

F. ANN RODRIGUEZ, RECORDER
RECORDED BY: NMB
DEPUTY RECORDER
1134 PE5

REZMS
EZ MESSENGER ATTORNEY SERVICE
EZ-HARALSON



DOCKET: 12961
PAGE: 5155
NO. OF PAGES: 22
SEQUENCE: 20062500879
12/29/2006
ARSTR 16:47
PICKUP
AMOUNT PAID \$ 29.00

When recorded return to:

Traci L. Riccitello
Haralson, Miller, Pitt, Feldman & McAnally, PLC
One South Church, Suite 900
Tucson, Arizona 85701

AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR CATALINA FOOTHILLS ESTATES NO. 9

2006-12-29 16:47

AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR CATALINA FOOTHILLS ESTATES NO. 9

December ____, 2006

TABLE OF CONTENTS

		<u>Page</u>
1.	<u>Background</u>	1
2.	<u>Definitions</u>	1
	a. Annual Assessment	1
	b. Architectural Consultant	1
	c. Areas of Association Responsibility	1
	d. Articles	1
	e. Assessment	1
	f. Assessment Lien	1
	g. Assessment Period	1
	h. Association	2
	i. Association Documents	2
	j. Association Rules	2
	k. Board	2
	l. Bylaws	2
	m. CCR's	2
	n. Common Area.....	2
	o. Common Expenses	2
	p. Declaration	2
	q. HDZ	2
	r. HDZ Lots	2
	s. Improvement.....	2
	t. Lot	2
	u. Maintenance Standard	2
	v. Majority	3
	w. Member	3
	x. Mortgage	3
	y. Mortgagee	3
	z. Owner	3
	aa. Person	3
	bb. Plat	3
	cc. Purchaser	3
	dd. Resident	3
	ee. Resident Unit	3
	ff. Single Family	3
	gg. Special Assessment	3
	hh. Subdivision	3
	ii. Visible From Neighboring Property	4

1-2006-1 210-100

3.	<u>Purpose</u>	4
4.	<u>Use Restrictions</u>	4
	a. Architectural Control	4
	b. Temporary Occupancy and Temporary Buildings	6
	c. Nuisances; Construction Activities	7
	d. Diseases and Insects	7
	e. Antennas	7
	f. Mineral Exploration	7
	g. Trash Containers and Collection	7
	h. Mechanical Equipment, Wood or Storage Piles and Clotheslines ..	8
	i. Utility Service	8
	j. Residential Use	8
	k. Animals	8
	l. Machinery and Equipment	9
	m. Signs	9
	n. No Further Subdivision, Rezoning or Restrictions	9
	o. Trucks, Trailers, Campers and Boats	9
	p. Motor Vehicles	9
	q. Towing Vehicles	10
	r. Variances	10
	s. Drainage	10
	t. Garages and Driveways	10
	u. No Rooftop Air Conditioners	10
	v. Reflective Materials	10
	w. Lighting	11
5.	<u>Easements</u>	11
	a. Owners' Easements of Enjoyment	11
	b. Utility Easement.....	11
	c. Easement for Association	11
6.	<u>The Association; Organization; Membership and Voting Rights</u>	11
	a. Association	11
	b. Board of Directors and Officers	11
	c. Association Rules	11
	d. Personal Liability.....	12
	e. Identity of Members	12
	f. Voting Procedures	12
	g. Transfer of Membership	12
	h. Conveyance or Encumbrance of Common Areas	12
	i. Suspension of Voting Rights.....	13
7.	<u>Covenant for Assessment and Creation of Liens</u>	13
	a. Creation of Lien and Personal Obligation of Assessment	13
	b. Annual Assessments	13
	c. Rate of Assessment	13

AMENDED AND RESTATED DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS FOR
CATALINA FOOTHILLS ESTATES NO. 9

THIS DECLARATION is made as of December ____, 2006 by CATALINA FOOTHILLS ESTATES NO. 9 ASSOCIATION, an Arizona non-profit corporation (the "Association").

1. Background. Catalina Foothills Estates No. 9 is a residential subdivision in Pima County, Arizona that is governed by the "Declaration of Protective Covenants for Catalina Foothills Estates No. 9, Lots 1 through 130" dated February 10, 1977, and recorded in the Office of the Pima County (Arizona) Recorder in Docket 5478 commencing at page 771 and thereafter amended (collectively, the "Old Covenants"). The Grantor's interest in the Old Covenants was assigned to the Association on November 2, 1981. The Old Covenants were amended and restated by "Amended and Restated Declaration of Covenants, Conditions and Restrictions For Catalina Foothills Estates No. 9" recorded in the Office of the Pima County (Arizona) Recorder in Docket 12677 commencing at page 2074 ("2005 Covenants"). This Declaration consolidates, amends, restates and replaces the 2005 Covenants.

