

F. ANN RODRIGUEZ, RECORDER  
RECORDED BY: LAM  
DEPUTY RECORDER  
6545 PE1



DOCKET: 12959  
PAGE: 599  
NO. OF PAGES: 24  
SEQUENCE: 20062480267  
12/27/2006  
ARSTR 11:40  
MAIL  
AMOUNT PAID \$ 32.00

W  
BERT IMSE  
1537 W VUELTA SALVATIERRA  
GREEN VALLEY AZ 85614

**FOURTH AMENDED AND RESTATED DECLARATION OF  
ESTABLISHMENT OF CONDITIONS, COVENANTS, AND  
RESTRICTIONS FOR CANOA SECA ESTATES  
LOTS 1-170 AND COMMON AREAS A & B.**

**Approved: November 7, 2006**

1-NOV-2006 11:40:00

CONDITIONS, COVENANTS, AND RESTRICTIONS  
TABLE OF CONTENTS

		<u>Page</u>
PROPERTY DESCRIPTION AND SUMMARY		1
ARTICLE I	DEFINITIONS	2
	SECTION 1 Association	2
	SECTION 2 Common Areas	2
	SECTION 3 Declaration	2
	SECTION 4 Dwelling Unit	2
	SECTION 5 Lot	2
	SECTION 6 Member	2
	SECTION 7 Mortgage	2
	SECTION 8 Owner	2
	SECTION 9 Person	2
	SECTION 10 Plat	2
	SECTION 11 Properties	2
ARTICLE II	SCOPE OF DECLARATION	3
ARTICLE III	COMMON AREAS	3
	SECTION 1 Ownership of Common Areas	3
	SECTION 2 Conveyance of Owner's Rights	3
	SECTION 3 Conveyance of Easements and Right-of-Way	3
ARTICLE IV	EASEMENTS, LICENSES, AND ENCROACHMENTS	3
	SECTION 1 Easement for Encroachments	3
	SECTION 2 Easement for Enjoyment	3
	SECTION 3 Drainage Easement	3
	SECTION 4 Utility Easement	3
	SECTION 5 Permissible Encroachments	4
	SECTION 6 Rear Yard and Front Yard Easements	4
ARTICLE V	THE ASSOCIATION	5
	SECTION 1 Responsibilities of the Association	5
	SECTION 2 Bylaws, Articles of Incorporation, And Board of Directors	6
	SECTION 3 Access	6

ARTICLE VI	VOTING RIGHTS AND ALLOCATION OF VOTES	6
ARTICLE VII	ASSESSMENTS AND POWER OF LIEN	7
	SECTION 1 Power to Levy Assessments and Impose penalties.	7
	SECTION 2 Effect of Nonpayment of Assessments Power of Lien	7
ARTICLE VIII	MORTGAGEE'S PROTECTION PROVISIONS	7
	SECTION 1 Definition	8
	SECTION 2 Obligation to Pay Assessments	8
	SECTION 3 Title Acquired Through Foreclosure or Default	8
	SECTION 4 Right to Pay Charges in Default	8
	SECTION 5 Precedence of First Mortgage	8
	SECTION 6 Written Notification of Default	8
	SECTION 7 Inspection of Books and Records	8
	SECTION 8 Notice	8
ARTICLE IX	INSURANCE OF COMMON AREAS	9
	SECTION 1 Scope of Coverage	9
	SECTION 2 Repair and Replacement of Damaged And Destroyed Property	9
	SECTION 3 Owner's Responsibilities	9
ARTICLE X	OWNER'S RESPONSIBILITIES	10
	SECTION 1 Scope of Responsibilities	10
	SECTION 2 Conformity to Use Restrictions	10
ARTICLE XI	ARCHITECTURAL REVIEW COMMITTEE	10
	SECTION 1 Composition of Committee	10
	SECTION 2 Review by Committee	10
	SECTION 3 Procedures	10
	SECTION 4 Alterations and Modifications - Discretion of Architectural Review Committee	11
	SECTION 5 Minimum Criteria for Plans	11
	SECTION 6 Fees	12
	SECTION 7 No Responsibility for Defects	12
	SECTION 8 Conflict of Interest	12
ARTICLE XII	USE RESTRICTIONS	12
	SECTION 1 Land Use and Building Type	12
	SECTION 2 Conformity to Building Codes	12
	SECTION 3 Fences, Walls and Hedges	12
	SECTION 4 Screening	12
	SECTION 5 Lights	13
	SECTION 6 No Business Use	13
	SECTION 7 Temporary Structures	13
	SECTION 8 Other Buildings	13

	SECTION 9	Architectural Review Committee Approval	13
	SECTION 10	Rubbish	13
	SECTION 11	Re subdivisions	13
	SECTION 12	Noise	14
	SECTION 13	Shrubs, Trees and Grasses	14
	SECTION 14	Vehicle Parking and Storage	14
	SECTION 15	Inoperable Vehicles and Commercial Vehicles	14
	SECTION 16	Drainage-Ways	14
	SECTION 17	Native Growth	14
	SECTION 18	Antennas and Exterior Additions	15
	SECTION 19	Signs	15
	SECTION 20	Derricks, Tanks, Heating and Cooling	15
	SECTION 21	Clotheslines	15
	SECTION 22	Animals	15
	SECTION 23	Waivers	16
	SECTION 24	Inspection	16
ARTICLE XIII	AGE RESTRICTIONS		16
	SECTION 1	Fair Housing Act	16
	SECTION 2	Requirements	16
	SECTION 3	Resale, Rental or Lease	16
	SECTION 4	Minors	16
	SECTION 5	Responsibility	17
ARTICLE XIV	PARTY WALLS		17
	SECTION 1	General Rules of Law Apply	17
	SECTION 2	Alterations	17
	SECTION 3	Sharing of Repair and Maintenance	17
	SECTION 4	Destruction by Fire or Other Casualty	17
	SECTION 5	Weatherproofing	17
	SECTION 6	Right to Contribution Runs with Land	17
	SECTION 7	Arbitration	17
	SECTION 8	Private Agreements	17
	SECTION 9	Eaves, Steps and Open Porches	18
ARTICLE XV	GENERAL PROVISIONS		18
	SECTION 1	Enforcement	18
	SECTION 2	No Waiver	18
	SECTION 3	Lien of Mortgages	18
	SECTION 4	Severability	18
	SECTION 5	Amendment	18
	SECTION 6	Term	18
	SECTION 7	Binding Effect	18
	SECTION 8	Captions	19
	SECTION 9	Well Site	19

