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TUCSON AZ 85737



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**SECOND RESTATED and AMENDED DECLARATION of
COVENANTS, CONDITIONS and RESTRICTIONS**

for

EL CONQUISTADOR RESORT PATIO HOMES ASSOCIATION, INC.

**(Completely Restating and Amending Instrument Recorded in
Instrument No. 4175965)**

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**SECOND RESTATED and AMENDED DECLARATION of
COVENANTS, CONDITIONS and RESTRICTIONS for
EL CONQUISTADOR RESORT PATIO HOMES ASSOCIATION, INC.**

Whereas, a Restated and Amended Declaration of Covenants, Conditions and Restrictions for El Conquistador Resort Patio Homes ("Former Declaration") was recorded on September 13, 1994, at Docket 9876 at Page 1944 at Instrument No. 94175965; and

Whereas, Article VII, Section 7.02, of the Former Declaration provides that the Former Declaration may be amended by an instrument signed and acknowledged by the President and Secretary of the Association certifying that such amendment has been approved by the vote or written consent of the Owners of not less than two-thirds (2/3) of the Lots, and shall be effective upon its being recorded with the Pima County Recorder; and

Whereas, this Declaration has been approved by the vote or written consent of the Owners of not less than two-thirds (2/3) of the Lots; and

NOW, THEREFORE, the undersigned President and Secretary of the Association hereby certify that this Declaration has been approved by the vote or written consent of the Owners of not less than two-thirds (2/3) of the Lots and, as a result, the Former Declaration shall be and hereby is null and void and this Declaration shall amend and supersede the Former Declaration. The real property as described herein shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the property. These easements, covenants, restrictions and conditions shall run with the property and shall be binding upon all parties having or acquiring any right, title or interest in the described properties or any part thereof and shall inure to the benefit of each such party.

ARTICLE I DEFINITIONS

Section 1.01. "Annual Assessments" shall mean those assessments levied by the Association and used to promote the recreation, health, safety and welfare of the Members and their guests and family, for the improvement of the Common Areas and for all other purposes set forth in the Articles, Bylaws and this Declaration.

Section 1.02. "Architectural Review Committee" refers to the Committee established by the Board pursuant to Section 3.05 of this Declaration.

Section 1.03. "Articles" refer to the Articles of Incorporation of the Association and any amendments which have been filed in the Office of the Arizona Corporation Commission.

Section 1.04. "Association" refers to El Conquistador Resort Patio Homes Association Inc., its successors and assigns.

Section 1.05. "Association's Governing Documents" refers to this Declaration, the Articles of Incorporation of the Association, the Bylaws and any Rules and Regulations adopted by the Association.

Section 1.06. "Board" refers to the Board of Directors of the Association.

Section 1.07. "Bylaws" refer to the Bylaws of the Association, as may be amended from time to time.

Section 1.08. "Common Areas" shall mean all real property, whether improved or unimproved, designated as Common Area on the Plats and owned by the Association for the common use and enjoyment of the owners.

Section 1.09. "Declaration" refers to this Second Restated and Amended Declaration as amended from time to time.

Section 1.10. "Dwelling Unit" it shall be the individual responsibility of each Owner to provide as he sees fit, at his own expense, insurance for his dwelling unit against loss or damage by fire or other hazards, owner's liability insurance, theft and other insurance covering personal property damage and loss.

Section 1.11. "Individual Patio Area" means that area located in the front and in the rear of each single family dwelling which is fully enclosed by a patio wall and/or fence.

Section 1.12. "Lot" refers to any numbered plot of land shown upon the recorded subdivision Plats, as amended from time to time, with the exception of the Common Areas.

Section 1.13. "Member" means the owner of a Lot who is entitled to membership in the Association, who is entitled to use and enjoy the Common Areas, and who is obligated to pay assessments to the Association, as more fully set forth herein.

Section 1.14. "Mortgage" shall mean any mortgage, deed of trust or other security instrument by which a Lot or any part thereof is encumbered.

Section 1.15. "Owner" refers to the record owner, 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 sale of real estate, but excluding persons holding an interest merely as security for the performance of an obligation.

Section 1.16. "Person" shall include a corporation, company, partnership, trust, firm, association or society, as well as a natural person.

Section 1.17. "Plats" shall mean the map of record in the Office of the Pima County Recorder for Lots 1 through 193, in Book 35 at Page 38, Book 36 at Page 44, and Book 37 at Page 14.

Section 1.18. "Properties" shall mean and refer to that certain real property described as follows:

Lots 1 through 94 and Common Areas of EL CONQUISTADOR RESORT PATIO HOMES, according to the Map recorded in Book 35 of Maps and Plats at Page 38 in the Pima County Recorder's Office.

Lots 96 through 154 and Common Areas of EL CONQUISTADOR RESORT PATIO HOMES, according to the Map recorded in Book 36 of Maps and Plats at Page 44 in the Pima County Recorder's Office.

Lots 155 through 193 and Common Areas of EL CONQUISTADOR RESORT PATIO HOMES, according to the Map recorded in Book 37 of Maps and Plats at Page 14, in the Pima County Recorder's Office.

Section 1.19. "Rules and Regulations" mean those policies and procedures adopted by the Board to govern the conduct and actions of owners, tenants, visitors, contractors, and guests on Lots and Common Areas not otherwise covered in this Declaration.

Section 1.20. "Single Family" refers to a group of one or more persons each related to the other by blood, marriage or legal adoption; or a group of two or less persons who are not related, but who maintain a common household in an Dwelling Unit. The number of unrelated persons residing in a Dwelling Unit may be increased upon application by the Owner to the Board and subsequent approval by the Board, and upon a showing of good cause.

Section 1.21. "Single Family Dwelling" shall mean a building erected and maintained in conformance with the requirements of this Declaration for private residential purposes and designed for occupancy by a single family.

Section 1.22. "Special Assessment" shall mean those assessments which the Association may levy pursuant to Section 6.04 herein.

ARTICLE II GENERAL USE RESTRICTIONS

All property within the Subdivision shall be held, used and enjoyed subject to the following limitations and restrictions.

Section 2.01. Insurance Rates. Nothing shall be done or kept on any lot or upon the Common Areas which will increase the rate of or which will result in the cancellation of insurance on any such property or which would be in violation of any law.

Section 2.02. Signs. Without the approval of the Board, no owner may display any signs of any kind which are visible from neighboring properties, except signs which may be required by legal proceedings and except which may be allowed by applicable laws.

Section 2.03. Animals. No animals of any kind shall be raised, bred, or kept, except that a reasonable number of generally recognized house or yard pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose. No animal shall be allowed to become a nuisance, nor shall any animal cause any detrimental health condition to exist. A "reasonable number" as used in the Section shall ordinarily mean no more than two pets per household; provided, however, that the Board may determine, in its sole and absolute discretion, whether a particular animal is a generally recognized house or yard pet or a nuisance, or whether the number of animals is reasonable. The Board may adopt Rules and Regulations limiting the size, number and kinds of pets which may be kept by the Owners.

