

28



When Recorded, Return to:

Encanto Paseo at San Tan Homeowners' Association, Inc.  
c/o Snow Property Services  
4135 S. Power Road, Suite 122  
Mesa, Arizona 85212

DATE/TIME: 02/08/2017 1353  
FEE: \$9.00  
PAGES: 2  
FEE NUMBER: 2017-008795



**FIRST AMENDMENT TO AMENDED AND RESTATED COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR ENCANTO PASEO**

THIS First Amendment to the Amended and Restated Covenants, Conditions and Restrictions for Encanto Paseo (this "First Amendment") is dated this 18<sup>th</sup> day of February, 2015 by and between the Owners, and shall amend, supplement and modify that certain Amended and Restated Covenants, Conditions and Restrictions ("Declaration") for Encanto Pasco dated April 30, 2007 and recorded by the County Record in the official records of Pinal County, Arizona at 2007-05585114028, which wholly superseded and replaced the Original Declaration of Covenants, Conditions and Restrictions recorded in Fee No. 2006-163219 Pinal County.

**3.12 of the CC&Rs currently reads:**

3.12 "Minimum Livable Area". All single-family residences constructed within Encanto Paseo Homeowners' Association, shall have a width of at least seventy (70) feet. All residences shall contain a minimum livable area of two thousand nine hundred fifty (2,950) square feet. All single family residences may be one story (with or without basement) with a maximum height of not more than eighteen (18) feet above grade level. All square footage requirements shall be exclusive of porches and attached garages.

**The new CC&R language that would be recorded and run with the lots, if adopted, would eliminate all two story homes and would read as follows:**

3.12 "Minimum Livable Area". All single-family residences constructed within Encanto Paseo Homeowners' Association, shall have a width of at least seventy (70) feet, with the exception of lots one through nine (1-9) which lots shall have a width of at least fifty-five (55) feet and at least four hundred and fifty (450) feet of that width of the front of the residence that faces the street shall be covered with stone. All residences shall contain a minimum livable area of two thousand nine hundred fifty (2,950) square feet, with the exception of lots one through nine (1-9) which lots shall contain a minimum livable area of two thousand five hundred (2,500) square feet. All single family residences may be one story (with or without basement) with a maximum height of not more than eighteen (18) feet above grade level. All square footage requirements shall be exclusive of porches and attached garages. Two- story homes are prohibited.

The President of the Association, duly elected to act for Encanto Paseo at San Tan Homeowners' Association, Inc., acknowledges the affirmative vote of at least 75% of the current owners of Encanto Paseo at San Tan Homeowners' Association, Inc. by written instrument for the above amendment to the CC&R's.

All other aspects of the CC&R's shall remain unchanged and remain in full force as previously adopted and recorded in the official records of Pinal County, Arizona.

IN WITNESS WHEREOF, I being President of Encanto Paseo at San Tan Homeowners' Association, Inc., hereby set my hand this 7 day of FEB 2017

Encanto Paseo at San Tan Homeowners' Association, Inc.

By: [Signature]  
Bill Pickron, President

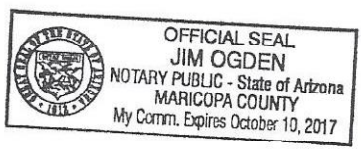
STATE OF ARIZONA        )  
  ) ss.  
COUNTY OF PINAL)

On this 7 day of Feb, 2017 before me, the undersigned Notary Public, personally appeared Bill Pickron, who acknowledged himself to be the Board President of the Encanto Paseo at San Tan Homeowners Association, Inc. and that he, as such officer, being authorized so to do, executed the within instrument of the purposes therein contained by signing the name of the said corporation by himself as such officer.

IN WITNESS WHEREOF, I have hereunto set my hand and seal.

My Commission Expires: 10-10-2017

[Signature]  
Notary Public





OFFICIAL RECORDS OF  
PINAL COUNTY RECORDER  
LAURA DEAN-LYTLE

When recorded mail to:  
Encanto Paseo at the San Tans, LLC.  
3561 E. Brown Rd. Suite 101  
Mesa, Arizona 85213

File: 19040049

DATE/TIME: 05/09/07 1539  
FEE: \$46.00  
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AMENDED AND RESTATED COVENANTS, CONDITIONS AND  
RESTRICTIONS FOR ENCANTO PASEO

DO NOT REMOVE  
THIS IS PART OF AN OFFICIAL  
DOCUMENT

**When Recorded, Return to:**

Encanto Paseo at San Tans, LLC  
3561 E. Brown Road, Suite 101  
Mesa, Arizona 85213

**AMENDED AND RESTATED COVENANTS, CONDITIONS AND  
RESTRICTIONS FOR ENCANTO PASEO**

THIS DECLARATION of Covenants, Conditions and Restrictions is made as of April 30, 2007, by Encanto Paseo at San Tans, LLC, an Arizona limited liability company, herein referred to as "Declarant".

**WITNESSETH:**

WHEREAS, The Declarant has Fee Title to all lots EXCEPT Lot 13, situated within the County of Pinal, State of Arizona, to wit:

Lots 1 through 12 and 14 through 18, inclusive, ENCANTO PASEO, according to the plat record in the office of the County Recorder of Pinal County, Arizona, in Cabinet G , Slide 112 , Dated November 8, 2006, thereof;

Lot 13 is vested in Ranchwood Homes and Development, and the equitable Title vested in Santan Gated Community Holding Corporation, an Arizona corporation as to all lots, except Lot 13.

