



MEMORANDUM

Date: January 31, 2017

To: The Honorable Steve Christy, Member
Pima County Board of Supervisors

From: C.H. Huckelberry
County Administrator 

Re: **Questions Regarding the January 17, 2017 Board of Supervisors' Agenda Item #6 - Final Plat with Assurances, New Tucson Unit No. 5, Lots 27 through 31 and Common Area A**

Mr. Jay Janicek raised several concerns at the January 17, 2017 Board of Supervisors meeting related to the homeowners' association authority within the New Tucson development and whether the cost of their actions was being borne by the public. Development Services staff contacted Mr. Janicek following the Board meeting regarding his concerns. The issues presented to them by Mr. Janicek also included the following:

1. Concerns that the property owners in New Tucson (also known as Sycamore Vista) Unit No. 8 may be paying for improvements elsewhere in the New Tucson development.
2. Questions regarding authorities of the master homeowners' association and possible improprieties involving New Tucson (NT) Properties, LLC which holds promissory notes and may have an affiliation with the master association.
3. A lack of transparency regarding how the master homeowners' association is using assessment payments.
4. Concerns that the cost of a lawsuit to challenge possible improprieties would be too great for individual homeowners to bear.

Background

New Tucson contained several sections of land platted in the mid-1960s. The plats were approved prior to modern consumer protections, leaving many property owners without adequate roads or utilities to serve their lots. In the early-2000s, new development entities purchased a majority of lots in the subdivision, becoming the substitute developer and establishing control of homeowners' associations of various New Tucson Units. The majority owners became the controlling entity of the New Tucson Unit No. 8 Homeowners' Association even though the development contained minority owners owning individual lots.

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Unsure of the Unit No. 8 Homeowners' Association standing as a developer, Pima County denied permits for subdivision improvements until there was a demonstration of 100 percent consent amongst the lot owners within the subdivision. This action gave rise to a 2004 court case regarding New Tucson Unit No. 8. The Unit No. 8 Association sued Pima County over its denial and asserted its ability to act on behalf of all lot owners. The court ordered that Pima County must issue the permits and that the New Tucson Unit No. 8 Homeowners' Association had the required authority to act on behalf of the property owners (Attachment A).

In January 2004, the New Tucson Master Homeowners Association was formed comprised of various individual homeowners' associations within New Tucson. In 2009, the New Tucson Master Homeowners' Association name was changed to the Sycamore Vista Master Homeowners' Association (SVMHOA). In January 2016, a Sycamore Vista Master Association Agreement was executed by the SVMHOA and each of the member associations (Attachment B). The SVMHOA President is also the President of the individual associations that comprise the master association. Included in the Master Association Agreement are provisions for payment of assessments. Exhibit A to the Agreement specifies the purpose of the Master Association, including causing to be constructed all improvements to roadways, utilities, drainageways, etc. At the time the Master Association Agreement was executed, promissory notes were executed by the SVMHOA to NT Properties, LLC (Attachment C). The current President of the SVMHOA and its member associations was the manager of NT Properties, LLC at the time of its incorporation in 2008. The NT Properties, LLC manager was changed in 2016.

Conclusion

Pima County has the authority to review and approve subdivision plats. Plat approvals are a ministerial act by the Board of Supervisors, meaning the County must approve the plat if it meets all adopted County requirements. An assurance agreement puts the platted lots into a third-party trust preventing the sale of lots without County authorization. The County authorizes the trust to release lots for sale only upon County inspection and approval of the improvements. Beyond this role, Pima County does not have authority over homeowners' associations, their Covenants, Conditions & Restrictions (CCRs), assessments or actions unless they violate County requirements, which has not occurred. Furthermore, the previous Court ruling has rendered the County unable to prevent the actions of the subject homeowners' associations related to the construction and financing of subdivision improvements. Lastly, the assertion that the public is bearing the cost of improvements in the development is invalid, since the assessments are being applied to lot owners within the development who benefit from the improvements, not the general public.

Notwithstanding, Mr. Janicek may pursue any remedies available in law. Additionally, he may be able to pursue a complaint with the Arizona Department of Real Estate. In 2011, the

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Arizona Legislature passed legislation providing Arizona homeowners and planned community associations a venue for resolving disputes as an alternative to costly litigation. The Department of Real Estate dispute resolution process can be found at their website. <http://www.re.state.az.us/HOA/HOA.aspx>

CHH/anc

Attachments

c: The Honorable Chair and Members, Pima County Board of Supervisors
Carmine DeBonis Jr., Interim Deputy County Administrator for Public Works
Nanette Slusser, Assistant County Administrator for Public Works
Carla Blackwell, Interim Director, Development Services

FILED

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PATRICIA A. HOLLAND
CLERK, SUPERIOR COURT
BY R. Schora
DEPUTY

1 David A. McEvoy
2 ASB No. 007599 PCC No. 37524
3 McEVOY, DANIELS & DARCY, P.C.
4 4560 East Camp Lowell Drive
5 Tucson, Arizona 85712
6 520-326-0133

7 Attorney for Plaintiff

8 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

9 **IN AND FOR THE COUNTY OF PIMA**

10 NEW TUCSON UNIT NO. 8 HOMEOWNERS)
11 ASSOCIATION, INC., an Arizona non-profit)
12 corporation,)

13 Plaintiff,)

14 vs.)

15 PIMA COUNTY, a political subdivision of the)
16 State of Arizona,)

17 Defendant.)

C20041194

Case No.: _____

**COMPLAINT AND APPLICATION
FOR ORDER TO SHOW CAUSE**

(Declaratory Relief)

Assigned to the Honorable

JANE L. EIKLEBERRY

18 Plaintiff, by and through its attorneys, alleges as follows:

- 19 1. Plaintiff is an Arizona non-profit corporation duly organized and operating in Pima County, Arizona.
- 20 2. Defendant is a political subdivision of the State of Arizona.
- 21 3. This Court has jurisdiction over the subject matter of this controversy, and venue is appropriate in Pima County, Arizona.
- 22 4. At all material times herein, Plaintiff was and is the residential community association with respect to and having jurisdiction over that certain residential real property subdivision located in Pima County, Arizona, known as New Tucson Unit No. 8 ("Subdivision").

McEVOY, DANIELS & DARCY, P.C.

LAWYERS

4560 EAST CAMP LOWELL DRIVE

TUCSON, ARIZONA 85712

PH: 520-326-0133 ♦ FAX: 520-326-5938

PAID

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1 5. The Subdivision originally was subject to that certain New Tucson Unit No. 8
2 Declaration of Restrictions, as recorded on September 24, 1964, in Book 2336, commencing
3 at page 108, in the official records of Pima County, Arizona, as amended by that certain New
4 Tucson Unit No. 8 Amended Declaration of Restrictions, as recorded on or about September
5 30, 1964, in Book 2347, commencing at page 155, in the official records of Pima County,
6 Arizona (collectively, "Original CC&Rs"). Among other things, the Original CC&Rs
7 provided that they were established to create "a general plan for the improvement . . . of the
8 above described property, . . . and may be revised or amended at any time by the vote of the
9 owners of a majority of the lots situate in NEW TUCSON NO. 8." A copy of the Original
10 CC&Rs is attached hereto as Exhibit "A" and is incorporated herein by this reference.

11 6. Pursuant to the Original CC&Rs and after Plaintiff had complied with all
12 applicable notice to lot owners and other due process requirements, the owners of more than
13 a majority of the lots within the Subdivision voted to approve amendments to the Original
14 CC&Rs, which amendments are contained in that certain Second Amended Declaration of
15 Covenants, Conditions and Restrictions for New Tucson Unit No 8 Lots 1-454 and Common
16 Area being a Subdivision Recorded at Book 17 Page 84 of Maps and Plats in the Office of
17 the Pima County Recorder, Pima County, Arizona, as recorded on November 1, 2002, in
18 Docket 11918, commencing at page 92, in the official records of Pima County, Arizona
19 ("New CC&Rs"). Among other things, the New CC&Rs provide that Plaintiff and its
20 representatives, assigns and agents shall have the right to enter upon each lots "for the
21 purpose of performing any engineering or the construction of any on or offsite improvement
22 or improvements" Section 10.2, page 18 of the New CC&Rs. That right is granted to
23 Plaintiff in recognition that "[o]ne of the primary purposes of this Declaration is to provide
24 for engineering, construction, improvement and maintenance of roadways, utilities,
25 drainageways, equestrianways, easements and any necessary improvements to the residential
26 Lots and Common Area of the property, as well as development, sale, maintenance,

1 preservation and architectural control of residential Lots and Common Area within the Real
2 Property." Section 10.1, pages 17 and 18 of the New CC&Rs. Moreover, the New CC&Rs
3 expressly state that Plaintiff "will: (1) construct, improve and maintain roadways,
4 thoroughfares, alleys and equestrianways within and without the Real Property; (2) install,
5 construct and improve utilities, including, but not limited to, sewer systems, water systems,
6 electrical, telephone, natural gas and cable within and without the Real Property; (3) install,
7 construct, improve and maintain drainageways, retention/detention basins, drainage control
8 structures or devices and any improvements necessary for the provision of adequate drainage
9 within and without the Real Property; (4) construct, improve and maintain any
10 landscape/drainage easements, certain drainage structures, certain easements, and certain
11 rights-of-way; (5) establish, levy, collect and disburse the Assessments and other charges
12 imposed hereunder; and (6) as the agent and representative of the Members of the
13 Association and Residents of the Real Property, administer and enforce all provisions hereof
14 and enforce use and other restrictions imposed on the Real Property; and" A copy of the
15 New CC&Rs is attached hereto as Exhibit "B" and is incorporated herein by this reference.
16 The New CC&Rs completely replace the Original CC&Rs, constitute an enforceable contract
17 under Arizona law and encumber the Subdivision.