Section 2.04. Trash Containers. No garbage or trash shall be placed or kept on any property within the Subdivision, except in closed containers of a type, size, and style that has been used or approved by the contracted vendor. All trash containers shall, at all times, be hidden from view except on day of trash pick-up. All rubbish, trash, garbage, plant trimmings and recyclables shall be removed from Lots and shall not be allowed to accumulate thereon nor on common areas. All plant trimmings must be placed in approved garbage containers. No incinerators shall be allowed. The Board, at its sole discretion, may limit trash collection to one service provider to be used by all of the Members of the Association. Payments for such services shall be made directly by Members. The purpose of contracting with one service provider is to control the number of trash collectors using the streets within the Properties.

Section 2.05. Vehicles. No truck classified by manufacturer rating as exceeding one ton carrying capacity, mobile home, recreational vehicle, motor home, motorcycle, travel trailer, tent trailer, camper shell, detached camper, boat, boat trailer, or other similar equipment or vehicle may be parked or maintained on any Lot or street so as to be visible from neighboring Lots, the Common Areas, or the streets. No mobile home, motor home, boat, recreational vehicle, trailer of any kind, truck, camper, permanent tent, or similar structure shall be kept, placed,

maintained, constructed, reconstructed or repaired, nor shall any motor vehicle be constructed, reconstructed, or repaired upon any portion of the Properties. Garages shall be used for parking vehicles and storage purposes only, and shall not be converted to living quarters or used for recreational or commercial activities. Except as provided above, only vehicles in operating condition and displaying a current license plate shall be parked on the Properties. All vehicles belonging to the residents, and where possible, vehicles belonging to guests, must be parked only in the garage or on a paved driveway. If parking is not available in the garage or on the driveway, guests may park on the private streets for visits of a temporary nature only. For purposes of this Section "Temporary Nature" shall be defined as visits to the Owner which are limited in time and not on a regular basis. Overnight parking on the streets is prohibited. Vehicles shall not be operated or parked in any Common Area other than the streets. Vehicles parked on the street shall be parked in a manner that does not inhibit traffic and does not allow tires to be on the bordering landscaping gravel. No vehicle may be parked or stored on any portion of a Lot except in the garage or on the driveway except as required otherwise by applicable laws.

Section 2.06. Backboards. No basketball backboard of any kind shall be erected or attached, by either a permanent or temporary method, to any Dwelling Unit unless approved by the Board.

Section 2.07. Garage Doors and Gates. All garage doors shall remain fully lowered and gates closed at all times unless the door or gate is opened for purposes of ingress and egress.

Section 2.08. Antennas. No aerial antenna or satellite dish to be used for television, radio or other form of communication reception, of a temporary or permanent character, shall be erected on any Lot or attached to the Dwelling Unit located upon any Lot in the Subdivision unless approved by the Board, subject to reasonable rules regarding screening and protection of views and further except as required otherwise by applicable laws.

Section 2.09. Nuisances. After completion of any construction on any Dwelling Unit, whether new construction or remodeling or maintenance of existing improvements or the landscaping of Lots, no rubbish, debris or residue of any kind shall be allowed to accumulate or be placed on any Lot, Common Area or street, so as to render any of these areas, or any portion of these areas, unsanitary, unsightly, offensive or detrimental to any other Lot or to its occupants. No noise or other nuisance shall be permitted on any Lot which is offensive or detrimental to its neighbors. The Board, in its sole discretion, has the right to determine the existence of any such nuisance.

Section 2.10. Unsightly Articles. No unsightly articles shall be permitted which are visible from adjoining Lots or from the street or public way, including trash containers, except as otherwise provided herein. No clotheslines shall be permitted. All items stored in the garage area shall be concealed from the view of adjoining Lots or from the street or public way. Grass, shrub or tree clippings and all machinery, storage piles, wood piles, garbage or trash containers shall be kept screened from the view of adjoining Lots or from the street, Common Areas or Golf Course except when such items are being collected by any trash removal company, and then, only for the shortest time reasonably necessary for such collection. The Board has the sole discretion to determine if any activity by an Owner is in violation of this Section.

Section 2.11. Diseases and Insects. No Owner shall permit anything or condition to exist upon any Lot which shall induce, breed or harbor infectious plant diseases or noxious insects.

Section 2.12. Common Area Plantings. The plantings upon the Common Areas shall not be destroyed or removed. The homeowners shall not do any planting upon the common areas unless written permission is first obtained from the Board.

Section 2.13. Drainage. There shall be no interference with the established drainage pattern over any Lot or the Common Areas.

Section 2.14. Improvements and Alterations. There shall be no excavation or construction or alteration which in any way alters the exterior appearance of any improvement in the Properties, including rocks, stones, gravel or earth without the prior written approval of the Board. No fences, hedges, or walls shall be maintained upon a Lot except those which are installed in accordance with the initial construction of the improvements constructed on the Lot, or as approved by the Board.

Section 2.15. Modification of Exterior Wall. No Owner shall alter or modify the exterior wall of the Dwelling Unit by cutting any opening in or placing any window of any kind in the exterior wall without first obtaining the written approval of the Board.

Section 2.16. Utility Easements. A blanket easement is created upon, across, over and under the Properties for ingress, egress, installation, replacing; repairing and maintaining all utility and service lines and systems including but not limited to water, sewers, gas, telephones, electricity, television cable or communication lines and systems, etc. By virtue of this easement, it is expressly permissible for the providing utility or service company to install and maintain facilities and equipment on the Properties and to affix and maintain wires, circuits and conduits on, in, and under the roofs and exterior walls of Dwelling Units. Notwithstanding anything to the contrary contained in this Section, no sewers, electrical lines, water lines, or other utilities or service lines may be installed or relocated on the Properties except as initially designed and installed or thereafter approved by the Board. This easement shall in no way affect any other recorded easements on the Properties. In

no event shall any portion of the above-mentioned easements for utilities be construed to authorize the placing or installing of sewers, electrical lines, water lines and other utilities under any permanent building structure constructed on the Properties. This easement shall be limited to improvements as originally constructed. There shall be an access easement for the delivery and collection of the U.S. Mail.

Section 2.17. Electrical Service and Telephone Lines. All electrical service and telephone lines shall be placed underground and no outside electrical lines shall be placed overhead.

Section 2.18. Right of Inspection. During reasonable hours, any member of the Board, or any authorized representative of any of the Board has the right to enter upon and inspect any Lot (except the interior of the Dwelling Unit), for the purpose of ascertaining whether or not the provisions of this Declaration have been or are being complied with, and such persons shall not be deemed guilty of trespass by reason of such entry.

Section 2.19. Violation of the Covenants, Conditions, or Restrictions and Rules. If any Owner, his family, or any licensee, tenant, lessee or invitee violates the Covenants or the Rules and Regulations, the Board may suspend the voting rights of any Owner or impose a reasonable monetary penalty against such owner in accordance with applicable law for each violation. Before invoking any such rights of imposition of a reasonable monetary penalty or suspension, the Board shall give the Owner notice and a reasonable opportunity for a hearing. Any assessment imposed hereunder which remains unpaid for a period of thirty (30) days or more, shall be collectable in the same manner as assessments.