WHEREAS, The original Declarant, Encanto Paseo at the San Tans, LLC, an Arizona limited liability company and pursuant to Article 9, paragraph 9.5 hereby Amends and Restates, (and wholly supersedes and replaces) the Original Declaration of Covenants, Conditions and Restrictions recorded in Fee No. 2006-163219.

WHEREAS, Declarant desires to develop the above-described real property into a uniquely planned residential subdivision; and

WHEREAS, at full development it is intended, without obligation, that such subdivision shall have common areas; and

WHEREAS, for the development of the lands now owned, Declarant intends, without obligation, to develop a subdivision upon the above-described real property which, as of the date of recordation of this Declaration, is owned by Declarant and shall comprise the "Property";

WHEREAS, Declarant desires to form a non-profit corporation for the purpose of benefiting the Property and the Owners thereof, which non-profit corporation (herein referred to as the "Association") shall be intended, without obligation, to (i) acquire, construct, operate, manage and maintain the common area and facilities; (ii) establish, levy, collect and disburse the assessments and other charges as may be imposed hereunder, and (iii) as the agent and representative of the Owners of the Property, administer and enforce all provisions hereof and enforce use and other restrictions imposed on various parts of the Property;

WHEREAS, until such time as the Association is incorporated, Declarant desires to and hereby does reserve to itself, its successors and assigns the right to exercise the powers and duties granted in this Declaration to the Association; and

WHEREAS, in order to enable Declarant and the Association to accomplish the purposes outlined above, all of the Property is hereby subjected to and shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions which are for the purpose of protecting the value and desirability of, and which shall run with the Property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall enure to the benefit of each Owner thereof.

NOW, THEREFORE, Encanto Paseo at San Tans, LLC, a Limited Liability Company as Declarant hereby declares, covenants and agrees as follows:

## **ARTICLE 1**

### **Definitions**

The following words, phrases or terms used in this Declaration shall have the following meanings:

1.1 “Additional Properties” shall mean properties added in accordance with Article 9 hereof.

1.2 “Association” shall mean and refer to the ENCANTO PASEO HOMEOWNERS’ ASSOCIATION, an Arizona non-profit corporation to be organized by Declarant to administer and enforce the covenants and to exercise the rights, powers and duties set forth in this Declaration.

1.3 “Association Manager” shall mean and refer to a person or business entity appointed or hired by the Board from time to time to manage the Association’s business affairs.

1.4 “Association Rules” shall be synonymous with “Encanto Paseo Rules” and “Rules”, which shall be adopted or modified from time to time by the Board. The term shall be deemed to include without limitation all rules and regulations adopted by the Board pertaining to safe operations of vehicles within Encanto Paseo Homeowners’ Association, architectural control guidelines and standards, and similar standards, procedures or guidelines that may be published together with or separate from any other rules and regulations adopted by the Board.

1.5 “Board” shall be synonymous with the Board of Directors and shall mean the Board of Directors of the Association.

1.6 “Committee” shall be synonymous with “Architectural Control Committee” and shall mean the ENCANTO PASEO HOMEOWNERS’ ASSOCIATION ARCHITECTURAL CONTROL COMMITTEE as described herein.

1.7 “Common Area” shall mean all real property owned by the Association for the common use and enjoyment of all or a part of the Owners, and any other real property which the Association has the obligation to maintain (including, without limitation, landscape tracts, subdivision signage, etc.), or which the Association may otherwise agree to maintain for the common use and enjoyment of all or a part of the Owners.

1.8 “Declarant” shall mean Encanto Paseo at San Tans, LLC, an Arizona limited liability company, its successors and assigns if (i) such successors or assigns should acquire more than one (1) undeveloped Lot from Declarant for the purpose of development, and (ii) if Encanto Paseo at San Tans, LLC has assigned its Declarant’s rights to such successors or assigns by a written instrument that has been recorded in Pinal County, Arizona.

1.9 “Declaration” shall mean the covenants, conditions and restrictions herein set forth in this entire document, as it may from time to time be amended or supplemented.

1.10 “Developer” shall mean and refer to Encanto Paseo at San Tans, LLC, an Arizona liability company, or its assigns.

1.11 “Lot” shall mean any plot of land shown upon any recorded subdivision map of the Property or Additional Properties with the exception of any “Tracts” and the “Exceptions” as they may be noted thereon; and the Common Area.

1.12 “Owner(s)” shall mean and refer to the record owner, whether one (1) or more persons or entities, of equitable or beneficial title (or legal title if the same has merged) of any Lot. The foregoing does not include persons or entities that hold an interest in any Lot merely as a security for the performance of an obligation, nor shall the term “Owner” include a Developer or contractor other than Declarant.

1.13 “Plat” shall mean *The Final Plat of Encanto Paseo*, prepared by Allen Consulting Engineering, and recorded in the office of the County Recorder of Pinal County, Arizona, as the same may be amended or modified from time to time.