18 7. Plaintiff is the "Association" defined in the New CC&Rs, in such capacity, has
19 the responsibility and authority to perform the engineering and construction activities
20 contemplated by the New CC&Rs.

21 8. In that regard, Plaintiff submitted to Defendant certain documents and
22 information requesting that Defendant issue required governmental permits to allow Plaintiff
23 to engage in such construction activities authorized by the New CC&Rs. A copy of Plaintiff's
24 February 24, 2004, letter to Defendant is attached hereto as Exhibit "C" and is incorporated
25 herein by this reference.
26

1 9. In response to that request by Plaintiff, Defendant wrote a letter to Plaintiff dated
2 March 2, 2004, indicating that Defendant would not issue the requested governmental
3 permits unless all, and not merely a majority, of the owners of lots within the Subdivision
4 were to make such request by signing Plaintiff's permit application, and inviting Plaintiff to
5 seek and obtain a declaration from this Court that Plaintiff, in fact, has the required authority
6 to proceed on behalf of the lot owners as the New CC&Rs provide. A copy of Defendant's
7 March 2, 2004, letter to Plaintiff is attached hereto as Exhibit "D" and is incorporated herein
8 by this reference.

9 10. Plaintiff hereby incorporates all allegations set forth above.

10 11. Plaintiff is entitled to an order issued by this Court declaring that the relevant
11 provisions of the New CC&Rs are valid and enforceable, as written, and accordingly that
12 Plaintiff has the required authority to proceed on behalf of the lot owners in connection with
13 the planned engineering and construction activities.

14 WHEREFORE, Plaintiff respectfully requests that this Court immediately issue an
15 Order ordering Defendants to appear before it on a date and time certain, then and there to
16 show cause, if any, why judgment should not be entered against them and in favor of Plaintiff
17 as follows:

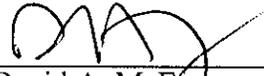
18 A. That this Court declare that the relevant provisions of the New CC&Rs are
19 valid and enforceable, as written, and accordingly that Plaintiff has the required authority to
20 proceed on behalf of the lot owners in connection with the planned engineering and
21 construction activities.

22 B. For such other and further relief as this Court deems just and appropriate
23 under the circumstances.

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DATED this 5th day of March, 2004.

McEVOY, DANIELS & DARCY, P.C.

By: 
David A. McEvoy
Attorney for Plaintiff

McEVoy, DANIELS & DARCY, P.C.

LAWYERS

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VERIFICATION

STATE OF ARIZONA)
) ss.
COUNTY OF PIMA)

Jeffrey S. Utsch, being first duly sworn upon oath, deposes and says:

1. I am the President of New Tucson Unit No. 8 Homeowners Association, Inc., the Plaintiff herein.

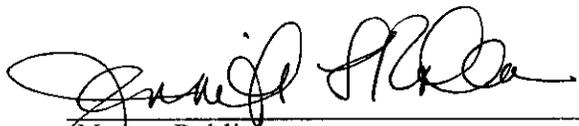
2. I have read the foregoing Complaint, and know the contents thereof; that the same is true of my personal knowledge, except as to those statements therein made upon information and belief, and as to those, I believe them to be true.

DATED this 4th day of March, 2004.

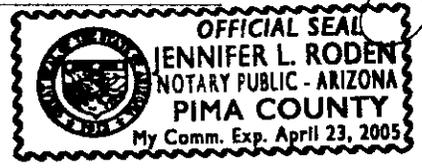


Jeffrey S. Utsch

SUBSCRIBED AND SWORN to before me this 4th day of March, 2004, by Jeffrey S. Utsch.

My Commission Expires: 

Notary Public



—

A

Unit #8

BEST AVAILABLE COPY

NEW TUCSON UNIT 8
DECLARATION OF RESTRICTIVE COVENANTS
BEST COPY

ARIZONA LAND TITLE AND TRUST COMPANY, as Trustee under Trust No. 1042-2, being the owner of the property situated in NEW TUCSON NO. 8, a Subdivision of Pima County, Arizona, consisting of Lots 1 through 455, both inclusive, of NEW TUCSON NO. 8, according to the Plat of record in the Office of the County Recorder, Pima County, Arizona, in Book 17 of Maps and Plans at Page 84 thereof,

In order to establish a general plan for the improvement, development, ownership, use, and sale of the above described property, we hereby subject the above described property to the following conditions, restrictions, and covenants, which shall run with the land and shall be binding on all present owners, and may be revised or amended at any time by the vote of the owners of a majority of the lots situated in NEW TUCSON NO. 8. Where more than one person owns a lot, or interest thereon, the concurrence of all such owners shall be necessary to entitle the owners of such lot to vote for such amendment or modification; and

THAT all of Lots 1 through 455, both inclusive, shall be subject to the following Restrictive Covenants, all of which are and shall be construed as Restrictive Covenants running with the title to said premises, and with each and every lot, part and parcel thereof, to wit:

1. No building except one single family residential dwelling and a private garage, carport, or servants' quarters, for use in connection with such dwelling, shall be erected, maintained, or permitted on any lot or portion thereof. No dwelling shall be used except as a single family dwelling.
2. No dwelling shall be erected upon any lot unless such dwelling contains at least eight hundred (800) square feet of enclosed living area floor space. The term living area floor space is exclusive of floor space in porches, pergolas, garages, carports, and servants' quarters. All buildings shall be constructed of brick, cement block, or other substantial construction. No more than one dwelling shall be built on any one lot.
3. No house trailer and no temporary or permanent building of any nature detached from the building shall be built, erected, placed, or maintained on any lot, provided, however, that a detached garage or carport limited in size to three-car capacity, or a detached garage or carport with servants' quarters attached, may be erected upon any lot, but such servants' quarters shall be used only by servants who are employed in the dwelling erected upon the same lot where such servants' quarters are located. No garage, carport, or servants' quarters shall be commenced or erected on any lot until construction of the dwelling, complying with these Restrictions, shall have been commenced. All buildings shall be of the same or similar style as that of the dwelling erected or being erected on the lot on which said buildings are located.
4. No commercial or business operation, other than arts, crafts, or professions operated solely by the members of the family occupying the dwelling, shall be conducted on any lot, and no exterior advertising is permitted.
5. No animals or fowl, other than ordinary household pets commonly housed in a residence, shall be kept, maintained, or bred on the property or any portion thereof.
6. The present CR-3 zoning ordinances of the Pima County, Arizona Zoning Board, as to regulation of front line, side line or side street, set-back limitations are herewith by reference incorporated herein and made a part hereof. In the event that such present ordinances are in the future changed to allow closer or shorter set-back limitations, the present limitations shall continue as to these restrictions.
7. No temporary building shall be moved or placed upon or otherwise maintained on any lot, provided, however, that a temporary office, tool

BOOK 2036 PAGE 108

9276

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shed, saw shed, lumber shed, and sales office may be maintained upon any lot or lots by any building contractor for the purpose of erecting and selling dwellings on any lot or lots; but such temporary structures shall be removed at completion of construction or selling of dwellings, whichever is later. No "For Sale" sign shall be placed on any lot except as approved by the Architectural Control Committee.

8. All clotheslines, equipment, service yards, wood piles, or storage piles shall be kept screened by adequate planting, fences, or walls, so as to conceal them from view of neighboring lots, streets, or golf course property. All rubbish, trash, or garbage shall be removed from the lot and shall not be allowed to accumulate thereon and shall not be burned except by use of incinerator, and then only during the hours so specified by the governing authority.
9. No building shall be erected, placed, or altered on any lot until the construction plans and specifications and a plan showing the location of the structure on the lot have been approved by the Manager of the Andrada-Corona Joint Venture or by the Architectural Control Committee, as the case may be, as to color, quality of materials and harmony of external design with existing structures. No fence or wall or structure shall be erected, placed, or altered on any lot unless specifically approved as to location, height, and materials.
10. The Manager of the Andrada-Corona Joint Venture, or the successors of its interest as developers only, may, at any time hereafter, constitute and appoint an Architectural Control Committee, which shall include not less than three (3) resident owners of lots included in the foregoing description, for the purpose of giving the approvals herein required. In such event, the Manager of the Andrada-Corona Joint Venture shall establish such rules, regulations, and by-laws for the Committee as will assure the existence and continuity of such Committee for the purpose of giving such approvals.
11. The approval or disapproval, as required in these covenants, shall be in writing. In the event the Manager of the Andrada-Corona Joint Venture or the Architectural Control Committee, as the case may be, fails to approve or disapprove within thirty (30) days after plans and specifications have been submitted on it, approval will not be required and the related covenants shall be deemed to have been fully complied with.
12. If the undersigned or any subsequent owner or any portion of said property shall violate, or attempt or threaten to violate, any of the covenants or restrictions herein contained during the term hereof, then the undersigned, or any other person or persons owning any portion of said property, may prosecute by law or bring proceedings against any person or persons violating, or threatening or attempting to violate, any such covenants or restrictions, and against such person or persons from such violations, or such threatened or attempted violation, and all costs of such action or proceedings, including a reasonable attorney's fee, shall be chargeable to and assessed against the person or persons who have violated, or threatened or attempted to violate, any of these covenants or restrictions, provided, however, that a violation of these restrictive covenants or any one or more of them, shall not affect the lien of any mortgage now of record, or which hereafter may be place of record, upon said lots or any part thereof.

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IN WITNESS WHEREOF, the undersigned has caused these presents to be executed this 22nd day of September, 1964.

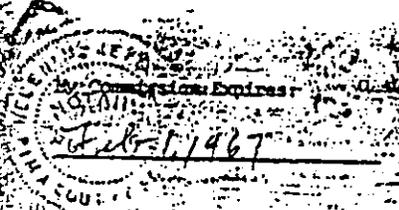
ARIZONA LAND TITLE AND TRUST COMPANY,
an Arizona Corporation, as Trustee
under Trust No. 5602-T.

