deemed a waiver of the right to do so thereafter.

g. In the event any action is brought by the Association to enforce the provisions of the Governing Documents, the successful party shall be entitled to an award of its attorneys' fees, litigation expenses and costs incurred.

13.2 Severability: Invalidity or unenforceability of any provision of this Declaration in whole or in part shall not affect the validity or enforceability of any other provision or any valid or enforceable part of a provision of this Declaration.

13.3 Captions: The captions and headings in this instrument are for convenience only and shall not be considered in construing any provisions of this Declaration.

13.4 Survival of Liability: The termination of ownership of a Lot shall not relieve or release any such former Owner from any liability or obligation incurred under, or in any way connected with his ownership, or impair any rights or remedies which the Board, Association or any other Owner may have against such former Owner arising out of, or in any way connected with such ownership and the covenants and obligations incident thereto.

13.5 Conflict: In the event of any discrepancies, inconsistencies or conflicts between the provisions of this Declaration, Articles of Incorporation, By-laws or Architectural Committee Rules, the provisions of this Declaration shall prevail.

13.6 Joint and Several Liability: In the case of joint ownership of a Lot, the liabilities and obligations of each of the Owners which are set forth in or imposed by the Governing Documents are joint and several.

13.7 No Warranty of Enforceability: While the Association has no reason to believe that any of the restrictive covenants or provisions contained in this Declaration are or may be invalid or unenforceable to any reason, or to any extent, the Association makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenant. Any Owner acquiring a Lot in reliance of one or more restrictive covenants shall assume all risks of validity or enforceability thereof.

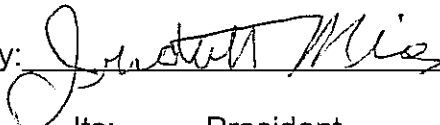


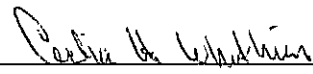
13.16 Delivery of Notices and Documents: Any written notice or other document relating to or required by this Declaration may be delivered either personally or by mail. If by mail, it is deemed to be delivered twenty-four (24) hours after depositing it in the United States mail, postage prepaid, addressed as follows: if to the Association, Western Winds Homeowners Association, % Christina Granillo, 6417 East Grant Road, Tucson, Arizona, 85715, or such other address that may hereafter from time to time be amended; if to an Owner, to the address of the Lot or to the latest address furnished by an Owner to the Association. Each Owner has the duty to ensure that the Association has that Owner's correct mailing address.

13.17 Binding Effect: By acquiring any ownership interest in any Lot, that person, for himself or itself, his heirs, personal representative, successors, transferees and assigns, bind himself, his heirs, person representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, rules and regulations now or hereafter imposed by the Governing Documents. In addition, each such person acknowledges that this Declaration sets forth a general scheme for the improvement and development of the Lots and the use and occupancy of the Common Areas. The restrictions, conditions, covenants, rules and regulations contained in the Governing Documents run with the land and are binding on all subsequent and future Owners, grantees, purchasers, assignees and transferees. Furthermore, each such person fully understands and acknowledges that this Declaration is mutually beneficial, prohibitive and enforceable by the various subsequent and future Owners. The Association and each Owner covenants and agrees that the Lots and the other rights created by this Declaration shall not be separated or separately conveyed, and that the provisions of the Governing Documents are deemed to be conveyed or encumbered with its respective Lot even though the description of such Governing Documents may refer only to the Lot.

IN WITNESS WHEREOF, we, the President and Secretary of the Western Winds Homeowners Association, by our signatures affixed hereto, certify that the Board of Directors has obtained the required sixty percent (60%) signatures of the Members to approve the Amended and Restated Declaration herein.

WESTERN WINDS HOMEOWNERS  
ASSOCIATION,

By:   
Its: \_\_\_\_\_ President \_\_\_\_\_

By:   
Its: \_\_\_\_\_ Secretary \_\_\_\_\_



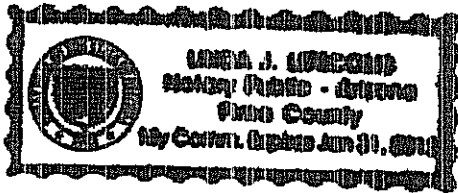
ACKNOWLEDGMENT

STATE OF AZ )  
County of Pima )ss.

The foregoing instrument was acknowledged before me this 6 day  
of December, 2008, by Judy Mirse the President  
and by Cecilia Whittem the Secretary of WESTERN WINDS  
HOMEOWNERS ASSOCIATION, on behalf of the Association.

Linda Lipscomb  
Notary Public

My Commission Expires:



SIGNATURE PAGES OF SIXTY PERCENT (60%) OF THE LOT OWNERS ARE  
ATTACHED HERETO AND MADE A PART HEREOF BY THIS REFERENCE  
AS EXHIBIT "A"

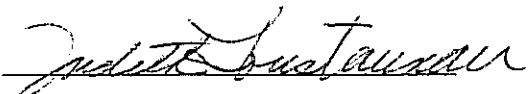
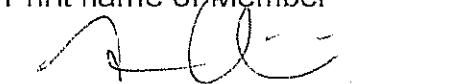
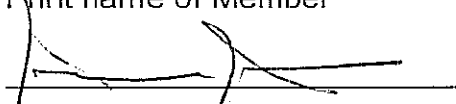
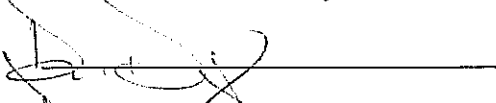
EXHIBIT "A"

SIGNATURE PAGES

ATTACHED HERETO

2025 01 04 14:00

The undersigned Lot Owners/Members hereby approve and consent to the above Restated and Amended Declaration of Covenants, Conditions and Restrictions for Western Winds Townhouses and hereby execute this document in compliance with the requirements set forth in the Article XII, Section 3, of the Original Declaration for Amending such Covenants, Conditions and Restrictions for Western Winds Townhouses.