1.14 “Property” shall mean that certain real property hereinbefore described and any Additional properties as has been added to the subdivision.

1.15 “Subdivision” shall mean and refer to the subdivision created by the Plat upon the Property and herein referred to as ENCANTO PASEO HOMEOWNERS’ ASSOCIATION.

1.16 “Supplementary Declaration” shall be synonymous with Supplementary Declaration of Covenants, Conditions and Restrictions with respect to the Additional Properties that may be added to the Subdivision from time to time.



## ARTICLE 2

### Property Rights

2.1 “Owner Easements of Enjoyment”. Every Owner of a Lot within Encanto Paseo Homeowners’ Association and within the Additional Properties as may be annexed from time to time, shall have a right and non-exclusive easement of enjoyment in and to the Common Area if applicable, which shall be appurtenant to and shall pass with the title of said Lot, subject to the following provisions:

- A. the restricted nature of any easement of enjoyment existing on any part of the Common Area;
- B. the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;
- C. the right of the Association to suspend the voting rights and right to use 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;
- D. the right of the Association to dedicate or transfer all or any part of the Common Area 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 two-thirds (2/3) of the members of each class of membership has been recorded.

2.2 “Private Roadways”. The roadways to be constructed within the Encanto Paseo Homeowners’ Association subdivision shall be private roadways constructed for the exclusive use of Owners and others per section 2.3 below. An affirmative easement for ingress, egress and public utilities over and across the roadways is hereby granted to each Owner for such purposes. The Association and not the County shall be solely responsible for the upkeep, maintenance and repair of the roadways. The Association from time to time may enact a special assessment for the care and maintenance of the private roadways, as the Board may deem necessary.

2.3 “Delegation of Use”. Any Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Area, Private Roadways and facilities to the members of his family, his tenants, or contract purchasers who reside on the Property.

### ARTICLE 3

#### Permitted Uses and Restrictions

3.1 “Residential Use”. Lots 1 through 28 inclusive of Encanto Paseo Homeowners’ Association, shall be single-family residential Lots, and there may be erected on any one (1) Lot not more than one (1) single-family residence plus such accessory and auxiliary guest house (not be used for rental or separate family), garages, barns and tack rooms as are incidental to single-family residential use. No other buildings shall be erected on any of said Lots, nor shall any of said Lots or any part thereof be used for any business purposes whatsoever, except as allowed in Section 3.18.

3.2 “Subdividing”. No Lot shall be re-subdivided into smaller Lots nor conveyed or encumbered in less than the full original dimensions of such Lot as shown by the recorded Plat. Nothing herein contained shall prevent the dedication or conveyance of portions of Lots for public utilities purposes, in which event the remaining portion of such Lots shall, for the purpose of this provision, be treated as a whole Lot.

3.3 “Parking”. Only automobiles of the private passenger class and pickup trucks not exceeding three-quarter (3/4) ton may be parked on the driveways of any Lot. No motor vehicles, campers, house trailers, horse trailers, motor homes or boats may be parked on the back of any Lot unless they are concealed from sight (as approved by the Architectural Committee). Trailers, RV’s, Motorhomes can be garaged in a structure that matches existing structure (as approved by the Architectural Committee). No motor vehicle that is under repair or not in operating condition shall be placed or permitted to remain on any street or streets, or any portion of any Lot in Encanto Paseo Community Association, unless it is within an enclosed garage or structure. On street parking of any vehicle shall not be allowed within the association.

3.4 “General Upkeep”. All clothes lines, yard, tack or other equipment, garbage cans and service yards shall be kept concealed from the view of neighboring parcels and streets. All rubbish, trash and garbage shall be removed from the premises of all Lots and shall not be allowed to accumulate thereon. All television antennas, including satellite dishes, installed upon any of the Lots in Encanto Paseo Homeowners’ Association shall conform to federal regulatory guidelines and standards and/or be subject to approval by the Architectural Control Committee. Such antennae or satellite dishes may be placed upon Lots if (i) the satellite dish is no more than eighteen (18) inches in diameter; (ii) the antenna is less than eighteen (18) inches in diameter or diagonal measurement and is designed to receive video programming via wireless cable. Provided, however, the Architectural Control Committee may prevent installation of the foregoing devices upon said Lots or restrict the location of such installation if (i) such installation would violate a legitimate safety rule; (ii) such installation would take place in an area protectable as an historical area; or (iii) such installation could reasonably be made elsewhere without the signal being impaired.

3.5 “Sewage”. Notice is hereby provided to all Owners that no sewer service is available to the Property and may not become available to the Property or any Additional Property. Until such time as sewers may be available (without any representation or warranty that sewer service will be available), all bathrooms, toilets or sanitary conveniences shall be connected to septic tanks and cesspools or leach fields constructed in accordance with the requirements and standards of County and State laws, rules and regulations in accordance with sound engineering, safety and health practices. There shall not be allowed any outside portable lavatories, outside toilets or open plumbing. No leach field shall be constructed in any area that is flood irrigated. Each Owner shall be responsible for and shall pay all costs relating to the percolation testing of his lot, and the design, construction and maintenance of all septic tanks, cesspools, leach fields and similar improvements constructed on his Lot.