CANOA SECA ESTATES HOMEOWNERS ASSOCIATION

**FOURTH AMENDED AND RESTATED DECLARATION  
OF ESTABLISHMENT OF CONDITIONS, COVENANTS AND RESTRICTIONS FOR  
CANOA SECA ESTATES  
LOTS 1 THROUGH 170  
AND COMMON AREAS A AND B**

PROPERTY DESCRIPTION AND SUMMARY

Lawyers Title of Arizona, an Arizona Corporation, as Trustee under Trust 648-T, was the "Declarant" under that certain First Amended and Restated Declaration of Establishment of Conditions, Covenants and Restrictions recorded in Book 8415, Page 1165, Pima County records. Declarant recorded said covenants governing the following real property:

Canoa Seca Estates, Lots 1 through 170 and Common Areas A and B, a subdivision of Pima County, Arizona recorded in Book 42 of Maps and Plats at Page 38 in the Office of the Recorder of Pima County, State of Arizona ("Original Plat").

Portions of said property have been resubdivided as follows:

Lots 25 through 70, Lots 79 through 94, and Common Area B of the Subdivision of Pima County known as Canoa Seca Estates Resubdivision recorded in Book 43, Page 55, of Maps and Plats, Pima County records, being a resubdivision of a portion of Lots 1 through 170 and Common Areas A and B of Canoa Seca Estates, recorded in Book 42, Page 38, of Maps and Plats, Pima County records ("Resubdivision Plat").

The property described on the Original Plat, as resubdivided by the Resubdivision Plat, shall constitute the "Properties" subject to this Declaration.

Canoa Seca Estates, Inc. declares and establishes the following amended and restated conditions, covenants and restrictions to which said Properties shall be subject, all of which shall be binding upon and inure to the benefit of the present and future Owners thereof, and which shall be imposed upon each part of said Properties as a servitude in favor of each and every part thereof, and Canoa Seca Estates, Inc. declares its intent to own and operate a planned community under the laws of the State of Arizona.

This Declaration, except as stated herein to the contrary, is intended to and does hereby completely restate, amend, supersede and replace any previous declaration or amendment relating to the Properties, and constitutes a continuation of the general plan for the improvement, development, and sale of the Lots and Common Areas. Notwithstanding the foregoing, this instrument in no way amends or supersedes the Declaration of Establishment of Conditions, Covenants and Restrictions recorded in Book 8344, Page 1463, Pima County records dealing with Green Valley Recreation, Inc.

ARTICLE I

DEFINITIONS

SECTION 1: "Association" shall mean and refer to Canoa Seca Estates, Inc., its successors and assigns.

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

SECTION 3: "Declaration" shall mean and refer to this Declaration as may be amended from time to time.

SECTION 4: "Dwelling Unit" shall mean the improvements placed upon or within the boundary of any Lot.

SECTION 5: "Lot" shall mean Lots 1 through 170 of the Original Plat, as modified by the Resubdivision Plat and amendments thereto, and including any improvements constructed thereon, if any, and including any new Lot created by combining two (2) or more adjacent Lots. When two (2) or more Lots are purchased, combined, and used as one (1) Lot with the approval of the Architectural Review Committee, the combined Lots shall be considered one (1) Lot for all purposes including voting rights and assessments.

SECTION 6: "Member" shall mean every person who is an Owner of a Lot. Membership shall be appurtenant to and may not be separated from ownership of a Lot. Only persons who own Lots under recorded instruments, including deeds and contracts for sale, shall be Members of the Association.

SECTION 7: "Mortgage" shall include any consensual monetary encumbrance to a Lot evidenced by an instrument in recordable form and shall specifically include both mortgages and deeds of trust. The term "Mortgagee" shall mean the holder of any Mortgage under which the interest of any Owner of a Lot is encumbered and which Mortgage has first and paramount priority subject only to the lien of general or ad valorem taxes and assessments. "First Mortgagees" for purposes of this Declaration are defined further by Article VIII, Section 1 below.

SECTION 8: "Owner" shall mean and refer to the record holder, whether one or more persons of the fee simple title to any Lot which is part of the Properties, including a buyer under a contract for the conveyance of real estate pursuant to Title 33, Arizona Revised Statutes, but excluding persons holding an interest merely as security for the performance of an obligation, and excluding buyers under sales agreements or deposit receipt and agreements.

SECTION 9: "Person" shall include a corporation, company, partnership, firm, association, or society, as well as a natural person.

SECTION 10: "Plat" shall mean the Original Plat of record in the office of the County Recorder of Pima County, Arizona, in Book 42 of Maps and Plats on Page 38, as modified by the Resubdivision Plat of record in Book 43, Page 55, of Maps and Plats, Pima County records and any amendment to or resubdivision thereof, including those recorded in Book 8803, Page 1216 and Book 9510, Page 2595 of Pima County records.

SECTION 11: "Properties" shall mean and refer to that certain real property described in the Original Plat and Resubdivision Plat as amended and such additions and deletions thereto as may be brought within the jurisdiction of the Association.

ARTICLE II  
SCOPE OF DECLARATION

The Declaration is intended to regulate and control the use of the Properties for the benefit of all Owners thereof, pursuant to the general plan of development set forth herein.