Section 2.20. Solar Devices. No solar devices of any type shall be erected or installed on any Lot without the prior written approval of the board or the Architectural Control Committee except as required otherwise by applicable laws. The Board or the Architectural Control Committee shall not prohibit the installation of solar devices on any lot. However, it may require reasonable screening and maintain control of all color selections except for solar collecting surfaces.

Section 2.21. Sales of Lots. Each Owner shall promptly notify the Board of any sale or transfer of his Lot and shall provide the Board with the name and address of the grantee or transferee and any other information as may be reasonably required by the Association. To the extent permitted by applicable law, the Association may charge a reasonable transfer fee to any subsequent Owner, except when title to the Lot is transferred by gift or devise to a member of the Owner's family.

Section 2.22. Play of Golf. All Owners acknowledge that golf will be played upon the El Conquistador Resort Golf Courses, and that the proximity of play upon the Golf Course to the Lots creates a possibility that golf balls struck by players upon the Golf Course may enter on the Owner's Lot. The owners covenant and agree, for themselves, their successors and assigns, not to interfere with the play of golf upon the Golf Course or the use made by players of the private roads owned by the Association which serve the Golf Course; provided, however, that this paragraph shall not be construed to permit players on the Golf Course to trespass upon the Lots or Common Areas subject to this Declaration, nor to affect any rights of Owners or the Association to seek or recover damages from Golf Course players.

Furthermore, Owners acknowledge that they have no right of access to the Golf Course across their common property lines, either directly from a Lot or from any Common Area, and that the owner of the El Conquistador Resort Golf Courses has the right to seek and recover damages for doing so. Any purchaser of any Lot irrevocably waives for himself, his successors, executors, administrators and assigns, the management of El Conquistador Resort Golf Courses, and the Owners of record and their successors, assigns, affiliates, subsidiaries, officers, directors, and attorneys from any and all rights, claims, losses, costs and causes of action of every kind and nature whatsoever now possessed or hereafter arising in whole or in part from the existence and operation of the El Conquistador Resort Golf Courses, including any personal injury or property damage caused by an errant golf ball.

Section 2.23. Garage Sales. Garage sales or any similar type of sale are prohibited.

ARTICLE III
OWNERS' PERMITTED USES, RESTRICTIONS and
RIGHTS of DWELLING UNITS and LOTS

Section 3.01. Private Residential Purposes. Except as provided for elsewhere in this Declaration, Lots shall be occupied and used solely as a private residence by the Owner, his or her family, tenants and social guests and for no other purpose. However, an Owner or occupant residing in a Dwelling Unit may operate a "Home Occupation" solely within the private confines of a Dwelling Unit so long as:

- A) The existence or operation of the business activity is not apparent from the outside of the Dwelling Unit, and there is no sound or smell from the outside of the Dwelling Unit indicating the conduct of business is detectable;
- B) The business activity conforms to all zoning requirements for the Properties;
- C) The business activity does not involve frequent or annoying traffic, as determined by the Board, by persons coming on the Properties who do not reside in the Properties or door-to-door solicitation of residents of the Properties; and
- D) The business activity is consistent with the residential character of the Properties and does not constitute a nuisance or hazardous or offensive use, nor threaten the security or safety of other residents of the Properties, as may be determined in the sole discretion of the Board.

No Home Occupation may involve equipment or machinery, manufacturing, drilling, burning, retailing of services or products, or conversion of any garage into a business office or room.

"Home Occupation", as permitted by this Section, means private consultation and advice in trades and professions. The Board has power, notwithstanding the foregoing, to prohibit any Home Occupation or business activity which in its judgment involves excessive noise, traffic, or poses a nuisance within the Properties or causes disharmony with respect to the overall design and peacefulness of the Properties.

No business conducted upon the Properties or in any Dwelling Unit shall result in any change to the exterior appearance of any Dwelling Unit or Lot, and no business shall involve signs, buildings, or structures in addition to the Dwelling Unit.

Section 3.02. Renting. The Owner has the right to lease or rent his Dwelling Unit. However, all leases must be in writing and must provide that any such tenant or lessee shall abide by the Rules and Regulations, Bylaws, Articles, and the provisions of this Declaration. In the event any lease does not contain this provision, such lease shall, at the option of the Board, be null and void. All leases must be for a

term of one month or longer. The Owner, or Owner's rental agent, shall provide the Association with the names, phone number, the number of people in residence, the number of pets, and any other information desired by the Association concerning the lessee that is consistent with applicable law.

Section 3.03. Common Walls. The rights and duties of the Owners with respect to common walls shall be as follows:

A) Each wall, including patio walls, which are constructed as part of the original construction of the Dwelling Unit, any part of which is placed on the dividing line between separate Dwelling Units, shall constitute a common wall.

With respect to any such wall, each of the adjoining Owners shall assume the burden and be entitled to the benefits recited in this Section 3.03, and to the extent it is consistent with this Section, the general rules of law regarding common walls shall be applied.

B) The Owners of contiguous Dwelling Units who have a common wall shall have reciprocal easements for support and an equal right to use such wall provided that such use by one Owner does not interfere with the use, view and enjoyment of same by the other Owner.

C) Unless other provisions of this Section 3.03 are applicable, the costs of reasonable repair and maintenance of a common wall shall be shared equally by the Owners who make use of the common wall.

D) In the event any common wall is damaged or destroyed through the act of one adjoining Owner, or any of his guests or agents or members of his family (whether or not such act is negligent or otherwise culpable) so as to deprive the other Owner of the full use and enjoyment of such wall, then the first of such Owners shall forthwith proceed to rebuild and repair the same to as good condition as formerly without cost to the other Owner.

E) In the event any common wall is damaged or destroyed by some cause other than the act of one of the adjoining Owners, his agents, guests or family (including ordinary wear and tear and deterioration from lapse of time), then in such event, both such adjoining Owners shall proceed forthwith to rebuild or repair the same to as good condition as formerly at their joint and equal expense.

F) Notwithstanding anything to the contrary contained in this Declaration, there shall be no impairment of the structural integrity of any common wall without the prior written consent of the Board. In addition to meeting the other requirements of this Declaration and of any building code of similar regulation or ordinance, any Owner proposing to modify, make additions to or rebuild his Dwelling Unit in any manner which requires the extension or other alteration of any common wall shall first obtain the written consent of

the Board. The Board shall determine the adjoining Owner's preference concerning the proposed modification, extension or alteration of the common wall prior to giving any written consent thereto, although the Board, in its discretion, may grant permission to the Owner, regardless of the adjoining Owner's preference.

G) In the event of a dispute between Owners regarding the repair or rebuilding of a common wall or regarding the sharing of costs for such wall, upon the written request of such Owners delivered to the Association, the matter shall be heard and determined by the Board. The judgment of the Board in this matter shall be final and binding.