2. Definitions. Unless otherwise defined, the following words and phrases have the meanings set forth below. The singular includes the plural and the masculine gender includes the feminine and neuter as required by the context.

a. Annual Assessment - the assessments levied against each Lot and the Owner thereof pursuant to Section 7.b. of this Declaration.

b. Architectural Consultant - the architect or architectural firm that may be designated by the Board pursuant to Section 4.a.(13) of this Declaration.

c. Areas of Association Responsibility - all Common Area and all real property in the Subdivision located within dedicated rights-of-way for which the Association has accepted responsibility including (without limitation) the streets known as Calle Los Altos, Altos Primero, Alto Segundo, Altos Tercero, Circulo Solaz, Solaz Primero, Solaz Segundo, Solaz Tercero, Solaz Cuarto and Placita Manzanita.

d. Articles - the Articles of Incorporation of the Association, as amended from time to time.

e. Assessment - an Annual Assessment or Special Assessment.

f. Assessment Lien - the lien created and imposed by Section 7.a. of this Declaration.

g. Assessment Period - the period set forth in Section 7.d. of this Declaration.

h. Association - Catalina Foothills Estates No. 9 Association, an Arizona non-profit corporation, and its successors and assigns.

i. Association Documents - means this Declaration, the Articles, the Bylaws, and the Association Rules.

j. Association Rules - the rules adopted by the Board pursuant to Section 6.c. of this Declaration, as amended from time to time.

k. Board - the Board of Directors of the Association.

l. Bylaws - the Bylaws of the Association, as amended from time to time.

m. CCR's - This Restated Declaration of Covenants, Conditions and Restrictions for Catalina Foothills Estates No. 9, as amended from time to time. The terms "CCR" and "Declaration" may be used interchangeably herein.

n. Common Area - tracts of land designated as Common Areas according to the Plat and all land, together with all Improvements situated thereon which the Association at any time owns in fee or in which the Association has a leasehold interest for as long as the Association is the owner of the fee or leasehold interest. Notwithstanding the foregoing, property shall not be considered "Common Area" until such time as title to such property has been conveyed to the Association.

o. Common Expenses - expenditures made by or financial liabilities of the Association, together with any allocations to reserves.

p. Declaration - this Restated Declaration of Covenants, Conditions and Restrictions for Catalina Foothills Estates No. 9, as amended from time to time. The terms "Declaration" and "CCR" may be used interchangeably herein.

q. HDZ - the Hillside Development Overlay Zone as set forth in Chapter 18.61, et. seq., of the Pima County Code, and any amendments thereto.

r. HDZ Lots - The Lots described in Note 17 of the Plat.

s. Improvement - any building, fence, wall or other structure, any roof, trim and walls of any building, any sewage system, septic tank, leeching field, swimming pool, road, driveway, parking area, and any trees, plants, shrubs, grass or other landscaping.

t. Lot - a portion of the Subdivision intended for independent ownership and use and designated as a lot on the Plat and, where the context requires, any Residential Unit, building, structure or Improvements situated on the Lot.

u. Maintenance Standard - the standard of maintenance of Improvements established from time to time by the Board or, in the absence of any standard established

by the Board, the standard of maintenance of Improvements generally prevailing throughout the Subdivision.

v. Majority - the Owners of 66 or more Lots. If additional land is annexed into the Subdivision or otherwise covered by this Declaration, then a Majority will be the Owners of more than one-half of the total number of Lots.

w. Member - any Person who is a Member of the Association.

x. Mortgage - any mortgage or deed of trust on a Lot.

y. Mortgagee - a Mortgage holder or beneficiary.

z. Owner - the record owner, whether one or more Persons, of beneficial, equitable or legal title to a Lot. Owner shall not include a Person having an interest in a Lot merely as security for the performance of an obligation or a Lessee or a purchaser under an executory purchase contract prior to the closing.

aa. Person - a natural person, corporation, business trust, estate trust, partnership, limited liability company, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.

bb. Plat - the plat of Catalina Foothills Estates No. 9 recorded in Book 28 of Maps and Plats at Page 43 in the Office of the Pima County (Arizona) Recorder, and all amendments, supplements and corrections thereto, and corrections thereto.

cc. Purchaser - any Person who by means of a voluntary transfer becomes the Owner of a Lot.

dd. Resident - each individual occupying any Residential Unit.

ee. Residential Unit - any building, or portion of a building, situated upon a Lot and designed and intended for independent ownership and for use and occupancy as a residence.

ff. Single Family - a group of one or more persons each related to the other by blood, marriage or legal adoption, or a group of not more than three persons not all so related, who maintain a common household in a Residential Unit.

gg. Special Assessment - any assessment levied and assessed pursuant to Section 7.e. of this Declaration.

hh. Subdivision - the real property including the Lots and Common Area known as Catalina Foothills Estates No. 9, Lots 1 through 130, a subdivision of Pima County, Arizona according to the Plat.

disturbed and the manner in which native growth will be restored on the open areas of the Lot following completion of construction. Any Owner requesting the approval of the Board shall also submit any additional information, plans and specifications which the Board may request. In the event that the Board fails to approve or disapprove an application within sixty days after receipt of the application, and all supporting information, plans and specifications requested by the Board, the submittal will be deemed to be denied. In such event, the Owner may submit a written request for a meeting with the Board or specific reasons for denial and the Board shall respond to that requests within 30 days. The approval by the Board of any construction, installation, addition, alteration, repair, change or other work shall not be deemed a waiver of the Board's right to withhold approval of any similar construction, installation, addition, alteration, repair, change or other work subsequently submitted for approval.