ARTICLE III  
COMMON AREAS

SECTION 1: Ownership of Common Areas. Ownership is vested in the Association subject to the easements created for purposes deemed necessary for the full use and enjoyment of the Properties, including easements for incidental encroachments. Common Areas are intended for use of public utility easements, drainage-ways, streets, open areas, and any recreational centers or other facilities, if any, and are for the common use and enjoyment of the Members of the Association and their invitees.

SECTION 2: Conveyance of Owner's Rights. Any sale, lease, or sublease of a Lot by its Owner or transfer of the same by operation of law, shall serve to transfer, convey, lease, or sublease to the same extent all of said Owner's right to use the Common Areas.

SECTION 3: Conveyance of Easements and Rights-of-Way. Notwithstanding any other provisions in this Declaration, the Association shall at all times have the right to grant and convey to any person or entity easements or rights-of-way, in, on, over, or under any Common Areas for the purpose of constructing, erecting, operating, or maintaining on, in, over, and under: roads, streets, walks, pathways, driveways, temporary overhead or permanent underground lines, cables, wires, conduits, or other devices for the transmission of electricity, heating, power, telephone, cable TV and other purposes, sewers, storm drains, pipes, drainage easements, water systems, water, heating and gas lines or pipes and any similar public or quasi-public improvements or facilities.

ARTICLE IV

EASEMENTS, LICENSES, AND ENCROACHMENTS

SECTION 1: Easement for Encroachments. Each Lot and the property included in the Common Areas shall be subject to an easement for encroachments created or necessary to be created by activities conducted and conditions existing upon the Properties, including construction, settling, and overhangs, as determined by the Association. A valid easement for said encroachments and for the maintenance of same so long as they stand, shall and does exist.

SECTION 2: Easement for Enjoyment. There is created a blanket, nonexclusive easement upon, across, over, and under all of the Common Areas for the use and enjoyment of all Members, their guests, invitees, and licensees, subject to reasonable regulations of the Association.

SECTION 3: Drainage Easement. A drainage easement is created upon, across, over, and under each Lot for the benefit of all other Lots.

SECTION 4: Utility Easements. The Association reserves the right to grant a perpetual exclusive easement and right-of-way across and upon all Common Areas for the ingress, egress, installation, construction, maintenance, operation, removal, repair, enlargement, alteration, and improvements for all utilities including, but not limited to, water, sewer, gas, telephone, electricity, cable communication or television antennae system, or a security system, and facilities appurtenant to any or all, including structures, equipment, and materials with required

appurtenances, necessary for the operation of any such utility or system and acknowledges any easement recorded in the Pima County Recorder's Office.

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

**SECTION 6: Rear Yard and Front Yard Easements.** The Resubdivision Plat depicts easements along the side boundaries of certain Lots shown thereon, in particular Lots 25 through 70 and 79 through 94. Said easements are for pedestrian use, maintenance of adjacent walls and structures, landscaping, sidewalks, drainage, utilities, and for the general use and enjoyment of the respective Owner benefited by the easement as set forth herein.

In each case, the Owner of a Lot having the benefit of an easement over an adjacent Lot may be referred to as the "benefited" Owner.

Notwithstanding the foregoing, the easements for Lots 45 through 51, which are shown on the Resubdivision Plat, recorded in Book 43, Page 55 of Maps and Plats, shall be deemed abandoned and reversed such that the front and rear side yard easements are on the opposite sides of the Lots and Common Area. More specifically, the said easements on Lots 45 through 51 shall correspond to the Exhibit "A" and the new legal descriptions recorded on March 31, 1993 as part of the Amendment to Second Amended and Restated Declaration in Book 9510, Page 2596.

In which case, an Owner shall have an exclusive easement onto an adjacent Lot for additional rear side-yard area (Rear Yard Easements), and an easement on the opposite side of the Lot for additional front side-yard area and ingress and egress, walkways and related purposes (Front Yard Easements), and for such other uses as are not inconsistent therewith.

Lots shown on the Plat and not having easements depicted as set forth above, are not governed by the provisions of this section.

The Owner of each Lot is hereby granted easements across adjacent Lots for the purposes of maintenance and repair of walls, structures and appurtenances. Each Owner benefited by the Front Yard Easements and Rear Yard Easements shall be solely responsible for all landscaping and maintenance of said easements and shall keep said areas in a clean, neat and well landscaped condition.

No walkways, patios or other improvements may be built upon the Front Yard Easements unless the same have been approved in writing by the Architectural Review Committee. The easement areas are intended to be free of all structures and buildings. The Architectural Review Committee may approve of limited structures (i.e. barbeques, benches) only if such structures are permitted by Pima County building and use setbacks. All Owners acknowledge that applicable building setbacks may require that the easement areas and additional land measured from the Lot lines (rather than from the easement boundary line) be free of structures.

PHOTOCOPIED

In addition to the requirement of Architectural Review Committee approval, any Owner wishing to modify the color, composition of building materials, location or structure of his or her wall lying immediately adjacent to the Rear Yard Easement benefiting an adjacent Owner, shall first obtain the written consent of the adjacent Owner benefited by the Rear Yard Easement. This requirement shall apply to all increases or decreases in wall heights and to all other such changes, including the addition of windows, doors, application of stucco, removal of stucco, etc.

The Owner benefited by Rear Yard Easements shall not attach any equipment or fixtures to said walls, other than plants or vines which do not modify the integrity of the wall or pose an unsightly appearance or threaten its strength, durability or lasting life. Further, the Owner benefited by a Rear Yard Easement shall not water his or her yard or plants to the extent that the foundation of adjacent walls will be undermined.