By: *[Signature]*
Authorized Officer

STATE OF ARIZONA)
)ss.
COUNTY OF PIMA)

Before me, on this 22nd day of September, 1964, personally appeared SIDNEY NELSON, authorized officer for the ARIZONA LAND TITLE AND TRUST COMPANY, known to me to be the authorized officer for the ARIZONA LAND TITLE AND TRUST COMPANY, who acknowledged to me that he executed the foregoing instrument as such officer, as the voluntary act and deed of said company.

[Signature]
Notary Public



BY 2336 RE 110

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INDEXED
FILED
SEP 24 1964
PIMA COUNTY ARIZONA
By *[Signature]*
Notary Public

STATE OF ARIZONA
COUNTY OF PINA

I hereby certify that the within
instrument was filed for record
in Pima County, State of Arizona
ANNA SULLIVAN
County Recorder

No. 76057
Book 2347 Page 155
Date
August 11 1964
8/175

Indexed	Filed	Noted
		CP

James J. Mc...
Deputy

AMENDED DECLARATION OF RESTRICTIONS
NEW TUCSON SUBDIVISION

BEST COPY

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ARIZONA LAND TITLE AND TRUST COMPANY, as Trustee under Trust No. 5002-T, being the owner of all of the property situated in NEW TUCSON NO. 6, a subdivision of Pima County, Arizona, having heretofore filed a Declaration of Restrictions affecting said property, which Declaration of Restrictions was recorded September 24, 1964 in Docket Book 2336 at Page 108 in the office of the County Recorder of Pima County, Arizona, hereby amends said Declaration of Restrictions by excluding therefrom Lot 45, as the same is shown on the recorded plat thereof by amending the third paragraph of the said Declaration of Restrictions which reads as follows:

"THAT all of Lots 1 through 454, both inclusive shall be subject to the following restrictive covenants, all of which are and shall be construed as restrictive covenants running with the title to the said premises, and with each and every lot, part and parcel thereof, to wit:

To be amended to read as follows:

"THAT all of Lots 1 through 454, both inclusive, shall be subject to the following restrictive covenants, all of which are and shall be construed as restrictive covenants running with the title to the said premises, and with each and every lot, part and parcel thereof, to wit:

IN WITNESS WHEREOF the undersigned has caused these presents to be executed this 30th day of September, 1964.

ARIZONA LAND TITLE AND TRUST COMPANY,
an Arizona Corporation, as Trustee
under Trust No. 5002-T.

By *[Signature]*
Authorized Officer

STATE OF ARIZONA)
COUNTY OF PINA) ss.

Before me, on this 30th day of September, 1964, personally appeared GREY ROPI, authorized Officer for the ARIZONA LAND TITLE AND TRUST COMPANY, known to me to be the Officer for the ARIZONA LAND TITLE AND TRUST COMPANY and who acknowledged to me that he executed the foregoing instrument, as such Officer, as a voluntary act and deed of said Company.

My Commission Expires:
February 1, 1967

BOOK 2347 PAGE 155



B

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F. ANN RODRIGUEZ, RECORDER
RECORDED BY: YRN
DEPUTY RECORDER
5131 PE2



DOCKET: 11918
PAGE: 92
NO. OF PAGES: 28
SEQUENCE: 20022120029
11/01/2002
ARSTR 10:47

W
JEFFREY M NEFF
6375 E TANQUE VERDE STE 130
TUCSON AZ 85715

MAIL

AMOUNT PAID \$ 36.00

Requested by and return to:
Jeffrey M. Neff
Attorney at Law
6375 E. Tanque Verde, Suite 130
Tucson, Arizona 85715

**SECOND AMENDED DECLARATION OF
COVENANTS, CONDITIONS, AND RESTRICTIONS FOR
NEW TUCSON UNIT NO 8
LOTS 1-454 AND COMMON AREA
BEING A SUBDIVISION
RECORDED AT BOOK 17 PAGE 84 OF MAPS AND PLATS
IN THE OFFICE OF THE PIMA COUNTY RECORDER,
PIMA COUNTY, ARIZONA**

12-06-02

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SECOND AMENDED DECLARATION OF COVENANTS, CONDITIONS,
AND RESTRICTIONS FOR
NEW TUCSON UNIT NO 8
LOTS 1-454 AND COMMON AREA
BEING A SUBDIVISION
RECORDED AT BOOK 17 PAGE 84 OF MAPS AND PLATS
IN THE OFFICE OF THE PIMA COUNTY RECORDER,
PIMA COUNTY, ARIZONA

This SECOND AMENDED DECLARATION of Covenants, Conditions and Restrictions ("Declaration") is made this 17 day of OCTOBER, 2002, by the undersigned majority of lot owners.

WITNESSETH:

WHEREAS, the undersigned are the Owners of the majority of Lots in Tucson, Arizona, known as and described as follows:

New Tucson Unit No 8 Lots 1-454 and Common Area being a Subdivision recorded at Book 17 Page 84 of Maps and Plats, in the Office of the Pima County Recorder, Pima County, Arizona.

hereinafter referred to as "the Real Property."

WHEREAS, the undersigned Owners, have or will create the corporate organization of the Association;

WHEREAS, the undersigned Owners hereby subject the Real Property to the Covenants;

WHEREAS, the undersigned owners desire to amend the CCRs for the purposes set forth herein, all of which will benefit the general plan of development of the Real Property, the Owners, and the Residents, and the Association will: (1) construct, improve and maintain roadways, thoroughfares, alleys and equestrianways within and without the Real Property; (2) install, construct and improve utilities, including, but not limited to, sewer systems, water systems, electrical, telephone, natural gas and cable within and without the Real Property; (3) install, construct, improve and maintain drainageways, retention/detention basins, drainage control structures or devices and any improvements necessary for the provision of adequate drainage within and without the Real Property, (4) construct,

ARTICLE 4.
PROPERTY RIGHTS

Section 4.1 Owners' Easements of Enjoyment. Every owner shall have a right and easement of enjoyment in and to the Common Areas, which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(1) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Areas;

(2) the right of the Association to suspend the voting rights and right to use of the recreational facilities by an owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations; as established by the Board of Directors;

(3) the right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by Lot owners of a majority of Lots has been recorded;

(4) if ingress or egress to any residence is through the Common Areas, any conveyance or encumbrance of such area is subject to the Lot owner's easement.

Section 4.2 Delegation of Use. Any owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

Section 4.3 Common Areas (and private easements), as shown hereon are reserved for the private use and convenience of all owners of property within this Real Property and are granted as easements to Pima County, the City of Tucson, and all utility companies for the installation and maintenance of aboveground and underground utilities and public sewers.

ARTICLE 5.
COVENANT FOR REGULAR DUES AND SPECIAL ASSESSMENTS

Section 5.1 Creation of the Lien and Personal Obligations.

Except as otherwise provided for herein, each Owner, by acceptance of a Deed to any Lot, whether or not it shall be expressed in the deed to his/her Lot, is deemed to covenant and agree to pay to the Association: (a) regular dues;(b) special assessments; and (c) any unpaid arrears in regular dues or special assessments that may be due on the date of said Owner's acceptance of a Deed to any Lot or Lots; such regular dues and special assessments to be established and collected as hereinafter provided. The regular dues and special assessments, together with interest, costs and reasonable attorneys' fees, shall be a charge on each Lot and shall be a continuing lien upon the Lot against which such regular dues and special assessments are levied. Such regular dues, special assessments and any unpaid arrears, together with interest and costs, including reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the regular dues and special assessments fell due.

Section 5.2 Purpose of Regular Dues and Special Assessments.

The regular dues and special assessments levied by the Association shall be used exclusively for the purpose of enhancing and protecting the value, desirability, and attractiveness of the Property, including, but not limited to, engineering, construction, improvement and maintenance of roadways, utilities, drainageways, equestrianways, easements and any necessary on or off site improvements to the residential Lots and Common Areas.

Section 5.3 Dues.

(1) The annual dues for the calendar year 2003 (January 1 through December 31) shall be established by the Board of Directors.

(2) The due dates, terms of payment and place of payment shall be established by the Board of Directors.

(3) Within ninety (90) days prior to the end of each calendar year, the amount of dues shall be set by the Board of Directors of the Association at an amount not more than five (5%) percent, or the increase in the Consumer Price Index (or any comparable successor index) plus three (3%) percent, whichever amount is greater, above the amount for the previous year without a vote of the membership, excepting the first year, when that assessment shall be set by the Board of Directors of the Association.

regular dues shall bear interest at an interest rate which may be set by the Board of Directors, not to exceed eighteen (18%) percent per annum. Late payments shall first be credited towards interest due, then towards regular dues, then special assessments. Special Assessments shall be due and bear interest as set forth in Section 5.4, above. In the event the Association employs an attorney for collection of any regular dues or special assessments, whether by suit or otherwise, or to enforce compliance with or specific performance of the terms and condition of this Declaration, or for any other purpose in connection with the breach of this Declaration, each Owner agrees to pay reasonable attorneys' fees and costs thereby incurred, in addition to any other amounts due or any other relief or remedy obtained against said Owner. In the event of a default in payment of any such regular dues or special assessments when due, in which case the regular dues or special assessments shall be deemed delinquent, and in addition to any other remedies herein or by law provided, the Association may enforce each such obligation in the manner provided by law or in equity, or without any limitation to the foregoing, by either or both of the following procedures:

(1) Enforcement by Suit. The Board may cause a suit at law to be commenced and maintained in the name of the Association against an Owner to enforce each regular dues or special assessment obligation. Any judgment rendered in any such action shall include the amount of the delinquency until paid, court costs, and reasonable attorneys' fees in such amount as the Court may adjudge against the delinquent Owner or Member.