Section 3.04. Easement for Encroachments. In the event Dwelling Units are partially or totally destroyed, and then rebuilt, the Owners agree that minor encroachments of parts of the adjacent Dwelling Units due to construction shall be permitted and that a valid easement for said encroachments and the maintenance thereof shall exist.

Section 3.05. Architectural Control. No building, fence, wall, or other structures shall be commenced, erected or maintained upon a Lot, nor shall any exterior addition to, or change in, or alteration of a Dwelling Unit or the exterior color scheme, roof or finish thereof be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board. In the event the Board fails to approve or disapprove such design and location within sixty (60) days after said plans and specifications have been submitted to it, approval will not be required and this Section will be deemed to have been fully complied with. Any Board-approved project that has not been started within six (6) months of Board approval must be resubmitted to the Board for approval. No awnings that extend beyond the building structure shall be temporarily, other than for purposes of current painting operations, or permanently fastened to or suspended from the exterior of any Lot or Dwelling Unit without the written consent of the Board. Covers and/or shades must be compatible with community colors.

ARTICLE IV
OWNERSHIP, USE and MANAGEMENT of the COMMON AREA

Section 4.01. Management. The Board has the exclusive right to control, maintain, manage and improve the Common Areas as provided in this Declaration, the Articles, Bylaws and Rules and Regulations. Such right and power of control and management shall be exclusive, and shall include all drainage detention and retention facilities, open spaces and private streets. In managing the Common Area, the Association accepts all responsibility for the control, maintenance, safety and liability of such Common Area, including the collecting and paying of any ad valorem real property taxes assessed by the County Assessor on the Common Areas, and the insurance coverage as provided in Section 5.05. Common Areas are intended as open spaces and not playgrounds.

Section 4.02. Damages. Each Owner shall be liable to the Association for any damage to the Common Areas which may be sustained by reason of the negligence or willful misconduct of said Owner or of his family and guests, both minor and adult. In the case of joint ownership of a Lot, the liability of such Owners shall be joint and several, except to the extent that the Association has previously contracted in writing with such joint Owners to the contrary. The amount of such damage shall be an assessment against the Lot and may be collected in same manner as assessments.

Section 4.03. Restrictions on Conveyance of Common Areas. The Common Areas, title to which is held by the Association, may not be alienated, released, transferred, hypothecated or otherwise encumbered without the affirmative vote of two-thirds (2/3) of the votes entitled to be cast by the Members. However, the Association has the right to grant and convey to any person or entity, easements, or rights of way, in, over, or under any Common Areas for the purpose of constructing, erecting, operating or maintaining thereon, therein, and there under:

- A) Roads, streets, walks, pathways, driveways, and/or other facilities or improvements deemed proper by the Board;
- B) Temporary overhead or permanent underground lines, cables, wires, conduits, or other devices for the transmission of electricity for lighting, heating, power, telephone, cable television, and other purposes;
- D) Sewers, storm drains and pipes, water systems, water, heating and gas lines or pipes;
- E) Any similar public or quasi-public improvements or facilities; and
- F) Such improvements as may be permitted under section 5.04 of this Declaration, provided that if ingress or egress to any residence is through the Common Areas, then any conveyance is subject to the Lot Owner's easement for the same.

Section 4.04. Restrictions on the Use of Common Areas. The right to use and enjoy the Common Areas shall be subject to the following provisions:

- A) The right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving and maintaining the Common Areas and facilities and, if necessary, to mortgage the Properties, but the rights of such mortgagee in the properties shall be subordinate to the rights of the Owners.

- B) The right of the Association to enter into such agreements and take such actions as is reasonably necessary and convenient for the accomplishment of the obligations set forth above and the operation and maintenance of the Common Areas.

- C) The right of the Association to suspend the voting rights of any Owner for any period in which the assessment against his Lot remains unpaid or for any violation of this Declaration or the Rules and Regulations.

ARTICLE V
THE ASSOCIATION: EL CONQUISTADOR RESORT
PATIO HOMES ASSOCIATION, INC.

Section 5.01. Organization.

- A) Association. The Association shall be a nonprofit Arizona corporation charged with the duties set forth in the Articles, Bylaws, and this Declaration.

- B) Board and Officers. The affairs of the Association shall be conducted by the Board and such officers and committees as the Board may elect or appoint, in accordance with the Articles and Bylaws, as amended from time to time. The composition of the Board shall be defined in the Bylaws.

- C) Personal Liability. No member of the Board or any Committee of the Association or any officer or employee of the Association shall be personally liable to any Owner, or to any other party, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error, or negligence of the Association, provided that such person has, upon the basis of such information as may be possessed by him, acted in good faith, without willful or intentional misconduct.

Section 5.02. Membership.

- A) Qualification. Each Owner of a Lot (which is subject to assessment) shall be a member of the Association. No Owner shall have more than one membership for each Lot owned.

- B) Transfer of Membership. Membership of each Owner in the Association shall be appurtenant to ownership of the Lot and shall not be transferred, pledged, or alienated in any way except upon the transfer of ownership to the Lot, and then only to the transferee. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership of a Lot shall automatically transfer said membership to the new Owner thereof.

Section 5.03. Voting Rights. Each Member shall be entitled to one vote for each Lot owned. When more than one person holds an interest in the Lot, all such persons shall be Members. The vote for such Lot shall be exercised as the Members among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

Section 5.04. Maintenance, Repair and Upkeep.

- A) Responsibilities of Owner. Maintenance, repair and upkeep of the Lots and Dwelling Units, including landscaping, except as otherwise specifically provided for in Paragraph C of this Section, shall be the sole responsibility of each Owner. All fixtures and equipment installed or located within a Lot, commencing at a point where the utility lines, pipes, wires, conduits or systems enter the Owner's Lot line, shall be maintained and kept in repair by

the Owner of the Lot. Termite control shall be the responsibility of the Owner. All maintenance and repair of the Properties within each Owner's Lot including but not limited to driveways, sidewalks, utilities and the Dwelling Unit itself shall be the sole obligation and at the expense of the individual Dwelling Unit Owners. Each Owner shall be responsible for the maintenance and repair, including replacement of light bulbs and of all exterior lighting fixtures located within the Owner's Lot except as stated in Paragraph C of this section.

B) Failure to Maintain Standard of Upkeep. No Owner shall commit any act or do any work which will impair the structural soundness or integrity of the lot and Dwelling Unit or impair any easement, nor do any act, nor allow any condition to exist, which will adversely affect the other Lots and Dwelling Units or their Owners. In the event any Owner fails to maintain the Lot or the exterior of his Dwelling Unit in a manner in keeping with the standards in the neighborhood, then the Association, after approval by a majority vote of the Board, has the right, through its agents and employees, to enter on a Lot, and to repair, maintain, and restore the Lot, and the exterior of the Dwelling Unit, and any other improvements erected on the Lot and the expense of such action shall become an assessment on the Lot and shall be collected in the same manner as Annual Assessments. The Board, in its sole discretion has the right to determine whether or not a Lot or the exterior of a Dwelling Unit is in need of maintenance, repair and upkeep in order to conform to the standards of the general neighborhood. The Board shall use a reasonably high standard in determining whether such maintenance, repair and upkeep is required so that the Lots as a whole will reflect a high pride of ownership.