Each Owner, by acceptance of a deed, has agreed to the provisions of these covenants and further has agreed that due to the placement of homes on particular Lots, the shape and terrain of certain Lots, the configuration of streets and other factors, the precise dividing line between the Front Yard Easements and Rear Yard Easements previously recorded with the Second Amended and Restated Declaration may have, of necessity, fluctuated several feet in either direction as a result of construction of models by the developer. Regardless of such fluctuation, the easements intended hereby shall apply to the fullest extent, and the precise location of the dividing line between Rear Yard Easements and Front Yard Easements has been determined by the final construction of improvements (including homes, walls, fences, walks, paths and other improvements) and shall not be altered without the consent of each adjacent Owner. Any incidental deviation in the location of the Front Yard Easements and Rear Yard Easements from the recorded locations which was caused in the course of original construction shall be deemed valid, and the Owner of the constructed improvements shall be deemed to have a permanent and valid easement of encroachment.

The Front Yard and Rear Yard Easements described above shall be deemed abandoned as to those Lots on which homes have been built having walls directly on Lot lines dividing adjacent Lots (i.e. "zero Lot line" houses). Each Owner of any zero Lot line home constructed shall have an easement for incidental roof and yard drainage over the Lot or Common Area immediately adjacent to the common wall of the Dwelling Unit. The easement shall be limited to five (5) feet in width.

## ARTICLE V THE ASSOCIATION

Section 1: Responsibilities of the Association. The Association shall be responsible for the protection, improvement, alteration, maintenance, repair, replacement, administration, management and operation of the Common Areas. The Association shall, to the extent applicable, be responsible for:

- (a) the maintenance of the common streets, roads, slopes, including slopes necessary to protect roads and other structures and sidewalks (if applicable) located within the Common Areas and entry way features and landscaping leading off Camino del Sol into the Properties, including decorative structures, walls, etc.;
- (b) the maintenance of the landscaped portions of the Common Areas;



ARTICLE VII

ASSESSMENTS AND POWER OF LIEN

SECTION 1: Power to Levy Assessments and Impose Penalties.

The Association, through its Board of Directors, shall have the power to levy regular annual assessments and such special assessments as shall be determined and to determine the amount of these assessments, the date(s) the payment of these assessments are to be made and to collect delinquent assessments by action of law from the Owners.

SECTION 2: Effect of Nonpayment of Assessments and Power of Lien.

- (a) Annual and any special assessments shall become delinquent thirty (30) days after the due date regardless if the Owner has, or believes he or she has, any claim against any other person, including the Association. All delinquent assessments may result in a lien upon the property against which such assessments are made.
- (b) All delinquent assessments shall bear interest from the date of default until paid at the rate of twelve percent (12%) per annum or two (2%) per annum above the prime rate of interest (whichever is lower) customarily charged by the Association's banking institution for short-term loans until such delinquent assessment is paid.
- (c) The lien for any Lot may be foreclosed in the same manner as a Mortgage or Deed of Trust, and each Owner consents to the recording by the Association of a Notice and Claim of Lien in the event of any assessment remaining delinquent sixty (60) days after the due date.
- (d) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three (3) years after the full amount of the assessment becomes due.
- (e) A judgment or decree in any action brought shall include costs and reasonable attorney fees for the prevailing party.
- (f) Arizona State Legislature Regulations 33-1807, 33-1803, 32-2197 and 33-1807 and House Bill HB2402 shall serve as guidelines when it is necessary to impose a lien on an Owner's property. State legislation when amended shall be used as guidelines as they are implemented by the State.

ARTICLE VIII

MORTGAGEE'S PROTECTION PROVISIONS

SECTION 1: Definition. Notwithstanding and prevailing over any other provisions of this Declaration, or Articles of Incorporation or Bylaws of the Association, any First Mortgagee shall have all rights and obligations provided by the statutes and laws of the State of Arizona. The following terms and provisions shall apply solely to and benefit only each First Mortgagee holding a Mortgage interest in any Lot.

The term "First Mortgagees" as used for purposes of this Article shall mean any holder of a First Mortgage interest in any Lot who has 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.

11/10/06 10:00 AM

SECTION 2: Obligation to Pay Assessments. At such time as a First Mortgagee shall become record Owner of a Lot by any means, First Mortgagee shall be subject to all of the terms and conditions of this Declaration including, but not limited to, the obligation to pay when due any and all assessments and charges accruing thereafter and assessable against the Lot acquired, in the same manner as any Owner.

SECTION 3: 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 this Lot free and clear of any unrecorded lien authorized by or arising out of any of the provisions of this Declaration or the Bylaws of the Association. Any such unrecorded assessment shall nevertheless continue to exist as the personal obligation of the defaulting Owner of the Lot to the Association, and the Board of Directors of the Association may use reasonable efforts to collect the same from the Owner regardless of whether said Owner is or is not a Member of the Association. 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 or by the Bylaws of the Association 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.

SECTION 4: Right to Pay Charges in Default. First Mortgagees are granted the right but shall not be obligated jointly or severally pay such taxes or other charges as are in default and which may or have become a charge against any Common Areas owned by the Association, and such First Mortgagees may, jointly or severally, pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy for such Common Areas and any First Mortgagees making such payment shall be owed immediate reimbursement from the Association.

SECTION 5: Precedence of First Mortgage. Nothing in this Declaration shall in any manner be deemed to give an Owner or any other party priority over any rights of a First Mortgagee under the terms of such First Mortgagee's Mortgage in the case of a distribution to an Owner of insurance proceeds or condemnation awards for losses or to a taking of any Dwelling Unit or any part of the Common Areas owned by the Association. Each First Mortgagee shall be entitled to timely written notice of such loss or taking, if such First Mortgagee has provided the Association with a written request to that effect.

SECTION 6: Written Notification of Default. Each First Mortgagee shall, upon written request to the Association, be entitled to a written notification from the Association of any default in the performance by the Owner of a Lot encumbered by the Mortgage in favor of such First Mortgagee under any obligation provided for in or under the Articles of Incorporation, Bylaws, or Rules of the Association and which default is not cured with 60 days.