3.6 “Tanks”. No elevated tanks of any kind shall be erected, placed or permitted on any Lot. Any tanks, including tanks for the storage of fuel, must be buried or attractively screened to conceal them from neighboring Lots, roads and streets, and then only with the prior approval of the Architectural Control Committee.

3.7 “Horse Privileges, Horse Trail Easement, and Animal Provisions”. Horses are allowed within the Encanto Paseo Homeowners’ Association Subdivision on Lot 1 through Lot 8 only. No more than 2 horses are allowed on any one acre lot and no lot may board horses. Horses and associated outbuildings, shall be kept 20’ off the back and side boundaries of the property and shall not extend more than 100 feet towards the front on the property line. The Owners of all Lots will be subject to the laws, ordinances, health codes, and rules and regulations of the State of Arizona and Pinal County.

All animals, including dogs, must be kept within a fenced area, encaged or otherwise controlled, and not be allowed to wander off or fly about. There shall be no commercial breeding, raising and/or boarding of any animals. The care of all animals shall be performed by the Owner in a clean, neat and orderly fashion in accordance with the prevailing customs and methods; the physical facilities for the same shall also be maintained by the Owner in a clean, neat and orderly fashion in accordance with the prevailing custom and usage so that such facilities shall not become a nuisance to the remaining Owners and shall comply with all requirements of the Pinal County Health Department, the Homeowners Association and/or the Architectural Control Committee. At no time will livestock, sheep, swine, guinea fowl, peacocks, chickens or geese be allowed in the Subdivision.

3.8 “Construction Permitted”. All structures erected within Encanto Paseo Homeowners’ Association, must be of new construction, and no buildings or structures may be moved from any other location, other than a point of distribution or manufacture, onto any of said Lots or tracts. All roofs, including without limitation, the roofs of accessory buildings must be of tile (clay or concrete) construction and no roofs of asphalt shingle construction will be permitted; provided, however, that flat roofs of such construction as are approved by the Architectural Control Committee, shall be permitted if the roof is concealed from view by a parapet. Construction within easements, except by public agencies and utility companies, shall be limited to utilities and either wood, wire or removable-section-type fencing, unless approved otherwise by Pinal County.

3.9 “Landscaping Required”. Each Owner of a Lot shall submit two (2) copies of a detailed front yard landscape plan (the “Landscape Plan”), conforming to the Encanto Paseo

Homeowners' Association Landscape guidelines, which plan shall be reviewed and approved by the Committee. The approved landscaping shall thereafter be installed in accordance with that approved Landscape Plan. Each such Landscape Plan shall have trees, two (2) of which shall be thirty-six (36) inch box trees which will be placed in the front yard of the Lot. Such trees shall be mesquite, palo verde, ironwood or other trees approved by the Committee. The Landscape Plan shall be drawn on a 24" X 36" sheet and contain a key which provides the following information: 1) the common and botanical names of each plant; 2) the quantities of each plant; 3) the container size of each plant; 4) the size and color of the decomposed granite used; 5) river rock and/or boulders (if used); and 6) the name and type of turf used. If such plan is submitted after the plans and specifications for the proposed home have been submitted, an additional fee of one hundred dollars (\$100.00) shall be payable by the Owner to the Association for the review of such Landscape Plan. The installation of the approved landscaping shall be completed, in accordance with the approved Landscape Plan, within one hundred twenty (120) days after the issuance of the certificate of occupancy for the residential structure. The Architectural Control Committee, the Association's Directors, or any of them, shall have the authority to inspect any installation of landscaping and enforce the provisions hereof in accordance with the provisions of this Declaration and any other applicable rules and requirements. No driveways in the front of the house shall be constructed of gravel, granite, dirt or asphalt. Any driveway in the backyard shall not be visible from the street. Pinal County is not responsible for and will not accept maintenance of any private landscaped areas within this Subdivision.

All lots shall maintain a twenty foot (20') natural vegetation band on each lot and this vegetation band shall be incorporated into the landscape plans as submitted to the architectural control committee for approval. Owner is responsible for all repairs to vegetation band during the construction process.

3.10 "Landscaping and Noncompliance". Any Owner who fails to complete landscaping within 120 days of the date of their "Certificate of Occupancy" of the Owners' home will receive written notice and fourteen (14) days to cure the noncompliance. The notice will state that: upon the fifteenth (15th) day a fine of twenty-five dollars (\$25.00) per week will be assessed to the homeowner's account; after thirty (30) days of noncompliance, the fine will become fifty dollars (\$50.00) per week; after sixty (60) days of noncompliance, the fine will become one hundred dollars

(\$100.00) per week; and every thirty (30) days thereafter, the fine will double. A written request for extension may be submitted to the Board of Directors within the fourteen (14) day cure period. The Board of Directors, within its sole and absolute discretion, may issue a written extension.

3.11 “Mailboxes”. The mailboxes for this Subdivision are to be of the latest design and provided by the U. S. Postal Service.

3.12 “Minimum Livable Area”. All single-family residences constructed within Encanto Paseo Homeowners’ Association, shall have a width of at least seventy (70) feet. All single-family residences shall contain a minimum livable area of two thousand nine hundred fifty (2,950) square feet. All single-family residences may be one or two story (with or without basement) with a maximum height of not more than twenty-eight (28) feet above grade level. Two story homes shall contain a lower level square footage of two thousand nine hundred fifty (2,950), and a upper level maximum square footage of one thousand four hundred (1,400). All square footage requirements shall be exclusive of open porches or attached garages.