C) Responsibilities of the Association.

1. Common Area. The Association shall maintain the Common Areas including private streets. This article shall in no way be construed to mean that the Association is responsible for those duties of the Owner to maintain his/her Lot, equipment and fixtures set forth in Section 5.04(A) above.

2. Landscape Maintenance. The Association shall be solely responsible for installation, irrigation, maintenance and removal, when necessary, of plants and trees on the Common Areas, and on each Lot, except for the Individual Patio areas or other such areas on the Lot which have been enclosed or separated by a decorative or masonry wall with prior approval of the Board. Each Owner shall be responsible for planting, irrigating and maintaining the Individual Patio Area of his or her own Dwelling Unit and shall not plant or erect any structure or decorative item upon the Common Areas or upon any portion of his or her Lot outside of the Individual Patio Area. Each Owner, by acceptance of a deed to a Lot, grants an easement to the Association over and upon the Lot for performance of landscape maintenance. In the event that the need for maintenance or repair is caused through the willful or negligent act of the Owner, his family, guests or invitees, the cost of such maintenance or repairs shall be added to and become part of the assessment to which each Lot is subject, and collected in the same manner as Annual

Assessments. The native growth on the Lots or Common Areas, including **but not limited** to cacti, mesquite and Palo Verde trees shall not be destroyed or removed from any of the Lots or the Common Areas without the written approval of the appropriate Arizona Department responsible for the granting or denying of such approvals. Each Owner is responsible for obtaining such permissions directly from the appropriate government agency before any plant material classified as "Native Growth" on the Lot is destroyed, replanted or removed. The Association is responsible for obtaining such permissions for any destruction, replanting or removal of "Native Growth" plants and trees located in the Common Areas.

3. Exterior Lighting Maintenance. The Association shall be responsible for the replacement of light bulbs and photo electric cells in the exterior lighting fixtures, located on the front wall of each Dwelling Unit (one or two fixtures per unit depending on the model, located generally between the garage door and the front entry and facing the street). Each Owner, by acceptance of a deed to a Lot, hereby grants an easement to the Association over and upon the Lot for the performance of exterior lighting maintenance. The Owner must maintain electrical power to the exterior lighting fixture(s) on his or her Lot at all times.

D) Easement for Maintenance. An easement for ingress, egress and maintenance is created upon, across, over, and under those portions of the Properties which are to be maintained by the Association pursuant to the foregoing paragraph. Said easement shall inure to the benefit of the Association and its agents, employees, independent contractors or assigns.

E) Landscape Maintenance Easement. A blanket easement is created upon, across, over and under the Properties for planting, watering, and caring for all plants located on the individual Lots outside the Individual Patio Areas, which plants shall be the responsibility of the Association.

F) Golfing Easement. A blanket easement is created across and over the common area private roads within the subdivision for use by individuals who will be playing golf on the El Conquistador Resort Golf Courses.

Section 5.05. Insurance Requirements.

A) Multi-Peril. A multi-peril type policy covering all of the Common Areas including Improvements thereon, providing, at a minimum, fire and extended coverage and all other coverage in the kind and amounts customarily acquired or required for projects similar in construction, location and use.

B) Liability. A comprehensive policy of public liability insurance covering all of the Common Areas in a minimum amount of at least \$2,000,000.00 per occurrence, for personal injury, death or property damage. The scope of such coverage shall include all other coverage in kinds and amount customarily acquired and required for projects similar in construction,

location and use, including, without limitation, water damage liability, liability for non-owned and hired automobiles and liability for property of others.

- C) Employee Dishonesty Coverage. Coverage against dishonest acts on the part of the directors, managers, trustees, employees or volunteers responsible for handling funds belonging to or administered by the Association. The insurance must name the Association as the named insured and shall be written to provide protection which is not less than one and one-half (1/2) times the Association's estimated annual operating expenses and reserves. In connection with such coverage, an appropriate endorsement to the policy to cover any person who serves without compensation shall be added if the policy would not otherwise cover volunteers.
- D) Worker's Compensation. A worker's compensation policy, if necessary to meet the requirement of law.
- E) Other. Such other insurance as the Board determines from time to time to be necessary.
- F) Dwelling Units. It shall be the individual responsibility of each Owner to provide as he/she sees fit, at his/her own expense, insurance for his/her Dwelling Unit against loss or damage by fire or other hazards, Owner's liability insurance, theft and other insurance covering personal property damage and loss. The Owner's insurance policy shall be considered as the primary insurance in the event the Association's insurance also covers the loss. In the event the Association's insurance covers a loss which is either caused by the negligent or intentional act of the Owner, or the loss occurs on the Owner's Lot, the Owner shall be responsible for any deductible portion of the insurance policy.
- G) Replacement or Repair of Property. In the event of damage to or destruction to any part of the Common Areas, the Association shall repair or replace the same from the insurance proceeds available. If such insurance proceeds are insufficient to cover the costs of repair or replacement of the property damaged or destroyed and subject to Section 6.04 below, the Association may levy a Special Assessment against all Owners to cover the additional cost of repair or replacement not covered by the insurance proceeds, in addition to any other assessment made against such Owner.
- H) Annual Review of Policies. All insurance policies shall be reviewed at least annually by the Board in order to ascertain whether the coverage contained in the policies, is sufficient to make any necessary repairs or replacement of the property which may have been damaged or destroyed.

Section 5.06. Committees. The Board shall establish a Landscape Committee, a Covenants Committee, an Architectural Committee, and a Nominating Committee. In addition, the Board may, from time to time, appoint other committees deemed necessary. Members of these committees must be members of the Association.

A) Landscape Committee. The Association shall form a Landscape Committee comprised of members selected by the Board.

1. Purpose of Landscape Committee. The purpose of this Committee is to handle all landscaping matters arising within the Properties.

2. Rules promulgated by Landscape Committee. Subject to Board approval, the Committee shall promulgate written rules and regulations, to which each Owner agrees to abide, governing the landscaping and maintenance of the Properties.

B) Covenants Committee.

1. Composition. The Covenants Committee shall be established by the Board for the purpose of dealing with alleged violations of the Association's Governing Documents by the Members, their guests, lessees and invitees and to promote the objective of having and maintaining a congenial community through the use of arbitration and other non-judicial means of resolving conflicts when they arise.