SECTION 7: Inspection of Books and Records. Each First Mortgagee shall, upon written request to the Association, be entitled to (a) inspect the books and records of the Association during normal business hours, (b) receive an annual financial statement of the Association within 90 days following end of any fiscal year of the Association, and (c) receive written notice of all meetings of the Association, and designate a representative to attend such meetings.

SECTION 8: Notice. Each First Mortgagee shall, upon written request to the Association, be entitled to written notice from the Association at least 30 days prior to (a)

abandonment or termination of the Association, or (b) any material amendment to the Declaration, Articles or Bylaws.

ARTICLE IX  
INSURANCE OF COMMON AREAS

SECTION 1: Scope of Coverage. The Association shall secure policies of insurance and shall maintain the same so that a policy is in force at all times providing, to the extent that the same is available at reasonable cost, liability insurance coverage for the Common Areas and all insurable facilities and improvements thereon in an amount of a minimum of one million dollars (\$1,000,000.00) coverage 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 Directors of the Association, but in no event less than one hundred percent (100%) of the current replacement value of Common Areas and facilities so that it will adequately and properly insure all structures, equipment and improvements on the 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 shall state that the same may not be cancelled or benefits be altered without ten (10) days notice in writing to the Association.

SECTION 2: Repair and Replacement of Damaged and Destroyed Property. In the event of damage or destruction by fire or other casualty of Common Areas facilities or improvements covered by the described insurance policies, the Board of Directors of the Association shall, on receipt of the insurance proceeds, contract to rebuild such damaged or destroyed property as good a condition as formerly existed provided that in the event the proceeds of such insurance shall be insufficient to substantially restore or repair the damaged or destroyed facilities, the Board of Directors of the Association shall poll the Members, upon the affirmative vote of a simple majority of those present may specially assess the Owners for the difference between the sum received as insurance proceeds and the reasonable cost of repair or replacement of the damaged or destroyed Common Area facilities. In the event that a simple majority of those present do not consent to a special assessment of the Owners, no such assessment shall be made and the Board of Directors of the Association may determine to only partially restore or replace the damaged or destroyed facilities or to make some other use of the affected Common Areas (s).

SECTION 3: Owner's Responsibilities. The Association shall in no event be required to replace or restore real or personal property located upon any Lot, and the insurance of Lots and improvements on these Lots against any and all hazards shall be the sole responsibility of the Lot Owner. In the event of damage to an improvement on a Lot, the Owner of said Lot shall repair or rebuild the improvement to the same standards and specifications of the original improvement, unless otherwise permitted by the Architectural Review Committee.

ARTICLE X  
OWNER'S RESPONSIBILITIES

SECTION 1: Scope of Responsibilities. Each Owner shall be responsible for all costs and expenses relating to the maintenance, repair, upkeep, taxation and assessment of his or her Lot(s) and any improvements including, but not limited to, the payment of utility costs, ad valorem taxes, roof maintenance and repair, maintenance and repair of building exteriors, fences and walls, upkeep of trees, shrubs, grass, walks and other exterior portions of, and structures on his or her Lot, unless otherwise provided in these Articles. All exterior repairs shall be made in conformance with the original architectural design and style of the structure being repaired.

SECTION 2: Conformity to Use Restrictions. Each Owner shall be responsible for assuring that all construction, alterations, modification or addition to buildings, walls, fences, copings, roads, driveways or other structures on his or her Lot conform to the Use Restrictions of Article XII. If an Owner fails or refuses to remove or repair any nonconforming structure, the Association may in its sole discretion, remove or repair the nonconforming structure, and the cost of removal or repair shall be added to and become part of the assessment to which the Owner of the nonconforming Lot is subject, and shall be collected in the same manner as delinquent assessments.

ARTICLE XI  
ARCHITECTURAL REVIEW COMMITTEE

SECTION 1: Composition of Committee. The Architectural Review Committee shall be composed of a minimum of three (3) members appointed by the Chairman of the Committee. The Chairman shall be appointed by the Board Members. The Architectural Review Committee shall not be entitled to any compensation for services performed pursuant to this Article and Article XII.

SECTION 2: Review by Committee. All architectural matters within the Properties shall be subject to the discretionary review of the Architectural Review Committee, except as otherwise provided in this Article. The Architectural Review Committee shall have the exclusive right, exercisable in its sole discretion, to promulgate and amend written rules and regulations concerning the construction, alteration, repair, modification or addition of any exterior building, wall, fence, coping, drive, or similar structure, and all plans, specifications and plot plans related thereto shall be at the sole discretion of the Architectural Review Committee provided that the same shall not be in conflict with any provisions in this Declaration. All decisions of the Architectural Review Committee are final, except the right of the Board of Directors, in its sole discretion, to accept an appeal of the committee's action by any affected Member and to take such action, if any, that it determines appropriate.

SECTION 3: Procedures. Prior to the construction of any improvement upon a Lot, whether such improvements are initial improvements or later alterations, modifications, or other changes, all Owners shall be required to obtain the written approval of the Architectural Review

Committee. Approval may be given at the sole discretion of the Architectural Review Committee. The Owner shall submit to the Architectural Review Committee two (2) complete sets of plans for the proposed improvements, specifications (including exterior color schemes), and plot plans which shall include the location of all major structures. Approval of the plans and specifications shall be endorsed on the plans and specifications. One (1) set of the endorsed plans shall be returned to the Owner of the Lot proposed to be improved prior to the beginning of any construction. One (1) set of plans and specifications shall be retained by the Architectural Review Committee. No changes or deviations in or from the plans and specifications, as far as the exterior of the proposed improvements are concerned, shall be made without the written approval of the Architectural Review Committee. After construction is completed, no further change including any change of the exterior color shall be made without written permission of the Architectural Review Committee.