(2) Enforcement by Lien. There is hereby created a right to record a claim of lien on each and every Lot to secure payment to the Association of any and all assessments levied against any and all Owners together with interest thereon from the date of delinquency until paid, and all costs of collection which may be paid or incurred by the Association in connection therewith, including reasonable attorneys' fees and costs. At any time after occurrence of any default in the payment of any such regular dues or special assessment, the Association, or any authorized representative may, but shall not be required to, make a written demand for payment to the defaulting Owner, on behalf of the Association. Said demand shall state the date and amount of delinquency. Each default shall constitute a separate basis for demand or claim of lien but any number of defaults may be included within a single demand or claim of lien. If such delinquency is not paid within ten (10) days after delivery of such demand, or, even without such a written demand being made, the Association may elect to record a claim of lien on behalf of the Association against the Lot of the defaulting Owner. Such a claim of lien shall be executed and acknowledged by any officer of the Association, shall be recorded in the office of the

County Recorder for Pima County, Arizona, and shall contain substantially the following information:

- (a) The name of the delinquent Owner;
- (b) The legal description of the Lot against which claim of lien is made;
- (c) The total amount claimed to be due and owing for the amount of the delinquency, interest thereon, collection costs, and reasonable attorneys' fees and costs (with any proper offset allowed);
- (d) A statement that the claim of lien is made by the Association pursuant to this Declaration;
- (e) A statement that a lien is claimed against said Lot in an amount equal to the amount stated; and
- (f) A statement that the claim of lien will also extend to all regular dues or special assessments which became due but are not paid from the date of the recording of the claim of lien to the date of payment of all amounts set forth therein (including interest thereon, reasonable attorneys' fees, costs and collection), and that the claim of lien will only be deemed satisfied and released when the Owner is current in the payment of all such amounts.

Upon recordation of a duly executed original or copy of such a claim of lien, the lien claimed therein shall immediately attach and become effective in favor of the Association as a lien upon the Lot. A copy of such lien shall be mailed to the Owner. Such a lien shall have priority over all claims of lien created subsequent to the recordation of the claim of lien thereof, except only tax liens for real property taxes on any Lot, or assessments on any Lot in favor of any municipal or other governmental assessing unit.

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

objection to the enforcement and foreclosure of such lien in this manner. The failure to pay assessments shall not constitute a default under an insured mortgage.

In the event that the Association purchases or holds a Lot which it has acquired in order to protect its lien, the Association shall list such Lot for sale with an independent, third-party real estate Broker.

Section 5.8 Non-Subordination of the Lien to Mortgagees. The lien for dues and special assessments provided for herein, including, without limitation, any fees, costs, late charges, or interest which may be levied by the Association in connection with unpaid assessments shall not be subordinate to the lien of any first mortgage. Each Owner waives all statutory or common law provisions that would otherwise create a subordination of the lien for dues or a special assessment to the lien of a first mortgage. Sale or transfer of any Lot shall not affect the dues and/or special assessment lien. The sale or transfer of any Lot pursuant to foreclosure of a first mortgage or a trustee's sale pursuant to power of sale of a first deed of trust or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture of an executory land sales contract, shall not extinguish the lien of such dues and special assessments. No such sale, transfer, foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure, nor cancellation or forfeiture of such executory land sales contract shall relieve such Lot from liability for any dues or special assessments thereafter becoming due or from the lien thereof and such lien for dues or special assessments shall maintain its priority as a first position lien upon the property. In the event of foreclosure of a first mortgage or the taking of a deed in lieu thereof, such first mortgagee shall be fully liable for all unpaid assessments or other charges which accrued prior to the acquisition of title to the Lot in question by such first mortgagee as well as all accruing charges.

ARTICLE 6. ARCHITECTURAL CONTROL

Section 6.1 Composition of Committee. All building plans for any residence, building, swimming pool, wall, fence, coping, or other structure whatsoever to be erected on or moved upon any Lot or any part of any Lot, and the proposed location thereof on any Lot, and the exterior color scheme thereof, and any changes after approval thereof, and any remodeling, reconstruction, alteration, or additions to any building or other structure on any Lot shall be subject to approval in writing of an architectural committee appointed by the Directors of the Association. The architectural committee may establish a reasonable fee to cover services in studying

the plans and specifications submitted and for inspecting the Lot and such fee shall be paid by the Owner at the time such plans are submitted for approval.

Section 6.2 Review by Committee. Before the Owner of any Lot shall commence the construction, installation, or alteration of any residence, building, swimming pool, patio wall, fence, coping, or other structure whatsoever on any Lot, such Owner shall submit to the architectural committee two complete sets of plans, specifications and construction details for said structure showing the nature, kind, shape, height, materials, exterior color scheme, location, and approximate cost of such structure and the grading of the Lot to be built upon. No structure of any kind shall be erected, altered, placed, or maintained upon any Lot unless and until the plans, specifications, and construction details therefor shall have received the written approval of said architectural committee.

Section 6.3 Procedures. The architectural committee shall either approve or disapprove said plans, specifications, and construction details within thirty (30) days from the receipt thereof. One set of said plans, specifications, and construction details with the architectural committee's approval or disapproval endorsed thereon shall be delivered to the person submitting said plans, specifications, and construction details to the architectural committee and the other copy thereof shall be retained by the Association. If said architectural committee shall fail, in writing, to approve or disapprove of such plans, specifications, and construction details within thirty (30) days after the delivery thereof and no action has been instituted to enjoin the doing of the proposed work, the provisions of this Section shall be deemed waived. The architectural committee shall have the right to disapprove any plans, specifications, and construction details submitted as aforesaid if such plans, specifications, and construction details are not in accordance with all of the provisions of this Amended Declaration or if, in the opinion of the architectural committee, the site, design, or color scheme of the proposed building or other structure is not in harmony with the general surroundings of such Lot or with the adjacent buildings or structures, or if the plans, specifications, and construction details submitted are incomplete. The decision of such architectural committee shall be final.

Section 6.4 Liability. Neither the Association nor any architectural committee of the Association shall be responsible in any way for any defects in any plans, specifications, and construction details submitted in accordance with the foregoing, nor for any structural defects in any building or structure erected according to such plans, specifications, and/or construction details.

Section and, in order to promote uniformity and harmony of appearance, the Board may also cause the Association to contract to provide maintenance services to Owners of Lots having such responsibilities in exchange for the payment of such fees as the Association and Owner may agree upon.

Section 7.4 Assessment of Certain Costs of Maintenance and Repair. In the event that the need for maintenance or repair of Landscape Easements and other areas maintained by the Association is caused through the wilful or negligent act of any Owner, his family, guests, invitees or designees, the cost of such maintenance or repairs will be added to and become a part of the Assessment to which such Member and the Member's Lots are subject and will be secured by the Assessment Lien; provided that, to the extent permitted by applicable law, absolute liability (that is, without fault or negligence) is not imposed on Owners for damage to the Common Areas, Landscape Easements or Lots. Any charges or fees to be paid by the Owner of a Lot pursuant to this Section in connection with a contract entered into by the Association with the Owner for the performance of an Owner's maintenance responsibilities will also become a part of such Assessment and will be secured by the Assessment Lien for Regular Dues.

ARTICLE 8. USE RESTRICTIONS

Section 8.1 Private Residential Purposes. Each and every Lot shall be used for private residence purposes only, and no structure whatsoever other than the one private, one-family residence, together with private garage, guest house, and the necessary outbuildings shall be erected, placed or maintained on any Lot. No store or other place of business of any kind, other than a professional office which does not create traffic; no hospital, sanatorium or other place for the care or treatment of the sick or disabled, physically or mentally; nor any theater, bar, or other place of entertainment; nor any church, organization headquarters, meeting place, or assembly hall, shall ever be erected or permitted upon any of the Lots or any part thereof, and no business of any kind or character whatsoever shall be conducted in or from any residence on the Lots. This section is subject to the exceptions enumerated in Section 8.5, below.

Section 8.2 Minimum Floor Area. The principal residence shall have a minimum fully enclosed floor area devoted to living purposes, exclusive of porches, terraces, garage, and servant quarters of one thousand two hundred (1,200) square feet.

in or kept screened by adequate planting, walls, or other means in such manner as to conceal them from the view of streets or public ways.

Section 8.9 Automobile Repair. No trucks, cars, recreational vehicles, boats, motor homes, or any other vehicle or means of conveyance shall be disassembled, overhauled, painted, or otherwise maintained or repaired within the view of any neighboring Lot, street, or in public view. No inoperative vehicle or other means of transportation shall be parked or stored within the view of any neighboring Lot, street, or in public view.

ARTICLE 9. EASEMENTS

Section 9.1 Blanket Easement. An easement and right-of-way in perpetuity is hereby reserved for the benefit of all Lots in the Real Property for the erection, construction, maintenance, and operation of pole lines with the necessary cross arms for wires for the transmission of electrical energy and for telephone lines and telegraph lines, for the laying and maintaining of pipes, mains, and conduits for the furnishing of water, gas, sewer service, or for other purposes, together with the right of entry for the purpose of installing, maintaining, and reading electric and water meters, together with the further right to the Association or any subsidiary, assignee, or successor thereof, to convey or lease the whole or any portion of such easement, right-of-way, and right of entry to any person or persons or to any corporation or municipal body over, under, along, across, upon and through the easements as shown on the Plat of said New Tucson Unit No. 8, as filed of record in the office of the County Recorder of Pima County, or any resubdivision of the Property as allowed by these CC & R's.

"Street" includes thoroughfares, drainageways, equestrianways, alleys and drainage easements shown on the Plat.