3.13 “Plan Approval”. Within Encanto Paseo Homeowners’ Association, except as provided herein, no footings of any residence, garage, shed, fence or other structure shall be dug (or otherwise commenced in any manner) and no landscaping shall be installed until such time as the architectural design, plans, specifications, locations and materials for such residence or other structures have been approved, so stamped and signed by the Committee. All such approvals shall be obtained pursuant to the provisions and requirements of Article 4 herein, and, except as may be otherwise permitted herein. If such construction begins before the above-described approval is obtained, the Association shall have the right to assess a twenty-five hundred dollar (\$2,500.00) fine, which shall constitute a lien on the Owner’s Lot.

3.14 “Commencement of Construction”. No garage, barn, stable or similar structure shall be erected on any Lot until construction of the primary single-family residence (complying with these restrictions) shall have been commenced on said Lot, and no garage or barn shall be used or occupied until construction on said single-family residence is finished and ready for occupancy. Any garage, barn, stable or similar structure erected on any Lot shall be of the same design and

constructed of the same materials as the permanent residence on said Lot. Each garage shall have a side entrance; except, however, that an additional garage which (i) is detached from the residence and (ii) the front of which is located behind and to the rear of the main garage entrance may have a front entrance.

3.15 “Permanent Structure”. No garage, barn, stable, tack room, trailer, mobile home, motor home, motor vehicle, or any temporary structure of any nature may be used temporarily or permanently as a residence on any Lot or tract, except as may be otherwise permitted by the Committee under the authority granted in Section 3.16 and Section 4.5 hereof, all permanent structures on all Lots shall comply with (i) all minimum yard setback requirements established by the zoning ordinances of Pinal County, as they may be amended from time to time, or (ii) the following minimum setback requirements, whichever are greater:

Front Yard	40 feet
Side Yard	20 feet
Rear Yard	40 feet

No garage, barn, stable or similar structure shall not exceed 23’ feet in height and shall not exceed more than 2,500 square feet in size. Structures should be designed in the same manner as the main residence and must receive prior Architectural Control Committee before construction.

3.16 “Fenced Areas”. A fence designed or used for the containment of animals or back yard screening may be built and maintained provided that the location, design and type of materials for such fence have been approved by the Architectural Control Committee as provided herein.

3.17 “Fence Material”. Open fencing walls shall be used as fencing between the home and the side property lines, as viewed from the street in front of the home, and shall not be constructed of vinyl or wood material. Interior privacy walls may be permitted within the building envelope subject to Architectural Control Committee approval. All Lots that are on the South and East perimeters of subdivision shall install exact style and material as the fencing on the North and West perimeters of the subdivision. All lots that are on the perimeter of the subdivision shall not alter the perimeter fencing installed by the Declarant. All fencing except what is described above shall be constructed on the Lots’ common property lines, and shall be approved by the Architectural

Control Committee. All border fencing between lot property lines shall be open fencing and shall not be vinyl or wood fencing. The use of rock columns and tubular steel fencing is strongly encouraged. All fencing designs must be submitted and approved by the architectural control committee prior to installation.

3.18 “Commercial Activities”. No hotel, store, multi-family dwelling, boarding house, guest ranch, halfway house, orphanage, rehabilitation facility, daycare center, nursing home, or any other place of business of any kind, and no hospital, sanitarium or other place for the care or treatment of the physically or mentally sick or for the treatment of disabled animals shall be erected or permitted upon the premises of any Lot, or any part thereof, and no business of any kind or character whatsoever shall be conducted in or from any residence or building on any Lots; provided, however, that notwithstanding the foregoing, Owners shall be permitted the right to conduct legal (i.e. comply with all applicable laws, zoning and other governmental requirements) business activities from the premises of a Lot (and work from home) using electronic equipment (i.e. computers, fax machines, modems, telephones, etc.), if such activities do not result in the delivery or shipment of goods to the property or otherwise adversely increase vehicular traffic and parking to the neighborhood.

3.19 “Signs”. No advertising signs, billboards or unsightly objects shall be erected, placed or permitted to remain on any Lot or tract; provided, however, that a sign or signs as may be required by legal proceedings and a single “For Sale” or “For Rent” sign, not containing more than four (4) square feet of surface area, may be placed on any Lot, and such sign or signs shall not be deemed in violation of these restrictions.

3.20 “Upkeep Assessment”. The Association shall retain a contractor to perform weed control on all vacant Lots and any other Lot that is unsightly with weeds, on a quarterly basis. If such Owner should fail after ten (10) days from the receipt of a written notice from the Association or the Association’s management organization to clean his Lot, the Association, or its designee, shall have the right to enter upon such Lot and may cause the Lot to be cleaned, up to four (4) times each year as necessary, and charge the actual cost thereof to the Owner of such Lot, and said charges shall be a lien against such Lot.