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

**SECTION 4: Alterations and Modifications – Discretion of Architectural Review Committee.** In reviewing plans for alterations, modifications, additions, or other changes to a structure upon a Lot, the Architectural Review Committee shall exercise its discretion in deciding whether or not an alteration or modification is in harmony with the overall scheme of the subdivision development. The Architectural Review Committee shall have the right to deny alterations or modifications for purely aesthetic reasons if the committee considers the alteration or modification to be unattractive in relation to the overall scheme of the development, or if the committee considers the alteration or modification to be a nuisance or upset of design, or if the committee considers the alteration or modification to be in contrast to or out of harmony with the style of existing structures, or if the physical views of the Properties will be disrupted by the alteration or modification. The Architectural Review Committee may elicit the opinion of other Owners, including the neighbors of the Owner submitting the plan for alteration or modification, as to the conformity and harmony of the proposed plan with the overall scheme of development, and the effect that the proposed plan might have on the physical views of other Owners. After eliciting these opinions, the Architectural Review Committee may or may not take them into account in making its final decision of approval or disapproval of an alteration or modification to an existing structure. While the opinion of no single Lot Owner will control a decision of the Architectural Review Committee, the committee, within its own discretion may or may not attach whatever significance it deems sufficient to the statements of residents and/or neighbors of the resident submitting the proposed alteration or modification to an existing structure.

**SECTION 5: Minimum Criteria for Plans.** All plans must meet the following minimum criteria and such further criteria as the Architectural Review Committee promulgates;

- (a) The plans shall be in accordance with the provisions of this Declaration and written rules and regulations of the Architectural Review Committee.
- (b) The plans shall be in sufficient detail to permit the Architectural Review Committee to make their determination; and
- (c) The plans shall be complete and ready for submittal to obtain a building permit from Pima County.

The Architectural Review Committee shall review and either approve or disapprove the submitted plans and specifications within sixty (60) days from receipt of plans. Any plans not so approved or disapproved shall be considered approved unless for good reason the Architectural Review Committee extends the period for up to an additional sixty (60) days by written notice to the applicant.

SECTION 6: Fees. The Association may charge each applicant for architectural approval a fee which shall be paid to the Architectural Review Committee or its designated representative. The fee shall not exceed two percent (2%) of the estimated cost of the improvements for which approval is sought.

SECTION 7: No Responsibility for Defects. Neither the Association nor the Architectural Review Committee shall be responsible in any way for any defects in any plans or specifications submitted in accordance with the foregoing, nor for any structural defects in any buildings or structures erected according to such plans or specifications.

SECTION 8: Conflict of Interest. In the event a conflict of interest arises wherein a member of the Architectural Review Committee wishes to alter, remodel, and/or add to his or her existing structure, a substitute member shall be appointed by the Board of Directors to the Architectural Review Committee to approve or disapprove, in conjunction with the remaining members of the committee, said plans and specifications.

## ARTICLE XII

### USE RESTRICTIONS

Violations of the following Sections shall be investigated by the Architectural Review Committee and reported to the Board of Directors with a recommendation of possible action or remedy.

SECTION 1: Land Use and Building Type. No improvement or structure, other than a private dwelling house, patio walls, swimming pool and customary outbuildings, garage or carport may be erected, placed or maintained on any Lot. Materials and workmanship are to be minimally at the level of the current structures in the subdivision.

SECTION 2: Conformity to Building Codes. All structural and design work shall be accomplished in accordance with the Uniform Building Code as adopted by Pima County. Electrical and mechanical work shall conform to all applicable local and national codes. All buildings, fences, ledges, improvement or appurtenances or other structures of any nature shall be in compliance with the setback requirements of Pima County including, but not limited to, the front, side and rear setbacks; the same must be approved by the Architectural Review Committee before the beginning of any construction.

SECTION 3: Fences, Walls and Hedges. Other than original construction, no fence or wall shall exceed six (6) feet in height without approval of the Architectural Review Committee. Any planting used to form a hedge will be subject to the same setback and height requirements as applied to a fence or wall. In determining the height of a wall or other such item, the natural ground level shall be used. Bare concrete walls and chain link fences are prohibited.

SECTION 4: Screening. Mechanical and electrical equipment, other than a part of the original construction, within reason, shall be concealed from the view of any adjoining street front or Lot. Complete concealing of said equipment may not be possible due to the terracing of lots in the subdivision. Included within this restriction is air conditioning, evaporative coolers, and pool pump or heating equipment. No such equipment shall be permitted to remain exposed at the side or rear of any Lot unless reasonably concealed.

SECTION 5: Lights. All exterior lights must be located and maintained so as to be directed downward and not to be directed toward or interfere with surrounding Properties or Common Areas, including streets.

SECTION 6: No Business Use. No business use shall be made of any Lot, and no building or structure intended for or adapted to business purpose and no apartment house, duplex, lodging house, rooming house, hospital, sanitarium or doctor's office, multiple family dwelling or other similar structure or use shall be erected, placed, permitted, or maintained on Properties of any part thereof. No room or rooms in any residence on said Lots shall be rented or leased, provided that nothing in this Section shall be construed as preventing the renting or leasing of an entire Lot, together with its improvements. However, no Lot may be rented for a hotel or transient purpose, which shall be construed to mean for a period of less than 30 days, nor shall any Lot be rented to other than a family as defined by the Pima County Zoning Code.

SECTION 7: Temporary Structures. No temporary house, house trailer, motor home, tent, garage, camper, boat or outbuilding of any kind shall be placed or erected upon any part of the Properties for use as living quarters. No residence placed or erected on any Lot shall be occupied in any manner at anytime prior to its being completed in accordance with approved plans, as in Article XI. No residence, when completed, may be in any manner occupied until made to comply with all requirements, conditions, and restrictions as set forth; provided that during the actual construction or alteration of a building or buildings on any Lot necessary temporary buildings for storage of materials and equipment 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 start of work until completion.