"Service installations" means pole lines (including wires), pipes, mains, conduits, and other appliances, whether similar or dissimilar, for which easements are reserved, as stated elsewhere in this Declaration, or which have been installed, or are used, or are intended for supplying (whether in a private capacity or as a public utility), water, gas, telephone, electric, power, television, and sewer service at or to the Property or any Lot within the Real Property.

When any land within the Real Property is conveyed subsequent to recording this Declaration, there shall be deemed to have been reserved and/or excepted from

development, sale, maintenance, preservation and architectural control of residential Lots and Common Area within the Real Property.

Section 10.2 Right of Entry & Right to Apply for Permits and Approvals. The Association and its representatives, assigns or agents shall have the right of entry on to each lot in the Real Property for the purpose of performing any engineering or the construction of any on or offsite improvement or improvements , the maintenance of roadways, utilities, drainageways, equestrianways, easements and any necessary on or offsite improvements to the residential Lots and Common Areas of the Real Property, as well as sale, maintenance, preservation and architectural control of residential Lots and Common Area within the Real Property.

The Association is hereby appointed the Agent of the Owners for the purpose of applying for any and all licenses, permits or approvals required by any and all private or governmental agencies for the purpose of improving the Lots as provided for by this Article or as otherwise provided by this Declaration.

ARTICLE 11. GENERAL PROVISIONS

Section 11.1 Enforcement.

(1) All provisions, conditions, restrictions, and covenants herein shall be binding on all Lots and parcels of real estate and the Owners thereof, regardless of the source of title of such Owners, and any breach thereof, if continued for a period of thirty (30) days from and after the date that the Association or other Owners shall have notified in writing the Owner or occupant in possession of a Lot upon which such breach has been committed to refrain from a continuance of such action or to correct such breach, shall warrant the Association or any Lot Owner to apply to any court of law or equity having jurisdiction thereof for an injunction or other proper relief, and if such relief be granted the court may, in its discretion, award to the plaintiff in such action his/her/its reasonable expenses in prosecuting such suit, including attorneys' fees and costs.

(2) Notwithstanding anything which may be contained herein to the contrary, any violation of the foregoing provisions, conditions, restrictions, or covenants which existed on the recording date of this Declaration shall be considered a breach hereof, and shall be subject to enforcement pursuant to this Declaration.

the Association, if one exists, certifying that such Amendment has been approved by the vote or written consent (with or without an Association meeting; subject, however, to the voting rights set forth herein) of the then Owners of a majority of the Lots, and such amendment shall be effective upon its recordation with the County Recorder of Pima County, Arizona.

Section 11.6 Transactions Requiring Prior Approval. Any annexation of additional properties, mergers and consolidations, mortgaging of the Common Areas, dedication of Common Areas, or amendment of the Declaration of Covenants, Conditions and Restriction shall require Federal Housing Administration or Veterans Administration prior approval.

Section 11.7 The Mortgaging of the Common Areas. The Common Areas cannot be mortgaged or conveyed without the consent of the Owners of a majority of the lots.

Section 11.8 Counterpart Signatures. This Declaration may contain more than one counterpart of the signature pages and may be executed by the affixing of the signature of each of the Owners to one of such counterpart signature pages and all such counterpart signature pages shall be attached to one Declaration and read having the same force and effect as though all the signatories had signed a single page.

IN WITNESS WHEREOF, the Owners have executed this Declaration the day, month, and year set forth next to their signatures on the attached counterpart signature page.

OWNERS OF MAJORITY OF LOTS:

Carl Pepper, Ltd., Profit Sharing Plan

By: *Carl Pepper*
TRUSTEE

Dated: 10-17-02

Lazy B Foods, Inc., Profit Sharing Plan

By: *Lazy B foods*

Dated: 10-23-02

Palatine Properties, L.L.C. *Alma Day* TRUSTEE

By: *[Signature]*
ITS MANAGING MEMBER

Dated: 10-17-02



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o

New Tucson Unit No. 8 Homeowners Association

1147 N. Howard Boulevard

Tucson, Arizona 85719

520.545.0108

Facsimile 520.545.0113

February 24, 2004

Mr. Carmine DeBonis
Director – Pima County Development Services
210 North Stone Avenue
Tucson, Arizona 85701

RE: New Tucson Unit 8 – Phase 1

Dear Carmine:

At your request I am resubmitting a package dated July 30, 2003, which includes a letter from Jeffrey Neff the attorney for New Tucson Unit 8 Homeowners Association and a full copy of the CC&R's. In addition, we have prepared an ownership list and map for your review.

Please note that Section 10.2 of the Second Amended CC&R's specifically designates the Association as agent for governmental permit purposes and also provides the Association a right of entry onto the individual lots to construct the improvements. These CC&R's have been duly ratified and adopted by a majority of the lot owners at a meeting of all lot owners. Mr. Neff sent all the lot owners notice of the meeting, and the meeting was held almost a year and a half ago on August 7, 2002. The CC&R's were adopted overwhelmingly.

Since that time, there have been numerous meetings of the Board of Directors of the Association and three (3) general meetings of all the lot owners of the Association. The first general meeting was on February 19, 2003 when the Association ratified the engineering and legal contracts needed to improve the property, the second meeting was on October 21, 2003 when the Association ratified (i.) the \$500,000 cost to extend "offsite" water and sewer lines to Unit 8, and (ii.) approved a Special Assessment to fund the cost of these improvements, and the third general meeting was on February 17, 2004 when the Association ratified a \$22,000 per lot Special Assessment to fund the cost of improving the lots. These Special Assessment were equally levied on all 454 lots in the Association. So you will know, the "offsite" improvements are now complete, paid for by the Association, and accepted by PCWW and Tucson Water.

We are very close to completing the reviews necessary to begin grading the property. As you know, I have worked very hard on behalf of the Association to accommodate the

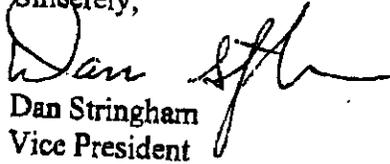
Page 2.

wishes of the County, and truly believed that we had resolved this issue of the Association's authority last summer.

The New Tucson Unit 8 Homeowners Association is the entity that has the legal authority to improve the lots, and the lot owners are anxious to begin the improvements so that they can finally use their lots after 40 years.

In closing, I would appreciate your assistance in taking what steps are necessary to quickly put this issue finally to rest. The Board of Directors of the Association is prepared to sign a construction contract with a major contractor before the end of the month.

Sincerely,


Dan Stringham
Vice President

Cc: Jim Mazzocco with attachments

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D



**PIMA COUNTY
DEVELOPMENT SERVICES DEPARTMENT**

201 N. Stone Avenue, 1st Floor
Tucson, AZ 85701-1207

CARMINE DEBONIS, JR.
Director

Phone: (520) 740-6800
Fax: (520) 623-5411

March 2, 2004

Dan Stringham, Vice President
New Tucson Unit No. 8 Homeowners Association
1147 N. Howard Boulevard
Tucson, AZ 85719

Dear Mr. Stringham:

I am writing in response to your letter of February 24, 2004 addressed to Carmine DeBonis, Director of the Pima County Development Services Department in connection with your assertion that the New Tucson Unit No. 8 Homeowners Association (the "HOA") has authority to apply for permits on behalf of all the lot owners in New Tucson Unit No. 8.

I have reviewed the CC&R's enclosed with your letter and see that Section 10.2 states that the HOA has authority to act on behalf of all the owners in connection with applications for permits. However, your letter states that not all lot owners voted in favor of those CC&R's. Therefore, it is not clear whether all lot owners have really delegated authority to the HOA to act on their behalf in this regard. All that is clear is that the HOA is asserting it has such authority.

The Pima County Development Services Department must assure itself that all lot owners have approved the application. To that end, your proposal for permits to construct on-site and off-site improvements for New Tucson Unit 8 will have to be signed by the owners of all lots within the subdivision. The only other option I can think of is that you could submit a declaration by a Court ruling that the HOA has actual legal authority to act on behalf of all the lot owners. (I am informed that there is an expedited process available to obtain declaratory relief from the Superior Court.)

Please call if you have any questions.

Sincerely,

Jim Mazzocco
Pima County Planning Official
cc
C. DeBonis

JEFF UTSCHE
JEFF NEFF
DAVID McEVON 326-5938

Post-It™ brand fax transmittal memo 7671		# of pages » 1
To Glenn Kerske	From Jim Mazzocco	
Co. Dan Stringham	Co. Pima Co. Dev Services	
Dept.	Phone # 740-6800	
Fax # 881-7571	Fax #	

McEVOY, DANIELS & DARCY, P.C.
LAWYERS
4560 EAST CAMP LOWELL DRIVE
TUCSON, ARIZONA 85712
PH.: 520-326-0133 ♦ FAX: 520-326-5938

FILED
PATRICIA A. NOLAND
CLERK OF SUPERIOR COURT

04 APR 16 PM 4:26

1 David A. McEvoy
ASB No. 007599 PCC No. 37524
2 McEVOY, DANIELS & DARCY, P.C.
4560 East Camp Lowell Drive
3 Tucson, Arizona 85712
520-326-0133

BY: J. WHITNELL, DEPUTY

4
5 Attorney for Plaintiff

6 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

7 **IN AND FOR THE COUNTY OF PIMA**

8
9 NEW TUCSON UNIT NO. 8 HOMEOWNERS)
ASSOCIATION, INC., an Arizona non-profit)
10 corporation,)
11 Plaintiff,)
12 vs.)
13 PIMA COUNTY, a political subdivision of the)
14 State of Arizona,)
15 Defendant.)