(3) Upon receipt of approval from the Board for any construction, installation, addition, alteration, repair, change or other work, the Owner who had requested such approval shall proceed to perform, construct or make the addition, alteration, repair, change or other work approved by the Board as soon as practicable and shall diligently pursue such work so that it is completed as soon as reasonably practicable and within such time as may be prescribed by the Board.

(4) Any change, deletion or addition to the plans and specifications approved by the Board must be approved in writing by the Board.

(5) The Board shall have the right to charge a fee to cover the costs of third party architects, engineers, surveyors, planners, consultants and attorneys in reviewing requests for approval of any construction, installation, alteration, addition, repair, change or other work pursuant to this Section, which fee shall be payable at the time the application for approval is submitted to the Board.

(6) All Improvements constructed on Lots shall be of new construction, and no buildings or other structures shall be removed from other locations onto any Lot. Native growth on Lots including (without limitation) cacti, mesquite and Palo Verde trees shall not be destroyed or removed except as may be necessary for construction of approved Improvements. Parasitic and non-native growth such as mistletoe and desert broom on Lots may be trimmed or removed at the discretion of the Owner.

(7) The approval required of the Board 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. In the event of any conflict between this Declaration and governmental requirements, the more restrictive standard shall apply.

(8) The approval by the Board of any construction, installation, addition, alteration, repair, change or other work pursuant to this Section shall not be deemed a warranty or representation by the Board.

(9) All mailboxes and mailbox standards shall be of uniform shape, size, color, lettering and design as approved by the Board. All trees and other vegetation

planted in Lots shall be kept trimmed to a height that will not materially interfere with views from neighboring Lots.

(10) Improvements must be at least thirty feet from Lot boundaries, except that (i) driveways may be located in the thirty foot setback, and (ii) cacti, mesquite and Palo Verde trees may be planted in the thirty foot setback. Walls and hedges shall not exceed six feet in height. No tennis courts are permitted on Lots.

(11) Exteriors of Improvements shall be constructed only of adobe, brick, plaster or stucco. Exterior paint colors of Improvements shall be limited to shades of muted earth tones with a Light Reflective Value between 7 and 71. No white or reflective roofs shall be permitted.

(12) Exterior elevations shall not exceed the following height limits:

(a) thirteen feet from the finished floor to the highest point of the parapet wall for a single-level territorial style Residential Unit;

(b) fifteen feet from the finished floor to the highest point of the roof ridge line for a single-level ranch style Residential Unit with a gabled roof;

(c) thirteen feet from the main living finished floor level to the highest point of the Improvement for a split-level Residential Unit.

(d) chimneys may be two feet higher than the height limits for Residential Units.

(e) the height of Residential Units on HDZ Lots shall not exceed the highest elevation point of the Lot unless the Residential Unit is located on the top or ridge of the HDZ Lot, and not on the slope of the HDZ Lot, in which case the height limitations set forth in (a), (b), (c) and (d) above will apply to the Residential Unit. In all events, Improvements on HDZ Lots must comply with the HDZ then in effect.

(13) The Board may designate an Architectural Consultant from time to time to assist the Board in making decisions. The costs and fees of the Architectural Consultant shall be paid by the Owners whose requests are reviewed by the Architectural Consultant. Copies of all requests and materials submitted by the Owner to the Board must also be submitted by the Owner to the Architectural Consultant unless otherwise stated by the Board.

(14) The Board may, from time to time, adopt, amend or repeal other or additional building guidelines, design standards and architectural objectives in connection with the process for review and approval of Improvements.

b. Temporary Occupancy and Temporary Buildings. No trailer, tent, shack, garage or barn and no temporary buildings or structures of any kind shall be used at any time for a residence. Temporary buildings, trailers or other structures used during the construction of Improvements approved by the Board shall be removed immediately after

the completion of construction and in no event shall any such buildings, trailer or other structures be maintained or kept on any property for a period in excess of twelve months without the prior written approval of the Board. All damaged structures must be repaired or replaced within 6 months of event unless Board approves extension in writing.

c. Nuisances; Construction Activities. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot or other property and no odors or loud noises shall be permitted to arise or emit so as to render any such property unsanitary, unsightly, offensive or detrimental to any other property in the vicinity or to the occupants of other property. No nuisance shall be permitted to exist or operate upon any Lot that is offensive or detrimental to any other Lot Owner. The Board in its sole discretion shall have the right to determine the existence of any such nuisance. Normal construction activities and parking in connection with the building of Improvements on a Lot shall not be considered a nuisance or otherwise prohibited by this Declaration, but Lots shall be kept in a neat and tidy condition during construction periods. Trash and debris shall not be permitted to accumulate and supplies of brick, block, lumber and other building materials will be piled only in such areas as may be approved in writing by Board. In addition, any construction equipment and building materials stored or kept on any Lot or other property during the construction of Improvements may be kept only in areas approved in writing by the Board, which may also require screening of the storage areas.