SECTION 8: Other Buildings. The Architectural Review Committee may require that any garages and other accessory buildings be incorporated as a part of and attached to the Dwelling Unit in a manner approved by the Architectural Review Committee rather than located apart from the Dwelling Unit.

SECTION 9: Architectural Review Committee Approval. No building of any nature shall be constructed or removed from within or without the Properties to any Lot within the Properties without the consent of the Architectural Review 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 relating thereto.

SECTION 10: Rubbish. No Lot shall be used in whole or part for the storage of rubbish of any character whatsoever nor for the storage of any property or thing that will cause such Lot to appear in an unclean or untidy condition or that will be otherwise obnoxious. No obnoxious or offensive activity shall be carried on upon any Lot, nor shall anything be done, placed, or stored which may become an annoyance or nuisance to the neighborhood or occasion any noise or odor which will/might disturb the peace, quiet, comfort or serenity of the occupants of surrounding Properties. All equipment for the storage or disposal of garbage or other waste shall be kept in a clean and sanitary condition. No container shall be kept at anytime in view of an adjacent street, except for the day when trash is picked up by the commercial rubbish collector.

- (a) No rubbish from private landscaping or any type of construction debris shall be dumped on the common area at the rear or side of any Lot.
- (b) All construction debris shall be removed from the area. Burying debris in the Subdivision shall not be permitted.

SECTION 11: Resubdivisions. No Lot or Lots shall be resubdivided, except for the purpose of combining the resubdivided portions with another adjoining Lot or area, provided that no additional Lot is created. This Section shall not prohibit the combining of Lots.

UNOFFICIAL COPY

SECTION 12: Noise. No Owner shall engage in any activity or permit any activity to occur on the Properties which shall result in unusual, loud, or obtrusive noise or sounds.

SECTION 13: Shrubs, Trees, and Grasses. No shrubs, trees or obstructions of any kind shall be placed on corner Lots in such places as to cause a traffic hazard. Bermuda grass, except that of a variety recognized to be pollen free and approved in writing by the Association, shall not be grown on any Lot. The Architectural Review Committee may forbid the planting or maintenance of certain plants, trees and shrubs or restrict the propagation of such plants, trees and shrubs to native or indigenous species as specified by Pima County Regulations.

(a) Tree Policy:

- (i) Trimming of trees shall be for the safety of residents, clearance over streets and sidewalks, and for the health of the tree.
- (ii) Consideration for trees to be trimmed or cut will be by written request to the Landscape Committee and the decision is at the discretion of the Landscape Committee. Trimming will normally be done when the growing season ends unless the Landscape Committee determines otherwise.
- (iii) The removal of trees in the common areas shall be kept to a minimum. A written request will be submitted to the Landscape Committee and consent of adjacent Owners shall be obtained.

SECTION 14: Vehicle Parking and Storage. In recognition of the need for safety and in accordance with current Fire Safety Regulations, the following Parking and Storage regulations shall be implemented:

- (a) All vehicles, whether motorized or non-motorized, shall be parked in the approved parking areas. These areas are paved driveways on each Lot and guest parking areas. No parking shall be allowed on streets, cul-de-sacs, curbs, sidewalks, or unpaved areas. Parking in visitor parking by Owners shall be for a limited amount of time to provide guest parking for visitors.
- (b) Recreational vehicles shall be parked no longer than ten (10) hours during daylight hours and no slide outs are to extend over a sidewalk or into the street for safety and right - of - way for emergency vehicles.

Enforcement of any part of this Section shall be by written notification by the Board of Directors, and subsequent infractions will be dealt with on an individual basis.

SECTION 15: Inoperable Vehicles and Commercial Vehicles. No inoperable, junk, or wrecked vehicles shall be placed on or stored on any Lot, Common Areas or guest parking areas, nor shall any commercial, construction or like vehicles be placed on or stored on any Lot or Common Areas, except as may be permitted by the Association, in writing, for limited periods of time.

SECTION 16: Drainage-Ways. No structure, planting, or other material, except as originally installed, shall be placed or permitted to remain within any drainage-way which may change the direction of flow or which may obstruct or retard the flow of water.

SECTION 17: Native Growth. The natural growth on the common areas shall not be destroyed or removed except as approved in writing by the Architectural Review Committee in conjunction with the Landscape Committee. In the event growth is removed, except As stated above, the Architectural Review Committee may require the replanting or replacement of same, the cost to be borne by the Owner responsible for such removal.



yard In consideration of your neighbors dogs are not allowed to run at large in accordance with Pima County Regulation 6.04.030. Excessive noise from animals or birds is prohibited as per Pima County Regulation 6.04.160. Each Owner shall be required to immediately clean up any animal feces left by his/her animal on any other Owner's Lot or on the Common Areas.

SECTION 23: Waivers. Any or all of the restrictions of this Section are subject to waiver by the Architectural Review Committee, which must be confirmed by the Board of Directors and any such waiver may apply at the option of the Architectural Review Committee to fewer than all of the Lots without waiver of such restrictions as to any other Lot or Lots.

SECTION 24: Inspection. During reasonable hours, any member of the Board of Directors of the Association, or any authorized representative of any of them, shall have the right to enter upon and inspect any Lot within the subdivision (not including the interior of any Dwelling Units) for the purpose of ascertaining whether or not the provisions of this Declaration have been or are being complied with. Such persons shall not be deemed guilty of trespass by reason of such entry.

### ARTICLE XIII

#### AGE RESTRICTIONS

SECTION 1: Fair Housing Act. Canoa Seca Estates, Inc. intends that all Dwelling Units and Lots described in the Declaration shall comply with the exemption provisions of the Fair Housing Act Amendments of 1988, Public Law 100-430, 42 U.S.C. 3601, et seq., as further interpreted by Rules and Regulations of the Department of Housing and Urban Development promulgated January 23, 1989 on Page 3290 (or any subsequent amendments or rules or regulations) which rules and regulations are incorporated by reference (the "Exemption"). The Exemption is based, generally, upon a standard that at least one (1) occupant per household be 55 years of age or older. Certain exceptions are made in cases wherein at least eighty percent (80%) of the Dwellings are so occupied.