Case No.: C20041194

JUDGMENT

Assigned to the Honorable Jane L.
Eikleberry, Division 11

16 THE COURT FINDS after reading Defendant's Motion for Joinder and Plaintiff's
17 Opposition to Defendant's Motion for Joinder and conducting a hearing on said Motion and
18 Opposition, that Judgment be entered in favor of Plaintiff and against Defendant, and
19 specifically that this Court (1) declares that the relevant provisions of that certain Second
20 Amended Declaration of Covenants, Conditions and Restrictions for New Tucson Unit No 8
21 Lots 1-454 and Common Area being a Subdivision Recorded at Book 17 Page 84 of Maps
22 and Plats in the Office of the Pima County Recorder, Pima County, Arizona, as recorded on
23 November 1, 2002, in Docket 11918, commencing at page 92, in the official records of Pima
24 County, Arizona ("Amended Declaration"), are valid and enforceable, as written, and
25 accordingly that Plaintiff has the required authority to proceed on behalf of the Lot Owners
26 with the planned engineering and construction activities on the Lots and other portions of the

1 Property, as those terms are defined in the Amended Declaration, and (2) denies Defendant's
2 Motion for Joinder.

3 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the material
4 allegations of the Complaint are true, that there is no just reason for delay in entry of
5 judgment, and orders and directs that judgment as set forth above, be entered forthwith
6 against Defendant and in favor of Plaintiff.

7 DATED this 15th day of April, 2004.

8
9 
10 HON JANE L. EIKLEBERRY

11 **Original** of the foregoing delivered
12 this _____ day of April, 2004, to:

13 Clerk of the Pima County Superior Court
14 110 West Congress Street
15 Tucson, Arizona 85701

16 Copy of the foregoing mailed this
17 _____ day of April, 2004, to:

18 Amelia C. Cramer, Esq.
19 Civil Division
20 Office of the Pima County Attorney
21 32 North Stone Avenue, Suite 2100
22 Tucson, Arizona 85701-1412
23 Attorney for Defendant
24
25
26

McEVOY, DANIELS & DARCY, P.C.
LAWYERS
4560 EAST CAMP LOWELL DRIVE
TUCSON, ARIZONA 85712
PH.: 520-326-0133 ♦ FAX: 520-326-5938

SYCAMORE VISTA MASTER ASSOCIATION AGREEMENT

This Sycamore Vista Master Association Agreement (the "Agreement") is dated as of January 1, 2016, by and among Sycamore Vista Master Homeowner's Association, an Arizona nonprofit corporation ("Association"), Sycamore Vista No. 5 Homeowner's Association, Inc., an Arizona nonprofit corporation ("Unit 5"), Sycamore Vista No. 7 Homeowner's Association, Inc., an Arizona nonprofit corporation ("Unit 7"), Sycamore Vista No. 8 Homeowner's Association, Inc., an Arizona nonprofit corporation ("Unit 8"), Sycamore Vista No. 9 Homeowner's Association, Inc., an Arizona nonprofit corporation ("Unit 9"), Sycamore Vista No. 10 North Homeowner's Association, Inc., an Arizona nonprofit corporation ("Unit 10 North"), and Sycamore Vista No. 10 South Homeowner's Association, Inc., an Arizona nonprofit corporation ("Unit 10 South"). Unit 5, Unit 7, Unit 8, Unit 9, Unit 10 North and Unit 10 South are sometimes referred to in this Agreement individually as an "HOA" and collectively as the "HOAs."

RECITALS

A. Each HOA is the homeowner's association established pursuant to and administering a declaration of covenants, conditions and restrictions ("CCRs") for a portion of the Sycamore Vista residential development in Pima County, Arizona. Each HOA, among other things, maintains any common area within the boundaries established by its respective CCRs.

B. The Association, which was formerly known as New Tucson Master Homeowners association, was organized for the purposes described in its Articles of Incorporation, which purposes are set forth on Exhibit A annexed hereto.

C. Since there are no recorded CCRs concerning the Association, the parties are entering into this Agreement to memorialize the parties' agreement regarding the Association's responsibilities and the HOA's obligations for funding the Association.

1. DEFINITIONS

1.1 "Articles" means the Articles of the Incorporation of the Association as amended from time to time.

1.2 "Assessment" means an assessment payable by a Member to the Association pursuant to this Agreement.

1.3 "Board" or "Board of Directors" means the Board of Directors of the Association.

1.4 "Bylaws" means the bylaws of the Association adopted in accordance with the Articles, as such Bylaws may be amended from time to time.

1.5 "Default Rate" means an annual rate of interest equal to the prime or base rate as announced from time to time by Wells Fargo Bank (Arizona) (or such other institutional leader as may be designated by Association from time to time), with interest hereunder adjusted as and when such prime or base rate is adjusted, plus five percent (5%) per annum.

1.6 "Land" means the real property governed by the HOAs pursuant to their respective CCRs.

1.7 "Lot" means a subdivided tract or lot including a commercial or residential lot, condominium unit, town house, or other unit as shown on the subdivision plat thereof, but shall not include individual units in a multi-family development.

1.8 "Maintenance Areas" means any private streets or roadways or areas adjacent to streets or roadways within the Land which the Association may elects from time to time use and maintain for landscaping, vegetation, entry features, monument signage or similar improvements and which are designated by the Association as Maintenance Areas.

1.9 "Member" means a member of the Association as provided in the Articles, Bylaws or this Agreement.

1.10 "NT Properties, LLC" means NT Properties, LLC, an Arizona limited liability company, or its successors, assigns or designees.

1.11 "Owner" means the holder, whether one or more persons, of record title to any Lot, but excluding those having such interest merely as security for the performance of an obligation. A contract purchaser under a recorded Agreement of Sale or Contract for the Sale of Real Property wherein legal title to the property remains in a vendor shall be deemed to be an Owner and the vendor thereunder shall be deemed a Mortgagee. If title is vested of record in a trustee pursuant to A.R.S. 33-801 et. seq., then, for the purposes hereof, such title shall be deemed to be in trustor, who shall be deemed to be an Owner.

1.12 The "Proportionate Share" of each HOA means one-sixth.

1.12 "SRWA" means SRWA, L.L.C., an Arizona limited liability company.

2. MEMBERSHIP

2.1 Members and Voting Rights. Each HOA shall be a Member of the Association, and only the HOAs shall be Members. Each HOA shall have one vote. Each HOA shall have at all times a designee named in writing by notice to the Association authorized to cast votes on

behalf of the HOA and otherwise to act on behalf of the HOA with respect to the Association and its business.

2.2 Meetings of the Members. Meetings of the Members shall be conducted as and when provided for in the Articles and/or Bylaws.

3. DUTIES OF ASSOCIATION

3.1 Duties of Association. The Association may (but is not obligated to) undertake any or all of the following:

3.1.1 Maintenance and repair of Maintenance Areas designated by the Association as Maintenance Areas from time to time.

3.1.2 Maintaining such policies of insurance as the Association deems necessary to protect it, its Board of Directors and its Members from any liability from occurrences or happenings on or about those portions of the Maintenance Areas (if any) maintained by the Association and from any other liability it determines to insure against;

3.1.3 Purchasing all goods, supplies, labor and services reasonably necessary for the performance of the obligations set forth herein;

3.1.4 Conducting the SRWA matters pursuant to Article 4;

3.1.5 Conducting the development and related activities directly or as agent for any HOA pursuant to CCRs (including by way of example, but not limited to, as described in Article 11 of the CCRs for Unit 8);

3.1.6 Enforcing the provisions of this Agreement (at the sole discretion of the Board);

3.1.7 Entering into such agreements and taking such actions as are reasonably necessary and convenient for the accomplishment of the obligations set forth herein; and

3.1.8 Such other matters as are provided in this Agreement or in the Articles and Bylaws.

3.2 Non-Liability. To the fullest extent permitted by the law, neither the Association nor any of its directors, officers, employees or agents shall be liable to any person or entity for any damage, loss or prejudice suffered or claimed on account of any decision, approval, course of action, act, inaction, omission, error, negligence, or the like made in good faith.

3.3 Board of Directors. The affairs of the Association shall be conducted by a Board of Directors in accordance with the Articles and Bylaws.

3.3.1 Board Composition. The Board shall initially consist of three (3) directors. The number of directors constituting the Board shall be subject to increase or decrease from time to time as provided in the Articles and/or Bylaws.

3.3.2 Terms of Office. The term of office for each director shall be for one (1) year or until the appointment of the director's successor. Any new director appointed to replace a director who has resigned or been removed shall serve such director's unexpired term. Directors who have resigned, been removed or whose terms have expired may be reappointed.

3.3.3 Appointment and Removal. The right to appoint and remove directors shall be exercised by a majority of the number of votes held in the aggregate by all of Members.

3.3.4 Resignation. Any director may at any time resign by giving written notice to the Board.

3.3.5 Delegation of Board Member Authority For Specific Meetings. If a director is unable to attend a particular meeting, the director may designate a delegate to act on the director's behalf at the meeting by causing a specific written designation to be delivered to the other directors at or before the meeting. The actions taken by a duly designated delegate shall have the same force and effect as if taken by the designating director.

3.4 Indemnification. To the fullest extent permitted by law, every director and officer shall be indemnified by the Association. Additionally, every other person serving as an employee or agent of the Association, or otherwise acting on behalf of, or at the request of, the Association may, in the discretion of the Board of Directors, be indemnified by the Association. Such indemnification shall include all expenses and liabilities, including attorney's fees, reasonably incurred by or imposed upon such person in connection with any proceedings which she/he may be a party, or in which she/he may become involved, by reason of her/his being or having served in such capacity on behalf of the Association, or any settlement thereof, whether or not she/he is a director or officer at the time such expenses are incurred. Such indemnification can be available only if the Board of Directors determines, in good faith, that the person or entity to be indemnified did not act, fail to act or failed or refused to act with gross negligence or fraudulent or criminal intent in the performance of her/his duties. The foregoing rights of indemnification shall in be addition to and not exclusive of all other rights to which such persons may be entitled.