3.21 “Grading and Drainage”. Each Owner shall have the responsibility of engineering, grading and otherwise preparing his Lot for the construction of any improvements thereon, including without limitation the obligation to pay all engineering fees and costs associated with preparation, such as the removal and disposal of excess dirt or the purchase and placement of additional fill dirt. The placement of the additional fill dirt on Lot can not be done until the Owner has been issued the building permit.

For each lot in this subdivision the lot owner shall have prepared, by an Arizona licensed civil engineer, a grading and drainage plan accompanied by a drainage report. The drainage report shall specify the final on-lot and any half street retention requirements based on current Pinal County drainage standards. The engineered plans and report shall be submitted to and approved associations architectural control committee and Pinal County in order to obtain a building permit.

The Developer has established appropriate street grades, as required by the proper governmental authorities, within Encanto Paseo Community Association, and said final grades shall not be disturbed in any manner which may adversely affect any other residential unit or real property whether within the Subdivision or elsewhere; nor shall any Owner divert or cause diversion of the surface water from the street adjacent to his Lot onto any other property. Each Owner hereby acknowledges and covenants that all surface runoff from the center of the street adjacent to his Lot and from his Lot shall be retained on the Lot in accordance with approved grading plans and a drainage report. The Lot Owner shall be responsible to ensure that the retention requirements are provided at all times. The provisions of this paragraph shall be subordinate to the Pinal County subdivision regulations governing such drainage and such plans shall be approved by Pinal County. No structure of any kind shall be constructed or any inappropriate vegetation be planted on any drainage easement which would obstruct or divert the flow or retention of storm water. Pinal County, if it so desires, may construct and maintain drainage facilities on or under the land of the easement.

3.22 “Utility Easements”. All Lots and tracts in the Subdivision are subject to a public utilities easement for the purpose of permitting installation and maintenance of public utilities, and no excavation, planting, fence, building, structure or other barrier or impediment may be placed or permitted to remain at any point on any public utility easement within Encanto Paseo Community

Association which would restrict the free use and enjoyment of said easements by the Owner of any Lot or Lots in the Subdivision or by a utilities provider.

3.23 “Use of Motor Driven Vehicles”. No all-terrain vehicles (ATVs), trail bikes, go-carts, motorcycles or motor-driven vehicles of any kind shall make use of any easement or vacant lot within Encanto Paseo Homeowners’ Association without the prior consent and approval of the Association.

3.24 “Trash Containers and Collection”. No garbage or trash shall be placed or kept on any property within Encanto Paseo Community Association, except in covered containers. In no event shall such containers be maintained so as to be visible from neighboring property except to make the same available for collection, and then, only for the shortest time reasonably necessary to effect such collection.

3.25 “Diseases and Insects”. No Owner shall permit any thing or condition to exist upon any property within Encanto Paseo Community Association which shall induce, breed or harbor infectious plant diseases or noxious insects; provided, however, this provision shall not restrict the animal privileges contained herein.

3.26 “Air Conditioning Equipment”. No heating, air conditioning or refrigeration equipment shall be placed, allowed or maintained anywhere other than on the ground unless concealed (subject to required approvals by the Architectural Control Committee) in such manner that the concealment thereof appears to be part of the integrated architectural design of the building and does not have the appearance of a separate piece or pieces of machinery fixtures or equipment. No window air conditioning unit shall be installed in any building or structure on any Lot without the prior approval of the Architectural Control Committee

3.27 “Utility and Service Lines”. No electric, power, telephone, water, sewer, cable television or other utility or service lines of any nature or kind shall be placed, allowed or maintained upon or above the ground on any Lot, except to the extent, if any, underground placement thereof may be prohibited by law or would prevent the subject line from being

functional. The foregoing shall not prohibit service pedestals and above ground switch cabinets and transformers where required.

3.28 “Burning and Incinerators”. No open fires or burning shall be permitted on any Lot at any time, and no incinerators or like equipment shall be placed, allowed or maintained upon any Lot. The foregoing shall not be deemed to preclude the use, in customary fashion, of outdoor residential barbecues, grills, fireplaces or fire pits.

3.29 “Noncompliance and Penalty Provisions”. Any Owner who violates any provision of this Declaration or any supplement thereto, or any decision of the Board of Directors or the Architectural Control Committee, shall receive a letter of notification of such noncompliance. If the noncompliance that is stated in this letter is not cured within fourteen (14) days after the initial notification, the Owner shall receive a second letter reminding him of the noncompliance and a warning of a pending fine if the issue is not cured at that time. If the noncompliance is not cured after an additional fourteen (14) day period following the second notification, a third letter will be sent to the homeowner. The Owner shall be given fourteen (14) days to cure the noncompliance. On the fifteenth (15th) day after the third notification is sent, a fine of twenty-five dollars (\$25.00) per week will be assessed to the homeowners account; after thirty (30) days of noncompliance, the fine will become fifty dollars (\$50.00) per week; after sixty (60) days of noncompliance, a fine of one hundred dollars (\$100.00) per week will result. Every thirty (30) day period thereafter, the fine will double until the nonconformance is cured. Any Owner who receives a fourteen (14) day notice shall be given the opportunity to be heard by the Board of Directors prior to the Association assessing any monetary penalties. The Owner must contact the management company prior to the expiration of the first fourteen (14) day notice period in order to schedule a hearing. Delivery of any notice shall be in accordance with Section 10.9 of this Declaration. Any written notice or other documents relating to or required by this Declaration may be delivered either personally or by mail. If by mail, it shall be deemed to have been delivered forty-eight (48) hours after a copy of the same has been deposited in the United States mail, postage prepaid, and addressed to the last known address of Addressee.