	Signature of Member	Date	Lot number
		<u>11/23/08</u>	<u>4199/Lot 1</u>
16.	JUDITH LOUSTANNAU Print name of Member		
		<u>12/7/08</u>	<u>4152/Lot 28</u>
17.	Aaron Valdivia Print name of Member		
		<u>12/6/08</u>	<u>4144/Lot 26</u>
18.	MARIA Solberg Print name of Member		
	DAN CHANDLER Print name of Member	<u>12/6/08</u>	<u>4155/Lot 16</u>
19.	Dan Chandler Print name of Member		
	Krystal Aguilar Print name of Member	<u>12/08/08</u>	<u>4185/Lot 6</u>
20.	Krystal Aguilar Print name of Member		
		<u>12/8/08</u>	<u>4189/Lot 5</u>
21.	Jeanne Dancser Print name of Member		
	_____ Print name of Member	_____	_____

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Signature of Member	Date	Lot number
<u>[Signature]</u> 1. <u>Gary Collins</u> Print name of Member	<u>12.3.08</u>	<u>4169/Lot 11</u>
<u>[Signature]</u> 2. <u>Eric Holter</u> Print name of Member	<u>6 Dec 08</u>	<u>4167/Lot 13</u>
<u>[Signature]</u> 3. <u>Michael Martinez</u> Print name of Member	<u>12/6/08</u>	<u>4145/Lot 18</u>
<u>[Signature]</u> 4. <u>Margarita S. Arredondo</u> Print name of Member	<u>12/6/08</u>	<u>4137/Lot 21</u>
<u>[Signature]</u> 5. <u>Jose R. Corrales</u> Print name of Member	<u>12/6/08</u>	<u>4197/Lot 2</u>
<u>[Signature]</u> 6. <u>Eva Buffington</u> Print name of Member	<u>12/6/08</u>	<u>4179/Lot 9</u>
<u>[Signature]</u> 7. <u>HENRY Ruiz</u> Print name of Member	<u>12/6/08</u>	<u>4142/Lot 25</u>
<u>[Signature]</u> 8. <u>Dabara Norris</u> Print name of Member	<u>Dec 7, 08</u>	<u>4165/Lot 12</u>

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	Signature of Member	Date	Lot number
9.	<u>David J. Woodman</u> Print name of Member	<u>Nov 16</u>	<u>4180/Lot 33</u>
10.	<u>David J. Woodman</u> Print name of Member	<u>Nov 16</u>	<u>4182/Lot 34</u>
11.	<u>Lynn Strakberg</u> Print name of Member	<u>11/16/08</u>	<u>4195/Lot 3</u>
12.	<u>John Shiffe</u> Print name of Member	<u>11-16-08</u>	<u>4160/Lot 29</u>
13.	<u>Christina D. Granillo</u> Print name of Member	<u>12/6/08</u>	<u>4157/Lot 14</u>
14.	<u>Joel M. Mies</u> Print name of Member	<u>12-6-08</u>	<u>4172/Lot 32</u>
15.	<u>Cecilia H. Whitham</u> Print name of Member	<u>12-6-08</u>	<u>4140/Lot 24</u>

2008-11-16

[illegible]

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Signature of Member

Date

Lot number

Max A. Mote

12/09/08

Lot 20  
4139 N. WESTERN WINDS DR,

MAX A. MOTE

**DRAFT**

Print name of Member

Print name of Member

Print name of Member

Print name of Member

Print name of Member

Print name of Member

Print name of Member

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Signature of Member

Date

Lot number

Bernard Gonzalez

2008 12 07

4159 / Lot 15

Bernard Gonzalez

Print name of Member

TAROLD HOTCHKISS 11/2/08

Lot 37

Tarold Hotchkiss

Print name of Member

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Print name of Member



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Signature of Member	Date	Lot number
<u>Margaret S. Trotter</u>	<u>11/30/08</u>	<u>4170 / Lot 31</u>
<u>Margaret S. Trotter</u> Print name of Member		
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Print name of Member		
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Print name of Member		
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Print name of Member		

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Signature of Member	Date	Lot number
<u>Yuk Mei Shim</u> Yuk Mei Shim Print name of Member	<u>11-22-08</u>	<u>Lot 22 / 4135</u>
_____ Print name of Member	_____	_____
_____ Print name of Member	_____	_____
_____ Print name of Member	_____	_____
_____ Print name of Member	_____	_____
_____ Print name of Member	_____	_____
_____ Print name of Member	_____	_____
_____ Print name of Member	_____	_____

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Signature of Member

Date

Lot number

*Nancy A. Beckham*

12-8-08

4190/Lot 35

*Nancy A. Beckham*

Print name of Member

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Print name of Member

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Print name of Member

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Signature of Member	Date	Lot number
<u>Thomas J Oger II</u>	<u>12-9-08</u>	<u>10</u>
Thomas J Oger II		
<u>Roanna L Oger</u>	<u>12/9/08</u>	<u>10</u>
Roanna L Oger		
_____	_____	_____
Print name of Member		
_____	_____	_____
_____	_____	_____
Print name of Member		
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Print name of Member		
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Print name of Member		
_____	_____	_____
_____	_____	_____
Print name of Member		

Western Winds Townhouses Resubdivision  
Lots 1-37 Inclusive Carport and Storage Lots  
and Common Areas A and B