3.5 Managing Agent. The Association is expressly authorized to contract with a managing agent (which may be an affiliate of a Member, officer or director) to provide management services or to perform other duties of the Association or the Board of Directors of the Association; provided, however, that the compensation to be paid under such contract, shall not exceed a reasonable amount consistent with compensation paid to professional managers performing similar services in accordance with the standards of the community.

4. SWRA MATTERS

4.1 The Association is a member of SRWA. SWRA develops water infrastructure for the property owned by its members by agreement with Tucson Water. The members pay for the infrastructure development through capital contributions and other payments to SWRA and, in return, receive allocations of water service capacity.

4.2 The Association has made various capital contributions to SWRA. Funds for some of the Association's capital contributions were advanced by NT Properties; as of September 20, 2016, \$549,000 in unreimbursed advances remain outstanding (which number would increase if NT Properties were to advance additional capital contributions to SWRA).

4.3 In order to provide funds to reimburse NT Properties for its advances on the Association's behalf and to provide funds as and when needed for future capital contributions to SWRA for future water infrastructure, each HOA shall collect \$1,000 from the transferring Owner on any transfer of ownership of any Lot and remit such funds to the Association (and each HOA authorizes the Association to collect such amount directly from the transferring Owner if the Association so elects).

5. ASSESSMENTS

5.1 Payment of Assessments. In furtherance of the Association's duties and responsibilities, the Association shall have the right to collect from each Member Assessments as provided for in this Agreement. Each Member agrees to pay to the Association the Assessments as herein provided, to be established and collected from time to time as provided in this Agreement.

5.2 Purpose of Assessments. The Assessments levied by the Association shall be used to pay the costs and expenses (including, but not limited to, reserves) of fulfilling the duties and responsibilities of and of operating the Association.

5.3 Share of Assessments.

5.3.1 Each year the Board of Directors shall determine the annual Assessment. If the Association determines at any time that the total annual Assessment for the current year is, or will become, inadequate to meet all anticipated expenses of the Association for whatever reason, then the Board of Directors shall determine the approximate amount of such inadequacy and issue a supplemental estimate of the annual Assessment and, on a semi-annual basis or otherwise as determined by the Board, determine the revised amount of each Member's Proportionate Share of the annual Assessment and the date or dates when due. If the annual Assessment for the current year proves to be excessive in light of actual expenses, the Board of Directors of the Association may, at its sole discretion, retain such excess as or reserves, reduce the amount of the Assessments for the succeeding year, or abate collection of the Assessments for such period as it deems appropriate.

5.3.2 Each Member's Proportionate Share shall be recalculated from time to time as the Board of Directors shall determine to reflect changes in ownership, changes in the total amount of the Estimated Annual Assessment and otherwise. The recalculation of a Member's Proportionate Share shall be prospective only and no Member shall be entitled to a refund of, or excused from the obligation to pay, Assessments previously levied, whether already paid or not, by reason of the fact that such Member's Proportionate Share may have been reduced by a recalculation.

5.4 Time and Manner of Payment. Assessments shall be due and payable in such manner and at such times as the Association shall designate. If not paid within thirty (30) days after its due date, each such Assessment shall have added to it a late charge equal to ten percent (10%) of the amount of the Assessment and, together with such late charge, shall bear interest at the Default Rate of interest until paid to the extent permitted by law. The Association may, in its discretion and without waiving the imposition of a late charge or interest in any other instance, waive the late charge and/or interest in any particular instance. A Member who is delinquent in paying any Assessment shall also be liable for attorney's fees and other related costs incurred by the Association as a result of such delinquency, and if any suit, action or other proceeding is brought to collect such Assessment or charge, then there shall be added to the amount thereof costs of suit and reasonable attorney's fees to be fixed by the Court and included in any judgment or award rendered thereon.

5.5 No Offsets. All Assessments shall be payable in the amounts specified in any notice and no offsets against such amount shall be permitted for any reason.

5.6 Reserves. Without limiting the generality of any other provision of this Agreement, the Association may include in Assessments such amounts for reserves as the Board of Directors reasonably determines. The responsibility of the Association shall be to provide only such reserves as the Board of Directors in good faith deems reasonable, and the Association shall not have any liability to any person or entity if such reserves prove to be inadequate.

6. REMEDIES

6.1 General Remedies. In the event of any default by any Member under the provisions of this Agreement, the Association shall have each and all of the rights and remedies which may be provided for in this Agreement or which may be available at law or in equity, and may prosecute any action or other proceedings against such defaulting Member for an injunction, whether affirmative or negative, or for foreclosure of the lien herein provided and the appointment of a receiver for any property owned by any such Member, or for damages, specific performance or otherwise.

6.2 Expenses of Enforcement. All expenses of the Association in connection with any action or proceeding described or permitted hereunder, including court costs and reasonable attorney's fees and other fees and expenses, and all damages, together with interest thereon until

paid at the Default Rate, shall be charged to and assessed against such defaulting Member and shall be a special Assessment against such Member and the Association shall have a lien as provided herein.

6.3 Limitation on Liability. Notwithstanding anything to the contrary herein, it is expressly agreed that no director or officer shall have any personal liability to the Association or to any member or Member arising under, or in connection with, or resulting from this Agreement.

7. AMENDMENT

Amendments to this Agreement may be made only by approval of two-thirds of the number of votes held in the aggregate by all of Members entitled to vote.

8. GENERAL PROVISIONS

8.1 Notices. Notices provided for in this Agreement shall be in writing and shall be addressed to the Association at the address specified in the Bylaws. The Association may designate a different address or addresses for notice by giving written notice of such change of address to all Members at such time. All notices to Members or other persons shall be to the last address shown in the records of the Association. Any Member or other person may designate a different address or addresses for notices her/him/it by giving written notice of her/his/it change of address to the Association. Notices addressed as above to any Member or other person shall be deemed delivered when mailed by first class mail or when delivered to the Member. Notices addressed as above to the Association shall be deemed delivered when mailed by registered or certified mail, return receipt requested, with written acknowledgment of the receipt thereof or when delivered in person.

8.2 Captions and Exhibits. Captions given to various paragraphs herein are for convenience only and are not intended to modify or affect the meaning of any of the substantive provisions hereof. Any exhibits referred to herein are incorporated as though fully set forth herein where such reference is made.

8.3 Severability. If any provision of this Agreement or any paragraph, clause, sentence, phrase or word, or the application thereof in any circumstance, is held invalid, the validity of the remainder of this Agreement and of the application of any such provision, paragraph, sentence, clause, phrase or word in any other circumstance, shall not be affected thereby, and the remainder of his Agreement shall be construed as if such invalid part were never included therein.

IN WITNESS WHEREOF, this Agreement has been executed by the Association and each of the HOAs.

SYCAMORE VISTA MASTER HOMEOWNER'S ASSOCIATION

By: 
Name: STEVEN RUSSO
Title: President

SYCAMORE VISTA NO. 5 HOMEOWNER'S ASSOCIATION, INC.

By: 
Name: STEVEN RUSSO
Title: President

SYCAMORE VISTA NO. 7 HOMEOWNER'S ASSOCIATION, INC.

By: 
Name: STEVEN RUSSO
Title: President

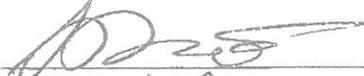
SYCAMORE VISTA NO. 8 HOMEOWNER'S ASSOCIATION, INC.

By: 
Name: STEVEN RUSSO
Title: President

SYCAMORE VISTA NO. 9 HOMEOWNER'S ASSOCIATION, INC.

By: 
Name: STEVEN RUSSO
Title: President

SYCAMORE VISTA NO. 10 NORTH HOMEOWNER'S ASSOCIATION, INC.

By: 
Name: STEVEN RUSSO
Title: President

SYCAMORE VISTA NO. 10 SOUTH HOMEOWNER'S ASSOCIATION, INC.

By: 
Name: STEVEN RUSSO
Title: President

STATE OF ARIZONA)
) ss.
COUNTY OF PIMA)

The foregoing instrument was acknowledged before me this 1st day of January, 2016 by Steven Russo as President of Sycamore Vista Master Homeowner's Association, Sycamore Vista No. 5 Homeowner's Association, Inc., Sycamore Vista No. 7 Homeowner's Association, Inc., Sycamore Vista No. 8 Homeowner's Association, Inc., Sycamore Vista No. 9 Homeowner's Association, Inc., Sycamore Vista No. 10 North Homeowner's Association, Inc. and Sycamore Vista No. 10 South Homeowner's Association, Inc.



Notary Public

My Commission Expires:

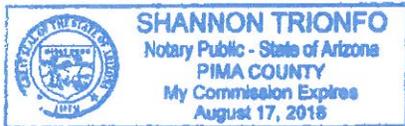


EXHIBIT "A"

Association Purposes

(a) Exercise all of the powers and privileges and to perform all of the duties and obligations of the Association as it is specifically provided to this Association in the respective Declarations of the New Tucson HOA's and any subsequent amendments, revisions or restatements thereof, which generally are:

- (i) To receive, manage and maintain common drainage areas within and between the New Tucson HOA's;
- (ii) To acquire property for, construct, manage and maintain any and all recreational facilities common between the New Tucson HOA's.
- (iii) To cause to be constructed all improvements to roadways, utilities, drainageways and lots, including but not limited to grading, Lots and Common Areas of this Association, maintenance and preservation.