#### ARTICLE 4

## Architectural Control Committee

4.1 “Organization”. There shall be an Architectural Control Committee organized which shall consist of not less than three (3) members. None of such members shall be required to be an architect or to meet any other particular qualifications for membership. Until such time as all home plans within Encanto Paseo Homeowners’ Association have been approved, Chris Anderson shall be the sole member. A member need not be, but may be, a member of the Board or an officer of the Association.

4.2 “Initial Members”. The following persons are hereby designated as the initial member of the Committee:

Chris Anderson, Chair

4.3 “Terms of Office”. Unless the initial members of the Committee have resigned or been removed, their terms of office shall expire at the time all home plans have been approved, but continue thereafter until the appointment of their respective successors. Thereafter the term of each member of the Committee shall be for a period of three (3) years and until the appointment of his successor.

4.4 “Appointment and Removal”. The right to appoint and remove all members of the Architectural Control Committee at any time shall be and is hereby vested fully in the Board; provided, however, that no member may be removed from the Architectural Control Committee by the Board except by the vote or written consent of two-thirds (2/3) of all the members of the Board. Any member of the Architectural Control Committee may resign at any time by giving written notice thereof to the Board.

4.5 “Duties”. The Architectural Control Committee shall have the authority and responsibility to review the plans and specifications of all single-family residences, garages, barns, stables, sheds, fences and other structures to be constructed in the Subdivision pursuant to the terms hereof, and perform such other duties as may be delegated to it by the Board.

The Architectural Control Committee shall have the right to disapprove any plans, or specifications, or grading plans which are not suitable or desirable, in its opinion, for aesthetic or

other reasons, and in so passing upon such plans, specifications and grading plans, and without any limitations of the foregoing, it shall have the right to take into consideration the suitability of the proposed building or other structure, and of the materials of which it is to be built, the site upon which it is proposed to erect the same, the harmony thereof with the surroundings and the effect of the proposed building or other structure on the outlook from the adjacent or neighboring property.

In addition, the Architectural Control Committee shall have the right and power to waive the specific requirements hereof when reasonableness and prudence, in its opinion, are required in order to avoid unnecessary or excessive expense or inconvenience to one or more Owners or the Association; provided, however, that the Committee shall have no power to waive the requirements of applicable town, county or state laws nor shall the Committee waive any requirement of the Declaration without prior approval of the Association's Board of Directors.

All subsequent additions to or changes or alterations in any building, fence, wall, or other structure including exterior color scheme, shall be subject to the prior approval of the Architectural Control Committee. No changes or deviations in or from such plans and specifications, once approved, shall be made without prior written approval of the Architectural Control Committee. All decisions of the Architectural Control Committee shall be final and no Owner or other party shall have recourse against the Architectural Control Committee for its approval or disapproval of any such plans and specifications or plat plans, including front landscaping.

4.6 "Application and Approval". Two (2) complete copies of the preliminary set of plans and specifications of any proposed structure must be submitted to the Architectural Control Committee as well as an engineered grading and drainage plan for the Lot for its review and approval before any final plans are prepared. The preliminary set of plans and specifications shall be submitted together with such fee or fees as the Association determines its sole discretion to be reasonable or necessary to defray the cost of its review and the professional evaluation of such preliminary plans and specifications, as well as the final plans and specifications. At least one (1) copy of said plans and specifications shall be retained by the Association until the final plans and specifications have been approved in accordance herewith.

Two (2) complete copies of the final set of architectural plans and specifications of any proposed structure and the related landscape plans must be submitted to the Architectural Control Committee for its review and approval before such plans or specifications are submitted for County

review. At least one (1) copy of the final set of plans and specifications shall be retained by the Association.

In the event that a written request for such approval is not acted upon within sixty (60) days of the receipt of each subsequent submittal by the Architectural Control Committee of said request, then such approval will not be required; provided, however, that no structure may be constructed pursuant to this paragraph which conflicts with any specifically delineated restriction contained within the Declaration or with any applicable zoning or use law.

4.7 “Fees”. The Architectural Control Committee may charge such fees as the Board determines, in its sole and exclusive discretion, to be reasonable or necessary to pay the fees of architects, engineers and other similar professional consultants, and to pay the costs of duplication, postage, etc. incurred in connection with the review of plans or specifications. All such fees shall be payable by the Owner (applicant) at such time as plans and specifications of any proposed structure, addition or modification is submitted to the Association Manager for review and approval by the Architectural Control Committee.

4.8 “Waiver”. The approval by the Architectural Control Committee of any plans, drawings, or specifications for any work done or proposed, or for any other matter requiring the approval of the Architectural Control Committee, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification, or matter subsequently submitted for approval.

4.9 “Meeting and Compensations”. The Architectural Control Committee shall meet from time to time as necessary to perform its duties hereunder. The vote or written consent of any two (2) members at a meeting, or otherwise, shall constitute the act of the Committee. Members of the Committee shall not be entitled to compensation for their services.