d. 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 or noxious insects.

e. Antennas. Except for television antennas not exceeding ten feet in height and satellite dishes not exceeding two feet in diameter, no antenna or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation including, without limitation, satellite or microwave dishes, shall be placed, erected, used, or maintained on any Lot without the prior written approval of the Board.

f. Mineral Exploration. No Lot or other property shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth or any earth substance of any kind.

g. Trash Containers and Collection. No garbage or trash shall be placed or kept on any Lot except in covered containers of a type, size and style which are approved by the Board. In no event shall such containers be maintained so as to be Visible From Neighboring Property except to make the same available for collection and then only for the shortest time reasonably necessary to effect such collection. The Board may assess the cost of trash pick-up and container removal to Owners that fail to comply with the foregoing. All rubbish, or garbage shall be removed from Lots and other property and shall not be allowed to accumulate thereon. No outdoor incinerators shall be kept or maintained on any Lot or other property. In the event the government does not provide trash service, the Board shall have the authority to identify a single source refuse service provider for the Subdivision, with the individual Owners utilizing the service paying for the services directly to the service provider.

h. Mechanical Equipment, Wood or Storage Piles and Clotheslines. Mechanical equipment and clotheslines shall be walled in. Wood piles, storage piles and construction materials shall be concealed at all times, so that none may be viewed from any point beyond the building site on which they are located. .

i. Utility Service. No lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television, and radio signals, shall be erected, placed or maintained anywhere in or upon any Lot or other property unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, or under or on buildings or other structures approved by the Board. No provision of this Declaration shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of buildings or structures approved by the Board.

j. Residential Use. All Residential Units shall be used, improved and devoted exclusively to residential use by a Single Family. No guest house may be rented or leased. No trade or business may be conducted on any Lot or in or from any Residential Unit, except that an Owner or other Resident of a Residential Unit may conduct a business activity within a Residential Unit so long as (i) the existence or operation of a business activity is not apparent from outside the Residential Unit, (ii) the business activity conforms to all applicable zoning ordinances or requirements for the Subdivision, and (iii) the business activity is consistent with the residential character of the Subdivision. The leasing of a Residential Unit by the Owner is not considered a business activity.

k. Animals. No animals, bird, fowl, poultry, reptile or livestock may be on a Lot temporarily or permanently except for a reasonable number of dogs, cats, common domestic birds such as parakeets, cockatiels and parrots, or similar household pets kept, bred or raised thereon solely as domestic pets and not for commercial purposes. All dogs, cats, or other household pets permitted to be kept on a Lot under this Section shall be confined to an Owner's Lot, except that a dog, cat or other pet capable of being walked on a leash may be permitted to leave an Owner's Lot without being confined if such animal is kept at all times on a leash and is not permitted to enter upon any other Lot. It shall be the responsibility of the Owner or Resident to immediately remove any droppings from pets. No household pet permitted on a Lot under this Section shall be allowed to make an unreasonable amount of noise or to become a nuisance. No structure for the care, housing or confinement of any permitted household pet shall be maintained so as to be Visible from Neighboring Property. Upon the written request of any Owner or Resident, the Board shall conclusively determine, in its sole discretion, whether for the purposes of this Section, a particular animal constitutes a household pet pursuant to this Section or whether such animal is a nuisance or making an unreasonable amount of noise. Any decision rendered by the Board shall be enforceable in the same manner as other restrictions set forth in this Declaration. The right of the Residents to maintain a reasonable number of house pets pursuant to this Section is expressly subject to the right of the Board to prospectively restrict the size and number of dogs or other pets which may be maintained or kept on the Lots.

l. Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot except such machinery or equipment as is usual and customary in connection with the use, maintenance or construction (during the period of construction) of a building, appurtenant structures, or other Improvements or such machinery or equipment which the Association may require for the operation and maintenance of the Subdivision.

m. Signs. No signs whatsoever (including commercial, political, "for sale", "for rent" and similar signs) shall be erected or maintained on any Lot except (i) signs required by legal proceedings; (ii) one sign board not exceeding five square feet identifying the contractor during the course of construction; (iii) residence identification signs provided the size, color, content and location of such signs have been approved in writing by the Board; (iv) political signs to the extent that the Association is required by law to permit them; (v) small signs identifying security service providers and (vi) one open house at the entrance to the subdivision and directional signs to the Lot for the purposes of open house only. The open house signs may be displayed only between 9:00 a.m. and 6:00 p.m.

n. No Further Subdivision, Rezoning or Restrictions. No Lot shall be further subdivided or separated into smaller lots or parcels by any Owner, and no portion less than all of any such Lot shall be conveyed or transferred by any Owner without the prior written approval of the Board. No further covenants, conditions, restrictions or easements shall be recorded by any Owner, Lessee, or other Person against any Lot without the provisions thereof having been first approved in writing by the Board. No application for rezoning, variances or use permits pertaining to any Lot shall be filed with any governmental authority by any Person unless the application has been approved by the Board and the proposed use otherwise complies with this Declaration.