SECTION 2: Requirements. Accordingly, all Lots within the Properties shall be occupied by at Least one (1) person per household 55 years of age or older. This provision does not prohibit occupancy by persons who, as of March 1, 1995, were in compliance with the original Declaration. Continued occupancy by the surviving unmarried spouse shall be deemed in compliance with this section.

SECTION 3: Resale, Rental or Lease.

(a) Resale. It shall be the duty and obligation of each Owner of a Lot to ascertain that upon resale of his or her Lot at least one (1) occupant shall be at least 55 years of age.

(b) Rental or Lease. Each Owner who rents or leases a Lot shall insure that any lease or rental arrangement or agreement complies with Section 6 of Article XII, and all Sections of this Article and the Declaration.

SECTION 4: Minors. Permanent occupancy by minors shall not be permitted. No person under 18 years of age shall reside in any Dwelling Unit for more than three (3) consecutive months during any 12 month period. Approval of the board of directors will be required for a minor to reside on the premises.

SECTION 5: Responsibility. It is understood that ultimate responsibility for compliance with the provisions of this Article rests with the Owners and not the Association. The Association and its officers, Directors and agents shall have no liability whatsoever for an Owner's non-compliance. It is the duty of each Owner to comply with this Article.

## ARTICLE XIV PARTY WALLS

SECTION 1: General Rules of Law to 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 on the Properties and placed on or immediately adjacent to dividing line between Lots, or on or immediately adjacent to a Rear Yard Easement or Front Yard Easement (including rear patio walls) shall constitute a party wall, and to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply. Each Owner is deemed to acknowledge that some portions or all of the Properties may be developed with structures having common Lot lines and common party walls. Each Owner, therefore, in the case of such a structure consents to the placement of the walls of the Dwelling Unit on the dividing lines between Lots or along the boundaries of the Rear Yard Easements and Front Yard Easements as set in this Article.

SECTION 2: Alterations. No Owner may alter the appearance or structure of a party wall, including landscaping, without the consent of the Architectural Review Committee and such committee may deny approval if all Owners having an interest in the party wall have not consented to the alteration.

SECTION 3: Sharing of Repair and Maintenance. 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 the wall.

SECTION 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 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.

SECTION 5: Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his or her negligent or willful act causes a party wall to be exposed to the elements shall bear the whole cost of repairing all damage resulting from such exposure.

SECTION 6: Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner sharing a party wall under this Article shall be appurtenant to and shall run with the land.

SECTION 7: Arbitration. In the event any dispute arises concerning a party wall of the provisions of this Article, each party shall choose one (1) arbitrator and the two (2) arbitrators shall choose a third arbitrator, and the dispute shall be decided by a majority of all the arbitrators.

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

11-0010-0000-00

SECTION 9: Eaves, Steps and Open Porches. For purposes of this Article, eaves, steps and open porches shall not be considered to be part of a Dwelling Unit.

## ARTICLE XV

### GENERAL PROVISIONS

SECTION 1: Enforcement. In addition to other options available to the Association, the Association or any Member shall have the right, but not the duty, to enforce by any proceeding at law or in equity all restrictions, conditions, covenants, reservations, liens or charges imposed by the provisions of this Declaration. The prevailing party in any Court action shall be awarded reasonable attorney's fees and costs.

SECTION 2: No Waiver. No delay or omission on the part of the Association or any Member in exercising their right of enforcement shall be construed as a waiver of any breach of any of the restrictions and covenants contained or acquiescence in any breach hereof and no right of action shall accrue against the Association or any Member for their neglect or refusal to exercise such right of enforcement.

SECTION 3: Lien of Mortgages. No breach of the provisions, conditions, restrictions or covenants in this Declaration shall defeat or render invalid the lien of any Mortgage 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 or by deed in lieu of foreclosure or any breach occurring after such acquisition.

SECTION 4: Severability. Invalidation of any covenant, restriction, provisions or terms of this Declaration by judgment or court order shall not affect any other covenant, restriction, provision or term which shall remain in full force and effect.

SECTION 5: Amendment. Except as provided elsewhere in this Declaration, the terms hereof may be amended by the Association provided that any amendments made by the Association shall be approved by at least a majority of the total votes held by Owners and shall be made only by an instrument in writing signed by the President and Secretary of the Association and recorded with the County Recorder of Pima County, Arizona.

SECTION 6: Term. The aforesaid provisions, conditions, restrictions and covenants shall run with the land and continue and remain in full force and effect at all times and against all persons until such time as the provisions, conditions, restrictions and covenants shall be revised.

SECTION 7: Binding Effect. By acceptance of a deed or acquiring any Ownership interest in any Lot, each person or entity for that person, shall adhere to all of the provisions, restrictions, covenants, conditions, rules and regulations now or hereafter imposed by the Declaration and Amendments thereof. In addition, each such person by so doing acknowledges that this Declaration sets forth a general plan for the development of the Properties and hereby evidences their intent that all restrictions, conditions, covenants, rules and regulations contained in this Declaration shall run with the land and be binding on all subsequent and future Owners, grantees, purchasers, assignees and transferees thereof. Furthermore, each such person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the various subsequent and future Owners.

SECTION 8: Captions. All captions and titles used in this Declaration are intended solely for convenience or reference purposes only and in no way define, limit or describe the true intent and meaning of the provisions herein.

SECTION 9: Well Site. The Well Site shown on the Plat which is bounded on the South and East by Common Area B and on the west by Camino del Sol is not a part of the Properties or Common Area. This parcel is a separate parcel of land in which no Member, Owner nor the Association has any interest.