2. Powers and Duties. The Covenants Committee shall monitor and, subject to appeal to the Board, enforce compliance by the residents with the Association's Governing Documents (except for such matters as are delegated to the Architectural Committee) in accordance with the procedures set forth in this Declaration, or such other procedures promulgated by this Committee. The Covenants Committee is empowered to issue a cease and desist request to any Owner, resident, or their guests, lessees and invitees, whose actions are inconsistent with the provisions of the Association's Governing Documents either upon petition of any Owner or upon its own initiative. The Covenants Committee may, from time to time, provide interpretations of the Association's Governing Documents as to their intent, provisions and meaning when requested to do so by a member of the Board or on its own initiative.

3. Authority. The Covenants Committee has such additional duties, power and authority as the Board may, from time to time, provide to it by resolution. The Board may relieve the Covenants Committee of any of its duties, power and authority either generally or on a case-by-case basis. The Covenants Committee shall carry out its duties and exercise its power and authority in the manner provided for in this Declaration.

C) Architectural Committee. All provisions for the Architectural Committee apply as set forth in Article III Section 3.05.

D) Nominating Committee. Recommendations for the nomination for election to the Board shall be submitted to and approved by the Board.

ARTICLE VI ASSESSMENTS

Section 6.01. Creation of the Lien and Personal Obligation to Pay Assessments.

Each Owner, upon the recording of a deed to any Lot, whether or not it is stated in the deed, is deemed to covenant and agree to pay the Association:

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

Such assessments shall be established and collected as provided in this Article. All Assessments, together with interest, late fees, costs, and reasonable attorneys' fees, shall be a charge on the Lot and shall be a continuing lien upon the property against which each assessment is made. Delinquent assessments, together with interest, late fees, costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of the Lot at the time when the assessment was levied. The personal obligation for delinquent assessments shall not pass to his successors in title unless assumed by them.

Section 6.02. Purpose of Annual Assessments. The Annual Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Members and their guests, for the improvement and maintenance of the Common Area, and for all other purposes set forth in the Articles, Bylaws and this Declaration.

Section 6.03. Annual Assessment.

A) Annual Maximum Assessment. Effective January 1, 2013, the Annual Maximum Assessment is One Thousand Twenty Dollars (\$1,020.00) per Lot. From and after January 1, 2013, the Annual Maximum Assessment shall be increased automatically, annually and cumulatively, without a vote of the membership, in the same percentage of an increase, if any, in the Consumer Price Index (All Urban Consumers (CPI-US) U.S. City Average-All Items) published by the Department of Labor, Washington, D.C. ("CPI Increase") for the 12-month period ending on January 1 of the preceding year. For purposes of illustration, if the CPI Increase for 2014, 2015 and 2016 shall be three percent (3%) each year, the Annual Maximum Assessment for 2017 shall be \$1,114.58, determined as follows: \$30.60 increase in 2014 for a new Annual Maximum Assessment of \$1,050.60; \$31.52 increase in 2015 for a new Annual Maximum Assessment of \$1,082.12; and \$32.46 increase in 2016 for a new Annual Maximum Assessment of \$1,114.58.

B) Actual Annual Assessments. The Actual Annual Assessments shall, at the discretion of the Board but subject to applicable law, be set in an amount equal to, less than, but not greater than, the Annual Maximum Assessment.

The effective date of any change in the Actual Annual Assessments shall be January 1 of each year.

C) Notification to Owners of Annual Assessments. The Board shall provide notification to the Owners of any change to the Annual Maximum Assessment or the Actual Annual Assessments at least thirty (30) days prior to January 1 of each year.

D) Increase in Annual Maximum Assessment. From and after January 1, 2013, the Annual Maximum Assessment may be changed above the automatic, annual and cumulative CPI Increase described in Section 6.03.A above provided that any such change is approved by the vote of two-thirds (2/3) of the Members who are entitled to vote and who are voting in person or by absentee ballot at a meeting duly called for this purpose; provided that after such increase as approved by the Members, the Annual Maximum Assessment thereafter shall be subject to the automatic, annual and cumulative CPI Increase described in Section 6.03.A above. The limitations hereof shall not apply to any change in the maximum assessment and the basis of the assessments if incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.

Section 6.04. Special Assessments. Subject to the limitations in the Bylaws, Special Assessments may be levied in addition to Annual Assessments for:

A) Constructing capital improvements;

B) Correcting an inadequacy in the current operating account;

C) Defraying, in whole or in part, the cost of any construction, reconstruction, unexpected repair or replacement of improvements in the Common Areas; or

E) Paying for such other matters as the Board may deem appropriate for the Properties. Special Assessments shall be approved by the vote of two-thirds (2/3) of the Members who are entitled to vote and who are voting in person or by absentee voting at a meeting duly called for this purpose.

Section 6.05. Notice and Quorum for Any Action Authorized Under Sections 6.03 and 6.04. Written notice of any meeting called for the purpose of taking any action authorized under Sections 6.03 or 6.04 shall be sent to all Members not less than twenty (20) days prior to the date set for the meeting. The presence at the meeting in person or by absentee ballot of twenty-five percent (25%) of the Owners who are entitled to vote shall constitute a quorum at this meeting.

Section 6.06. Uniform Rate of Assessment. Except as otherwise provided in this Declaration, all Assessments must be set at a uniform rate for all Lots.

Section 6.07. Date of Commencement of Annual Assessments; Due Dates.

The Annual Assessments shall commence on all Lots on the first day of the month following the conveyance of a Lot to an Owner. The first Annual Assessment due for any Lot shall be adjusted according to the number of months remaining in the calendar year. The Board shall set the amount of the Annual Assessment against each Lot at least thirty (30) days prior to January 1 of each year. The due dates of such assessment, partial payment for which may become due on a periodic basis, shall be as established by the Board.

Section 6.08. Reimbursement Assessments. The Association shall levy a Reimbursement Assessment against any Owner and his/her Dwelling Unit if a failure to comply with the Association's Governing Documents has:

- A) Necessitated an expenditure of monies by the Association to bring the Owner or his/her Dwelling Unit into compliance; or
- B) Resulted in the imposition of a fine or penalty.

A Reimbursement Assessment shall not be levied by the Association until notice and an opportunity for a hearing has been given to the Owner as required by applicable law. Reimbursement Assessments may be enforced in the same manner as Annual and Special Assessments, by the filing of a Notice of Lien as provided in this Declaration.

Section 6.09. Effect of Nonpayment of Assessments; Remedies of the Association.

In addition to all other remedies provided by law, the Association, or its authorized representative, may enforce the obligations of any Owner to pay each assessment provided for in this Declaration in any manner provided by law or by either or both of the following procedures:

- A) By Suit. The Association may commence and maintain a suit at law against any Owner personally obligated to pay a delinquent assessment. The suit shall be maintained in the name of the Association. Any judgment rendered in any action shall include the amount of the delinquency, additional charges and any other amounts as the court may award, including reasonable attorneys' fees. A proceeding to recover a judgment for unpaid assessments may be maintained without the necessity of foreclosing or waiving the lien established herein.
- B) By Lien. To perfect its lien, the Association shall record a Notice of Lien in the Office of the Pima County Recorder. The lien provided for in this Section shall be in favor of the Association and shall be for the benefit of the Association. The Association may commence and maintain proceedings to foreclose its lien in the same manner as the foreclosure of mortgages. The lien for assessments shall constitute a lien on each respective Dwelling Unit prior and superior to all other liens, except:

1. All taxes, bonds, assessments and other levies which, by law, would be superior thereto,
2. The lien or charge of any first mortgage or deed of trust; and
3. As otherwise provided by applicable law..