o. Trucks, Trailers, Campers, and Boats. No truck, mobile home, bus, travel trailer, tent trailer, trailer, camper shell, detached camper, recreational vehicle, boat, boat trailer, may be parked, maintained, constructed, reconstructed or repaired on any Lot or Common Area so as to be Visible From Neighboring Property without the prior written approval of the Board, except for: (i) the temporary parking of any such vehicle or equipment on a Lot or on a street for a period of not more than four days within any thirty day period; (ii) temporary construction trailers or facilities maintained during and used exclusively in connection with, the construction of any Improvement approved by the Architectural Committee; (iii) boats and vehicles parked in garages on Lots so long as such vehicles are in good operating condition and appearance and are not under repair, or (iv) motor vehicles not exceeding seven feet height and eighteen feet in length which are not used for commercial purposes and which do not display any commercial name, phone number or message of any kind.

p. Motor Vehicles. Except for emergency vehicle repairs, no inoperable vehicle may be repaired, restored, stored or parked on any such Lot or other property so as to be Visible From Neighboring Property or to be visible from any Common Area or any street. No automobile or other motor vehicle shall be parked on any road or street in the Association, except for automobiles or motor vehicles of guests of Owners which may be parked on a road or street in the Association for a period of not more than forty-eight hours

during any seven day period. No motor driven two-wheel or three-wheel vehicles shall be operated in the Subdivision if such operation is disturbing to any Owner.

q. Towing of Vehicles. The Board shall have the right to have any truck, mobile home, bus, travel trailer, tent trailer, trailer, camper shell, detached camper, recreational vehicle, boat, boat trailer or similar equipment or vehicle or any automobile, motorcycle, motorbike, or other motor vehicle which is parked, kept, maintained, constructed, reconstructed or repaired in violation of the Association Documents towed away at the sole cost and expense of the owner of the vehicle or equipment. Any expense incurred by the Association in connection with the towing of any vehicle or equipment shall be paid to the Association upon demand by the owner of the vehicle or equipment. If the vehicle or equipment is owned by an Owner, any amounts payable to the Association shall be secured by the Assessment Lien, and the Association may enforce collection of suit amounts in the same manner provided for in their Declaration for the collection of Assessment.

r. Variances. The Board may in its discretion grant variances from the restrictions set forth in this Declaration. Any Owner requesting a variance from the thirty foot setback requirement must obtain written consent from the Owner of the Lot on the common boundary where the setback would be encroached.

s. Drainage. No Residential Unit, structure, building, landscaping, fence, wall or other Improvement shall be constructed, installed, placed or maintained in any manner that would obstruct, interfere with or change the direction of flow of water in accordance with the drainage plans for the Subdivision, or any part thereof, or for any Lot as shown on the drainage plans of file with the county or municipality in which the Association is located.

t. Garages and Driveways. Garages shall be used only for the parking of vehicles and shall not be used or converted for living or recreational activities without the prior written approval of the Board. Such conversion shall not be permitted if the conversion results in vehicles parking in the street or visible from Neighboring Property. All driveways and roads shall be treated and maintained with a minimum of a two-shot bituminous surface treatment to prevent dust.

u. No Rooftop Air Conditioners. No air conditioning units, evaporative coolers, mechanical components or appurtenant equipment may be mounted, installed or maintained on the roof of any Residential Unit or other Improvement, except that solar devices may be installed on roofs if (i) not Visible from Neighboring Property and (ii) approved prior to installation by the Board. No window air conditioners or portable air conditioning units of any kind may be installed in any Residential Unit or other building situated on a Lot so as to be Visible From Neighboring Property.

v. Reflective Materials. No reflective materials including, but not limited to, aluminum foil, reflective screens or glass, mirrors or similar type items, shall be installed or placed on the outside or inside of any windows which are Visible from Neighboring Property without the prior approval of the Board.

w. Lighting. No spotlights, floodlights, or other high intensity lighting shall be placed or utilized on any Lot which will allow light to be directed or reflected on any other Lot or any public street.

5. Easements.

a. Owners' Easements of Enjoyment. Every Member and any person residing with or leasing from such Member shall have a right and easement of enjoyment in and the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the right of the Association to regulate the use of the Common Area through the Association Rules and to prohibit access to such portions of the Common Area, such as landscaped areas, not intended for use by the Owners.

b. Utility Easement. There is hereby created an easement upon, across, over and under the ten foot perimeter of the Lots for reasonable ingress, egress, installation, replacing, repairing or maintaining of all utilities, including, but not limited to, gas, water, sewer, telephone, cable television and electricity. By virtue of this easement, it shall be expressly permissible for the providing utility company to erect and maintain the necessary equipment on the Common Area or Lots but no sewers, electrical lines, water lines, or other utility or service lines may be installed or located on the Common Area or Lots except as approved by the Board.

c. Easement for Association. The Lots are hereby made subject to an easement during any period of construction in favor of the Association and its directors, officers, agents, employees and independent contractors for the limited purpose of enabling the Association, the Board, the Architectural Consultant or any other committees appointed by the Board to exercise and discharge their respective rights, powers, and duties under the Association Documents. The easement may be used after reasonable notice (verbal or written) to the Owner in a manner that respects the privacy and property rights of the Owner.