(b) Fix, levy, collect and enforce payment by any lawful means, all charges or assessments for the benefit and on behalf of the New Tucson HOA's, pursuant to the terms of the New Tucson HOA Declarations and amendments; to pay all expenses in connection therewith and all office and other expenses incident to the conduct of the business of the Association, including all licenses, taxes or governmental charges levied or imposed against the property of the Association;

(c) Acquire (by gift, purchase or otherwise), own, hold, operate, maintain, sell, lease, transfer, or otherwise dispose of property in connection with the affairs of the Association;

(d) Borrow money, and with the assent of a majority of the membership, mortgage, pledge, deed in trust, or hypothecate any or all of its property as security for money borrowed or debts incurred;

(e) Dedicate, sell or transfer all or any part of the Common Area, if any, to any agency, authority or utility, for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument has been signed by a majority of the membership agreeing to such dedication, sale or transfer;

(f) Participate in mergers and consolidations with other non-profit corporations organized for the same purpose or annex additional residential property and Common Area, provided that any such merger, consolidation or annexation, except those annexations specifically permitted in the respective Declarations, shall have the assent of a majority of the membership;

(g) Take any and all actions, including but not limited to, hiring such contractors and engineering, architectural, environmental, legal and accounting professionals as may

be necessary or reasonable in order to implement the stated purpose of providing for the construction, improvement and maintenance of roadways, utilities, drainageways, equestrian ways, easements and any necessary improvements (on and off-site) to the residential Lots and Common Areas of the property, as well as sale, maintenance, preservation and architectural control of residential Lots and Common Area, and including, but not limited to, submission of plats or plans, proposed plats or plans, applications, requests or forms to any and all governmental agencies or departments;

(h) Have and exercise any and all powers, rights and privileges which a corporation organized under the Non-Profit Corporation Law of the State of Arizona by law may now or hereafter have or exercise.

PROMISSORY NOTE

\$161,670.05

Pima County, Arizona
Dated: January 1, 2016

1. FUNDAMENTAL PROVISIONS. The following terms will be used as defined terms in this Note:

PAYEE: NT PROPERTIES, LLC

MAKER: SYCAMORE VISTA MASTER
HOMEOWNER'S ASSOCIATION

PRINCIPAL AMOUNT: ONE HUNDRED SIXTY-ONE THOUSAND
SIX HUNDRED SEVENTY DOLLARS
AND 05/100 (\$161,670.05)

INTEREST RATE: FIVE PERCENT (5%)

MATURITY DATE: DECEMBER 31, 2020

GOVERNING JURISDICTION: STATE OF ARIZONA

2. UNCONDITIONAL PROMISE TO PAY. FOR VALUE RECEIVED, Maker promises to pay to the order of Payee at 6700 North Oracle Road, Suite 100, Tucson, Arizona 85704, or at such place the holder hereof may from time to time designate, the Principal Amount with interest on the unpaid principal balance from and after the date hereof from time to time outstanding at the Interest Rate set forth herein. Payments of principal and interest shall be made in the lawful money of the United States which shall be legal tender for public and private debts at the time of payment. Payments will be made based on a 360-day year of twelve 30-day months.

3. PAYMENTS. Maker shall pay interest only payments semi-annually on January 1st and July 1st in the amount of \$4,041.75 until the Maturity Date. On the Maturity Date the entire principal balance outstanding plus all accrued but unpaid interest shall be fully due and payable.

4. PREPAYMENT. Maker may prepay this Note at any time.

5. DEFAULT.

(A) Events of Default. The occurrence at any time of any of the following constitutes an Event of Default:

(1) Failure to pay any payment within fifteen (15) days after the same becomes due hereunder,

(2) Default in the payment or performance of any other liability or obligation of the Maker to the holder of this Note,

(3) The dissolution of the Maker, if Maker is a corporation, partnership, or limited liability company; or

(4) A breach of any covenant, warranty, liability or other obligation referred to herein.

(B) Acceleration. Upon the occurrence of any Event of Default, the total sum remaining unpaid hereunder shall become immediately due and payable, without notice or demand.

6. NOTE HOLDER COSTS AND EXPENSES. If this Note is not paid when due, whether at maturity or by acceleration, the Maker promises to pay all costs of collection, including without limitation reasonable attorney's fees incurred by the holder hereof on account of such collection, whether or not suit is brought. Such costs and expenses shall include without limitation all costs, attorney's fees and expenses incurred by the holder hereof in connection with any insolvency, bankruptcy, or other similar proceedings involving the undersigned, or involving any endorser, co-maker or guarantor hereof, which in any way affect the exercise by the holder hereby of its rights and remedies under this Note.

7. WAIVERS. Maker and all sureties, endorsers and guarantors of this Note waive presentment, demand, protest, notice of protest, dishonor and non-payment of this Note, all notices of every kind, benefits of any statutory provisions limiting the liability of a surety. To the extent permitted by applicable law, the defense of the statute of limitations is hereby waived. Failure of Payee, or the Holder of this note, to enforce any of the rights, reservations, covenants, or other provisions contained herein shall not in any event be construed or held to be a waiver thereof or consent to any further or succeeding breach or violation thereof.

8. SAVINGS CLAUSE. If by reason of the acceleration of the maturity of such indebtedness, or for any other reason, interest in excess of the highest rate allowed by law shall be due or paid, any such excess shall constitute and be treated as payment on the principal hereof, and shall operate to reduce such principal by the amount of such excess, or, if in excess of the principal indebtedness, such excess shall be refunded to Maker.

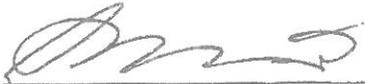
9. CHOICE OF LAW. This Note and the other Loan Documents and every other agreement entered into or document signed in connection with the Loan evidenced hereby is to be governed by and construed in accordance with the law of Arizona.

10. CHOICE OF FORUM. Any claim arising under or relating to this Note or other Loan Documents will be brought solely in Pima County, Arizona.

11. TIME IS OF THE ESSENCE. Time is of the essence with respect to every provision hereof.

MAKER:

SYCAMORE VISTA MASTER HOMEOWNER'S ASSOCIATION


By: Steven Russo
Its: President

PROMISSORY NOTE

\$260,645.15

Pima County, Arizona
Dated: January 1, 2016

1. FUNDAMENTAL PROVISIONS. The following terms will be used as defined terms in this Note:

PAYEE: NT PROPERTIES, LLC

MAKER: SYCAMORE VISTA MASTER
HOMEOWNER'S ASSOCIATION

PRINCIPAL AMOUNT: TWO HUNDRED SIXTY THOUSAND
SIX HUNDRED FORTY-FIVE DOLLARS
AND 15/100 (\$260,645.15)

INTEREST RATE: FIVE PERCENT (5%)

MATURITY DATE: DECEMBER 31, 2020

GOVERNING JURISDICTION: STATE OF ARIZONA

2. UNCONDITIONAL PROMISE TO PAY. FOR VALUE RECEIVED, Maker promises to pay to the order of Payee at 6700 North Oracle Road, Suite 100, Tucson, Arizona 85704, or at such place the holder hereof may from time to time designate, the Principal Amount with interest on the unpaid principal balance from and after the date hereof from time to time outstanding at the Interest Rate set forth herein. Payments of principal and interest shall be made in the lawful money of the United States which shall be legal tender for public and private debts at the time of payment. Payments will be made based on a 360-day year of twelve 30-day months.

3. PAYMENTS. Maker shall pay interest only payments semi-annually on January 1st and July 1st in the amount of \$6,516.12 until the Maturity Date. On the Maturity Date the entire principal balance outstanding plus all accrued but unpaid interest shall be fully due and payable.

4. PREPAYMENT. Maker may prepay this Note at any time.

5. DEFAULT.

(A) Events of Default. The occurrence at any time of any of the following constitutes an Event of Default:

(1) Failure to pay any payment within fifteen (15) days after the same becomes due hereunder,

(2) Default in the payment or performance of any other liability or obligation of the Maker to the holder of this Note,

(3) The dissolution of the Maker, if Maker is a corporation, partnership, or limited liability company; or

(4) A breach of any covenant, warranty, liability or other obligation referred to herein.

(B) Acceleration. Upon the occurrence of any Event of Default, the total sum remaining unpaid hereunder shall become immediately due and payable, without notice or demand.

6. NOTE HOLDER COSTS AND EXPENSES. If this Note is not paid when due, whether at maturity or by acceleration, the Maker promises to pay all costs of collection, including without limitation reasonable attorney's fees incurred by the holder hereof on account of such collection, whether or not suit is brought. Such costs and expenses shall include without limitation all costs, attorney's fees and expenses incurred by the holder hereof in connection with any insolvency, bankruptcy, or other similar proceedings involving the undersigned, or involving any endorser, co-maker or guarantor hereof, which in any way affect the exercise by the holder hereby of its rights and remedies under this Note.

7. WAIVERS. Maker and all sureties, endorsers and guarantors of this Note waive presentment, demand, protest, notice of protest, dishonor and non-payment of this Note, all notices of every kind, benefits of any statutory provisions limiting the liability of a surety. To the extent permitted by applicable law, the defense of the statute of limitations is hereby waived. Failure of Payee, or the Holder of this note, to enforce any of the rights, reservations, covenants, or other provisions contained herein shall not in any event be construed or held to be a waiver thereof or consent to any further or succeeding breach or violation thereof.

8. SAVINGS CLAUSE. If by reason of the acceleration of the maturity of such indebtedness, or for any other reason, interest in excess of the highest rate allowed by law shall be due or paid, any such excess shall constitute and be treated as payment on the principal hereof, and shall operate to reduce such principal by the amount of such excess, or, if in excess of the principal indebtedness, such excess shall be refunded to Maker.

9. CHOICE OF LAW. This Note and the other Loan Documents and every other agreement entered into or document signed in connection with the Loan evidenced hereby is to be governed by and construed in accordance with the law of Arizona.

10. CHOICE OF FORUM. Any claim arising under or relating to this Note or other Loan Documents will be brought solely in Pima County, Arizona.

11. TIME IS OF THE ESSENCE. Time is of the essence with respect to every provision hereof.

MAKER:

SYCAMORE VISTA MASTER HOMEOWNER'S ASSOCIATION


By: Steven Russo
Its: President