Section 6.10. Additional Charges. In addition to any other amounts due or any other relief or remedy obtained against an Owner who is delinquent in the payment of any assessments, each Owner agrees to pay such additional costs, fees, charges and expenditures ("Additional Charges") as the Association may incur or levy in the process of collecting monies due and delinquent from the Owner. All additional charges shall be included in any judgment in any suit or action brought to enforce collection of delinquent assessments or may be levied against a Dwelling Unit as a reimbursement assessment. Additional charges shall include, but not be limited to, the following:

A) Attorneys' Fees. Reasonable attorneys' fees and costs incurred in the event an attorney is employed to collect any assessment or sum due, including the placement of the lien, or the filing of a suit or otherwise, whether or not a lawsuit is filed;

B) Late Charges. A late charge in an amount to be determined by the Board, to compensate the Association for additional collection costs incurred in the event any assessment or other sum is not paid when due; provided, however, that such late charge shall not exceed ten percent (10%) of the delinquent assessment or Fifteen and No/100 Dollars (\$15.00) per month, whichever is greater;

C) Cost of Suit. Costs of suit and court costs incurred as are allowed by the court or arbitrator having jurisdiction;

D) Interest. Interest on all sums imposed in accordance with this Article VI including the delinquent assessment, reasonable costs of collection, reasonable attorneys' fees and late charges, at an annual percentage rate to be established by the Board, commencing thirty (30) days after the assessment becomes due; and

E) Other. Any such other additional costs that the Association may incur in the process of collecting delinquent assessments or sums.

Section 6.11. Application of Payments. All payments received by the Association shall first be applied to collection costs and attorney's fees, then to late charges, then to interest and then to delinquent assessments, except as otherwise required by applicable law.

Section 6.12. Release of Lien. Upon payment of delinquent assessments or other satisfaction thereof, the Association shall record a release of any recorded lien.

Section 6.13. Statement of Assessment Lien. Within ten (10) days of a request from an Owner liable for assessments, the Association shall furnish to that Owner a written certificate signed by an officer or authorized agent of the Association stating the amount of any assessment and any additional charges secured by the lien upon his/her Dwelling Unit. A charge, not to exceed the reasonable cost of preparation and reproduction of the certificate, may be levied by the Board for the issuance of such certificate.

Section 6.14. No Exemption of Owner. No Owner is exempt from liability for payment of assessment by waiver of the use of enjoyment of the Common Areas, by abandonment of his Lot, or for any other reason.

Section 6.15. Subordination of the Lien to Mortgages. The lien for assessments shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to a mortgage foreclosure, or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer of any lot shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 6.16. Mortgage Protection and Additional Assessment as Common Expense. Notwithstanding and prevailing over any other provision of this Declaration, or the Association's Articles or Bylaws, or the Rules and Regulations, the following provisions shall apply to and benefit each holder of a first mortgage upon a lot (called the first mortgagee):

A) The first mortgagee shall not in any case or manner be personally liable for the payment of any assessment or charge, nor for the observation or performance of any covenant, restriction, regulation, , article or bylaw, except for those matters which are enforceable by injunctive or other equitable actions, not requiring the payment of money, except as hereinafter provided.

B) During the pendency of any proceeding to foreclose the first mortgage, including any period of redemption, the mortgagee (or receiver appointed in such action) may, but need not, exercise any or all of the rights and privileges of the Owner of the mortgaged lot, including but not limited to the exclusion of the Owner's exercise of such rights and privileges.

C) At such time as the first mortgagee becomes record Owner of a Lot, said first mortgagee shall be subject to all of the terms and conditions of these Restrictions, including but not limited to the obligation to pay for all assessments and charges accruing thereafter, in the same manner as any Owner.

Section 6.17. Reserves. The reserves which are collected as part of the Annual Assessments shall be deposited by the Association in a separate bank account to be held in trust for the purposes for which they are collected. Such reserves shall be deemed a contribution to the capital account of the Association by the Owners. The responsibility of the Board shall be only to provide for such reserves as the Board in good faith deems reasonable, and no Member of the Board is liable to any Owner or to the Association if the amount in the reserve account proves to be inadequate.

ARTICLE VII GENERAL PROVISIONS

Section 7.01. Term. The covenants, conditions, and restrictions of this Declaration shall remain in full force and effect for a period of twenty (20) years from the date this Declaration is recorded. Thereafter, they shall be renewed and automatically extended for successive periods of ten (10) years each, unless prior to the end of any ten year extension period, the Owners of not less than two thirds (2/3) of the Lots agree, in writing, to terminate the provisions of this Declaration.

Section 7.02. Amendments. This Declaration may be amended by an instrument in writing signed and acknowledged by the President and Secretary of the Association certifying that such amendment has been approved by the vote or written consent of the Owners of not less than two-thirds (2/3) of the Lots who shall be entitled to vote. Such amendment shall be effective upon its being recorded with the Pima County Recorder.

Section 7.03. Enforcement and Non-Waiver.

A) Enforcement. Except as otherwise provided herein, the Association, or any Owner, has the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens or charges now or hereafter imposed by provision of this Declaration.

B) Alternate Dispute Resolution/Prerequisite to Litigation. In the event of a dispute between an Owner, the Board, the Association, [excluding the nonpayment of any Assessments due under the terms of this Declaration), the complainant, as an absolute condition precedent to instituting a legal action against respondent, must first serve notice in writing on respondent, advising him/her of the alleged grievance, the action or results desired and a date and time convenient for a meeting to discuss such grievance. The respondent shall have a minimum of fifteen (15) days, but not to exceed thirty (30) days, from receipt of the notice, to schedule a meeting with the complainant, for the purpose of arriving at a settlement of the controversy with the complainant.

C) Violation of Law. Each and every provision of this Declaration and any amendment hereto shall be subject to all applicable state, county, municipal or local ordinances and Subdivision regulations and any future amendments thereto. Any violation of any state, municipal or local law, ordinance or regulation pertaining to the ownership, occupation or use of any property within the Subdivision is hereby declared to be a violation of these Restrictions and subject to any or all of the enforcement procedures set forth herein or in the Bylaws.

D) Remedies Cumulative. Each remedy provided by these Restrictions is cumulative and not exclusive.

E) Non-Waiver. Failure by the Board, the Association or any Owner to enforce any of the provisions of these Restrictions at any time shall not constitute a waiver of the right thereafter to enforce any such provision or any other provisions of these Restrictions.