6. The Association; Organization; Membership and Voting Rights.

a. Association. The Association is a non-profit Arizona corporation charged with the duties and invested with the powers prescribed by law and set forth in the Articles, Bylaws, and this Declaration. In the event of any conflict or inconsistency between this Declaration and the Articles, Bylaws, Association Rules, this Declaration shall control.

b. Board of Directors and Officers. The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint, in accordance with the Articles and the Bylaws. Unless the Association Documents specifically require the vote or written consent of the Members, approvals or actions to be given or taken by the Association shall be valid if given or taken by the Board. The Board shall have the power to levy reasonable fines against an Owner for a violation of the Association Documents.

c. Association Rules. The Board may, from time to time and subject to the provisions of the Declaration, adopt, amend and repeal rules and regulations pertaining to: (i) the management, operation and use of the Areas of Association Responsibility; (ii)

1-2000-1 210-1001

building guidelines, design standards and architectural objectives for the Improvements on or within the Subdivision; (iii) minimum standards for any maintenance of Lots; or (iv) the health, safety or welfare of the Owners and Residents. In the event of any conflict or inconsistency between the provisions of this Declaration and the Association Rules, the provisions of this Declaration shall prevail. The Association Rules shall be enforceable in the same manner and to the same extent as the covenants, conditions and restrictions set forth in this Declaration.

d. Personal Liability. No member of the Board or of any committee of the Association, no officer of the Association, and no manager or other employee of the Association shall be personally liable to any Member, or to any other person or entity, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error, or negligence of the Association, the Board, the manager, any representative or employee of the Association, or any committee, committee member or officer of the Association; provided, however, the limitations set forth in this Section shall not apply to any person who has failed to act in good faith or has engaged in wilful or intentional misconduct.

e. Identity of Members. Membership in the Association shall be limited to Owners of Lots. An Owner of a Lot shall automatically, upon becoming the Owner thereof, be a member of the Association and shall remain a member of the Association until such time as his ownership ceases for any reason, at which time his membership in the Association shall automatically cease.

f. Voting Procedures. No change in the ownership of a Lot shall be effective for voting purposes unless and until the Board is given actual written notice of such change. The vote for each such Lot must be cast as a unit, and fractional votes shall not be allowed. In the event that a Lot is owned by more than one person or entity and such Owners are unable to agree among themselves as to how their votes shall be cast, they shall lose their right to vote on the matter in question. If any Member casts a vote representing a certain Lot, it will thereafter be conclusively presumed for all purposes that he was acting with the authority and consent of all other Owners of the same Lot unless objection thereto is made at the time the vote is cast.

g. Transfer of Membership. The rights and obligations of any Member shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership of an Owner's Lot, and then only to the transferee of ownership to the Lot. A transfer of ownership to a Lot may be effected or such other legal process as now in effect or as may hereafter be established under or pursuant to the laws of the State of Arizona. Any attempt to make a prohibited transfer shall be void. 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 notify the Association of his purchase within ten days after he becomes the Owner of a Lot.

h. Conveyance or Encumbrance of a Common Area. The Common Area shall not be mortgaged, transferred, dedicated or encumbered without the prior written consent or affirmative vote of a Majority of the Owners of Lots.

ENCLOSURE

i. Suspension of Voting Rights. If any Owner fails to pay any Assessments or other amounts due to the Association under the Association Documents within thirty days after such payment is due or if any Owner violates any other provision of the Association Documents and such violation is not cured within thirty days after the Association notifies the Owner of the violation, the Board of Directors shall have the right to suspend such Owner's right to vote until such time as all payments, including interest and attorney's fees, are brought current, and until any other infractions or violations of the Association Documents are corrected.

7. Covenant For Assessments and Creation of Lien.

a. Creation of Lien and Personal Obligation of Assessment. Each Owner, by becoming the Owner of a Lot, is deemed to covenant and agree to pay Assessments to the Association in accordance with this Declaration. All Assessments shall be established and collected as provided in the Declaration. The Assessments, together with interest, late charges and all costs, including but not limited to reasonable attorneys' fees, incurred by the Association in collecting or attempting to collect delinquent Assessments, whether or not suit is filed, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each such Assessment is made. Each Assessment together with interest and all costs, including but not limited to reasonable attorneys' fees, incurred by the Association in collecting or attempting to collect delinquent Assessments, whether or not suit is filed, shall also be the personal obligation of the person who was the Owner of the Lot at the time when the Assessment became due. The personal obligation for delinquent Assessments shall not pass to the successors in title of the Owner unless expressly assumed by them.

b. Annual Assessments.

(1) In order to provide for the operation and management of the Association and to provide funds for the Association to pay all Common Expenses and to perform its duties and obligations under the Association Documents, including the establishment of replacement and maintenance reserves, the Board, for each Assessment Period, shall assess against each Lot an Annual Assessment.

(2) The Board shall give notice of the Annual Assessment to each Owner at least thirty days prior to the beginning of each Assessment Period, but the failure to give such notice shall not affect the validity of the Annual Assessment established by the Board nor relieve any Owner from its obligation to pay the Annual Assessment.

(3) The maximum Annual Assessment for each fiscal year of the Association shall be \$100. The maximum Annual Assessment may be increased only with the approval of a Majority of Owners of Lots.

c. Rate of Assessment. The amount of the Annual Assessment for each Lot shall be the amount obtained by dividing the total budget of the Association for the Assessment Period for which the Annual Assessment is being levied by the total number of Lots subject to the Assessment at the time the Annual Assessment is levied. The Owner of each Lot shall bear an equal share of each Annual or Special Assessment.

d. Assessment Period. The period for which the Annual Assessment is to be levied shall be the fiscal year commencing on February 1 and ending January 31. The Board in its sole discretion from time to time may change the Assessment Period.

e. Special Assessments. The Association may levy against each Lot which is then subject to assessment, in any Assessment Period, a Special Assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of an Improvement upon the Common Area, including fixtures and personal property related thereto, provided that any Special Assessment shall have the approval of a Majority of the Owners of Lots.

f. Rules Regarding Billing and Collection Procedures. Annual Assessments shall be collected on an annual basis or such other basis as may be selected by the Board. Special Assessments may be collected as specified by the Board. The Board shall have the right to adopt rules and regulations setting forth procedures for the purpose of making Assessments and for the billing and collection of the Assessments provided that the procedures are not inconsistent with the provisions of this Declaration. The failure of the Association to send a bill to a Member shall not relieve any Member of his liability for any Assessment or charge under this Declaration, but the Assessment Lien therefor shall not be foreclosed until the Member has been given not less than thirty days written notice prior to such foreclosure that the Assessment or any installation thereof is or will be due and of the amount owing. Such notice may be given at any time prior to or after the delinquency of such payment. The Association shall be under no duty to refund any payments received by it even though the ownership of a Lot changes during an Assessment Period but successor Owners of Lot shall be given credit for prepayments, on a prorated basis, made by prior Owners.

g. Effect of Nonpayment of Assessments; Remedies of the Association.

(1) Any Assessment, or any installment of an Assessment, not paid within thirty days after the Assessment, or the installment of the Assessment, first became due shall bear interest from the due date at the rate of interest specified from time to time by the Board. In addition, the Board may establish a late fee to be charged to any Owner who has not paid any Assessment, or any installment of an Assessment, within thirty days after such payment was due.

(2) The Association shall have a lien on each Lot for: (i) all charges assessed against the Lot or payable by the Owner of the Lot; (ii) all fines levied against the Owner of the Lot; and (iii) all attorney fees, court cost, title report fees, cost and fees charged by any collection agency either to the Association or to an Owner and any other fees or cost incurred by the Association in attempting to collect Assessments or other amounts due to the Association by the Owner of a Lot. The Recording of this Declaration constitutes record notice and perfection of the Assessment Lien. The Association may record a Notice of Lien setting forth the name of the delinquent owner as shown in the records of the Association, the legal description or street address of the Lot against which the Notice of Lien is recorded and the amount of claimed to be past due as of the date of the recording of the Notice, including interest, lien recording fees and reasonable attorney's

fees. Before recording any Notice of Lien against the Lot, the Association shall make a written demand to the defaulting Owner for payment of the delinquent Assessments, together with interest, late charges and reasonable attorney's fees, if any. The demand shall state the date and amount of the delinquency. Each default shall constitute a separate basis for a demand. Ten days after delivery of the demand, the Association may proceed with recording a Notice of Lien against the Lot.

(3) The Assessment Lien shall have priority over all liens or claims except for: (i) tax liens for real property taxes; (ii) assessments in favor of any municipal or other government body; and (iii) the lien of any first Mortgage. Any Mortgagee or any other Person acquiring title or coming into possession of a Lot through foreclosure of the Mortgage, purchase at a foreclosure sale or trustee sale or through any equivalent proceedings shall acquire title free and clear of any claims for unpaid assessments and charges against the Lot which became payable prior to the acquisition of such Lot by the Mortgagee or other Person. Any Assessments and charges against the Lot which accrue prior to such sale or transfer shall remain the obligation of the defaulting Owner or the Lot.

(4) The Association shall not be obligated to release the Assessment Lien until all delinquent Assessments, interest lien fees, reasonable attorneys' fees, court cost, collection cost and all other sums payable to the Association by the Owner of the Lot have been paid in full.