Section 7.04. Attorney's Fees. In the event the Association incurs attorney's fees and/or court costs, in the enforcement of any of the provisions of this Declaration, or the Rules and Regulations adopted by the Association, regardless of whether a lawsuit is filed, such attorney's fees and court costs, if any, shall be paid by the Owner against whom the action is taken. The Association shall be entitled to collect such attorney's fees and court costs to the maximum extent allowed by applicable law.

Section 7.05. Mortgage Protection. Notwithstanding any other provision of this Declaration, no amendment to this Declaration shall operate to defeat and render invalid the rights of the beneficiary under any Deed of Trust or mortgage upon a Lot made in good faith for value, and recorded prior to the recording of such amendment, provided that after the foreclosure of any such Deed of Trust or mortgage such Lot shall remain subject to this Declaration as amended.

Section 7.06. Construction.

A) Interpretation. The provisions of this Declaration shall be literally construed to effectuate their purpose of creating a uniform plat for the development and operation of the Subdivision. This Declaration shall be construed and governed by the laws of the State of Arizona.

B) Restriction Severable. Notwithstanding the provisions of the Paragraph A, each of the provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision.

C) Rule Against Perpetuities. In the event the provisions of this Declaration are declared void by a court of competent jurisdiction by reason of the period of time herein stated for which the same shall be effective, then in that event said periods of time shall be reduced to a period of time which shall not violate the rules against perpetuities as set forth in the laws of the State of Arizona.

D) Singular Includes Plural. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine or neuter shall each include the masculine, feminine and neuter.

E) 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 intent and meaning of the provisions hereof.

Section 7.07. Delivery of Notices and Documents. Any written notice or other documents relating to or required by this Declaration may be delivered either personally or by mail. If by mail, it shall be deemed to have been delivered seventy-two (72) hours after being deposited in the United States mail, postage prepaid, certified or registered mail addressed as follows: If to the Association to:

El Conquistador Resort Patio Homes Association, Inc.
c/o The President or his designated representative.

If to an Owner, to the address of any Lot within the Subdivision or to the last address furnished by an Owner to the Association; provided, however, that any such address may be changed at any time by the Owner by delivering written notice of change of address to the Association. Each Owner of a Lot shall promptly provide his/her current mailing address to the Association and shall promptly notify the Association in writing of any subsequent change of address.

Section 7.08. Binding Effect. By accepting a deed or acquiring any ownership interest in any of the Properties included within this Declaration, each person or entity, for himself, or itself, his heirs, personal representatives, successors, transferees and assigns, binds himself, his heirs, personal representatives, successors, transferees and assigns, all of the provisions, restrictions, covenants, conditions, rules or regulations contained herein 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.

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SIGNATURES PAGE

IN WITNESS WHEREOF, the President and Secretary of the Association, executed this Declaration, certifying that this Declaration has been approved by the vote or written consent of the Owners of not less than two-thirds (2/3) of the Lots.

EL CONQUISTADOR RESORT PATIO HOMES ASSOCIATION, INC., an Arizona non-profit corporation.

Russell Case
By Russell Case, President

Marianne Berlan
By Marianne Berlan, Secretary

STATE OF ARIZONA)
) ss.
COUNTY OF PIMA)

The foregoing instrument was acknowledged before me this 27th day of May, 2014, by Russell Case as the President of El Conquistador Resort Patio Homes Association, Inc., an Arizona non-profit corporation.

My Commission Expires:
April 14, 2017

Jessica Strauss
Notary Public

STATE OF ARIZONA)
) ss.
COUNTY OF PIMA)



JESSICA STRAUSS
Notary Public - Arizona
Pima County
Expires 04/14/2017

The foregoing instrument was acknowledged before me this 27th day of May, 2014, by Marianne Berlan as the Secretary of El Conquistador Resort Patio Homes Association, Inc., an Arizona non-profit corporation.

My Commission Expires:
April 14, 2017

Jessica Strauss
Notary Public



JESSICA STRAUSS
Notary Public - Arizona
Pima County
Expires 04/14/2017

AMENDMENT A

To

**Article VI Section 6.06
(Assessments – Uniform Rate of Assessment)**

F. ANN RODRIGUEZ, RECORDER
Recorded By: MM
DEPUTY RECORDER
1787



SEQUENCE: 20153160322
NO. PAGES: 2
AMEN 11/12/2015
13:16
MAIL
AMOUNT PAID: \$10.00

W
EL CONQUISTADOR RESORT PATIO HOA
778 E CAMINO DIESTRO
ORO VALLEY AZ 85704

When recorded, return to:

El Conquistador Resort Patio Homes Association, Inc.
778 East Camino Diestro
Oro Valley, Arizona 85704

FIRST AMENDMENT TO SECOND RESTATED AND AMENDED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR EL CONQUISTADOR RESORT PATIO HOMES ASSOCIATION, INC.

(Amending Instrument Recorded in Instrument No. 20141480079)

WHEREAS Article VII, Section 7.02. of the Second Restated and Amended Declaration of Covenants, Conditions and Restrictions for El Conquistador Resort Patio Homes Association, Inc. ("Declaration"), states:

"This Declaration may be amended by an instrument in writing signed and acknowledged by the President and Secretary of the Association certifying that such amendment has been approved by the vote or written consent of the Owners of not less than two-thirds (2/3) of the Lots who shall be entitled to vote. Such amendment shall be effective upon its being recorded with the Pima County Recorder."

The Declaration is hereby amended to include the following:

Article VI, Section 6.06

Except as otherwise provided in this Declaration, all Assessments must be set at a uniform rate for all Lots. Owners have, and will continue to have, the option of paying Annual Assessments either annually (due on or before the first day in January), semi-annually (due on or before the first day of January and the first day of July) or quarterly (due on or before the first day of each calendar quarter). The Board may, at its discretion, offer a discount to those Owners who choose to pay the Annual Assessments in full in January. The decision to offer or not to offer the Annual Assessments discount and the amount of the discount (if any) shall be at the discretion of the Board each year. The Board will notify the Owners no later than December 1 of each year as to the uniform rate of Annual Assessment for the following year and whether or not the discount for full payment in January will be applied for the following year and, if so, the amount of such discount. All Owners have the option each year to pay the Annual Assessments annually, semi - annually or quarterly, subject to any applicable discount."

IN WITNESS WHEREOF, THE President and Secretary of the Association hereby certify that this First Amendment has been approved by the vote or written consent of the Owners of not less than two-thirds (2/3) of the Lots who shall be entitled to

vote, and have hereunto set their hands this 6 day of November, 2015.

[Signature]
Russell Case, President

[Signature]
Marianne Berlan, Secretary

STATE OF ARIZONA)
)ss
County of Pima)

The foregoing instrument was acknowledged before me this 06 day of November, 2015, by **Russell Case** and **Marianne Berlan**, President and Secretary, respectively, of the El Conquistador Resort Patio Homes Association, Inc., an Arizona nonprofit corporation, on behalf of said corporation.

Marni Bayes
NOTARY PUBLIC

My commission expires: 5-15-2017



MARNI BAYES
Notary Public - Arizona
Pima County
Expires 05/15/2017