(5) The Association shall have the right, at its option, to enforce collection of any delinquent Assessments together with interest, lien fees, reasonable attorney's fees and any other sums due to the Association in any manner allowed by law including, but not limited to, (i) bringing an action at law against the Owner personally obligated to pay the delinquent Assessments and such action may be brought without waiving the Assessment Lien securing the delinquent Assessments or (ii) bringing an action to foreclose the Assessment Lien against the Lot in the manner provided by law for the foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any and all Lots purchased at such sale.

h. Purpose for which Association's Funds May be Used. The Association shall apply all funds and property collected and received by it for the common good and benefit of the Subdivision and the Owners. The Association shall not be obligated to spend in any year all the Assessments and other sums received by it in such year, and may carry forward as surplus any balances remaining. The Association shall not be obligated to reduce the amount of the Annual Assessment in the succeeding year if a surplus exists from a prior year, and the Association may carry forward from year to year such surplus as the Board in its discretion may determine to be desirable for the greater financial security of the Association and the accomplishment of its purpose.

8. Maintenance.

a. Areas of Association Responsibility. The Association, or its duly delegated representative, shall manage, maintain, repair and replace the Areas of the Association Responsibility. The Board shall be the sole judge as to the appropriate maintenance repair and replacement of all Areas of Association Responsibility. The

Association shall pay all ad valorem taxes on the Common Area prior to delinquency. The Association may take reasonable steps to appeal or protest any Common Area tax assessments.

b. Lots. Each Owner of a Lot shall be responsible for maintaining and repairing its Lot and all buildings, Residential Units, landscaping or other Improvements situated thereon. All buildings, Residential Units, landscaping, native growth, cacti, mesquite, palo verde and other Improvements shall at all times be kept in good condition and repair. No yard equipment, woodpiles or storage areas may be maintained so as to be Visible From Neighboring Property or streets. All Lots upon which no Residential Units building or other structures, landscaping or Improvements have been constructed shall be maintained in an attractive manner.

c. Assessments of Certain Cost of Maintenance and Repair. In the event that the need for maintenance or repair of an Area of Association Responsibility is caused through the wilful or negligent act of any Owner, his family, tenants, guest or invitees, the cost of such maintenance or repairs shall be paid by such Owner to the Association upon demand and payment of such amounts shall be secured by the Assessment Lien.

d. Improper Maintenance and Use of Lots. In the event any portion of any Lot is so maintained as to present a public or private nuisance, or as to substantially detract from the appearance or quality of the surrounding Lots or other areas of the Subdivision which are substantially affected thereby or related thereto, or in the event any portion of a Lot is being used in a manner which violates this Declaration; or in the event the Owner of any Lot is failing to perform any of its obligations under the Association Documents, the Board may make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto give notice thereof to the offending Owner that unless corrective action is taken within fourteen days, the Board may cause such action to be taken at said Owner's cost. If at the expiration of said fourteen day period of time the requisite corrective action has not been taken, the Board shall be authorized and empowered to cause such action to be taken and the cost thereof shall be paid by such Owner to the Association upon demand and payment of such amounts shall be secured by the Assessment Lien.

9. Insurance. The Association shall maintain, to the extent reasonably available, such insurance as the Board shall determine from time to time to be appropriate to protect the Association or the Owners.

10. Right of the Mortgagees. Upon receipt by the Association of a written request from a Mortgagee 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 Mortgagee with timely written notice of any condemnation loss or any casualty loss which affects a material portion of the Subdivision Lot on which there is a Mortgage.

11. General Provisions.

a. Enforcement. The Association shall have the right to enforce the

Association Documents in any manner provided for by law or in equity. The failure of the Association to take enforcement action with respect to a violation of the Association Documents shall not constitute a waiver of the right of the Association to enforce the Association Documents in the future.

b. Term; Method of Termination. This Declaration shall continue in full force and effect for a term of twenty years from the date this Declaration is recorded, after which time, this Declaration shall be automatically extended for successive periods of ten years each. This Declaration may be terminated at any time if such termination is approved by the affirmative vote or written consent, or any combination thereof, of the Owners representing ninety percent or more of the Owners of Lots. If the necessary votes and consents are obtained, the Board shall record a Certificate of Termination duly signed by the President of the Association, in which event this Declaration shall have no further force and effect, and the Association shall be dissolved pursuant to the terms set forth in its Articles.

c. Amendments. This Declaration may be amended by the Board except for (i) amendments that are not uniform as to all Lots and Owners, (ii) amendments to Section 7 of this Declaration, and (iii) amendments to this Section 11.c. Amendments that are not uniform as to all Lots and Owners, amendments to Section 7 of this Declaration and amendments to this Section 11.c. must be approved by a Majority of the Owners of Lots.

d. Amendment Waiting Period. This is the 60 days following the sending, in writing, of a proposed Amendment to all Owners of Lots. The Board may only approve an Amendment after the completion of this 60-day period.

e. Severability. Any determination by a court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity of any of the other provisions hereof.

f. Perpetuities. If any right or provision created by this Declaration violates the Rule against Perpetuities, then such right or provision shall continue until 21 years after the death of the last survivor of the now living descendants of the President of the United States holding office in 2006.

CATALINA FOOTHILLS ESTATES NO. 9
ASSOCIATION, an Arizona non-profit
corporation

By George Robinson
George Robinson
President

UN-1001-001-100