4.10 “Committee Rules”. The Architectural Control Committee may, with Association and Board approval, from time to time in its sole and absolute discretion, adopt, amend and repeal, by a two-thirds (2/3) vote or written consent, rules and regulations, defined herein as the Committee Rules. The Committee Rules may set forth the standards and procedures for Committee review and

guidelines for architectural design, landscaping, color scheme, exterior finishes and materials and similar features that are recommended for use within Encanto Paseo Homeowners' Association. Variances from these declarations can be obtained if the Architectural Control Committee and the Association approve them.

4.11 "Liability". Neither the Architectural Control Committee nor any member thereof shall be liable to the Association, any Owner, or to any other party for any damage, loss or prejudice suffered or claimed on account of:

- A. Approval or disapproval of any plans, drawings, or specifications, whether or not defective;
- B. The construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications;
- C. The development of any property within Encanto Paseo Homeowners' Association; or
- D. The execution and filing of any estoppel certificate, whether or not the facts therein are correct; provided, however, that with respect to the liability of a member, such member has acted in good faith on the basis of such information as may be possessed by him.

Without any way limiting the generality of any of the foregoing provisions of this Section 4.11, the Architectural Control Committee, or any member thereof, may, but is not required to, consult with or hear the views of the Association or any Owner with respect to any plans, drawings, specifications, or any other proposal submitted to the Committee for review. In the event that the Architectural Control Committee's approval of any plan is in conflict with these Declarations, it does not waive the responsibility of the homeowner or any of his contractors to conform to these Declarations. These Declarations control the actions of the Owners in Encanto Paseo Community Association.

## ARTICLE 5

### Encanto Paseo Homeowners' Association

5.1 “The Association”. The Encanto Paseo Homeowners’ Association Community Association shall be a non-profit Arizona corporation charged with the duties and vested with the powers prescribed by law and set forth in its Articles, Bylaws and this Declaration. Neither the Articles nor Bylaws shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

5.2 “Board of Directors and Officers”. The affairs of the Association shall be conducted by a board of directors, elected by its members in accordance with the Articles and Bylaws of the Association, and such officers and committees as the Board may elect or appoint in accordance with the Articles and Bylaws. Directors need not be Members of the Association. The initial Directors are as follows:

Rosa Anderson

Darlene Pickron

5.3 “Powers and Duties”. The Association shall have such rights, duties and powers as set forth in the Articles and Bylaws, as they may be amended from time to time. Such rights, duties and powers shall include, but not be limited to, the following:

- A. Appoint and remove members of the Committee as permitted herein;
- B. Hold title to the Common Area and such other areas as may be acquired by it and set aside and maintained for the use, enjoyment or convenience of Owners of Lots within Encanto Paseo Homeowners’ Association; and
- C. Maintain and manage all Common Areas, which shall specifically include the following:
  - (i) the tracts or areas dedicated for landscaping along adjacent roads to the Association; and
  - (iv) landscape areas within open spaces, tracts and arterial and collector rights-of-way created or dedicated specifically for the benefit of Encanto Paseo Community Association. Landscaping within the major street and public right-of-way to the back of the curb shall be maintained by the Association.



5.4 “Rules and Regulations”. By a majority vote of the Board, the Association may, from time to time and subject to the provisions of this Declaration, adopt, amend and repeal rules and regulations to be known as the Encanto Paseo Homeowners’ Association Rules (“Rules”). The Rules may restrict and govern the use of any area by any Owner, or by an invitee, licensee or lessee of such Owner, provided that the Rules may not discriminate among Owners and shall not be inconsistent with this Declaration, the Bylaws or Articles. A copy of the Rules, as they may from time to time be adopted, amended or repealed, shall be mailed or otherwise delivered to each Owner and may be recorded. Upon such recordation, said Rules shall have the same force and effect as if they were set forth in and were a part of this Declaration.

5.5 “Personal Liability”. No member of the Board or any Committee member of the Association, or any officer of the Association, or the Manager, shall be personally liable to any Owner, or to any other party, including the Association, for any damage, loss or prejudice suffered or claimed on account of any acts, omissions, errors or negligence of the Association, the Board, the Manager or any other representative or employee of the Association or the Architectural Control Committee or any other committee or any officer of the Association, provided that such person has, upon the basis of such information as may be possessed by him, acted in good faith, without willful or intentional misconduct.

## **ARTICLE 6**

### **Membership and Voting Rights**

6.1 Every Owner of a Lot that is subject to assessment shall be a member of the Association. Membership shall be appurtenant to, and may not be separated from, ownership of any Lot that is subject to assessment.

6.2 The Association shall have three (3) classes of voting membership.

Class A. Class A members shall be all Owners of Lots within Encanto Paseo Homeowners’ Association and such Owners within Additional Properties as may be so designated in a Supplemental Declaration annexing such Additional Properties, with the exception of Declarant. Class A members shall be entitled to one (1) vote for each Lot owned.

When more than one (1) person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot. The Class A members shall, in addition, be entitled to such other rights and obligated by such other restrictions as may be specifically set out in the Supplemental Declaration annexing their properties and designating them Class A members.

Class B. The Class B members shall be the Owners of Lots within Additional Properties as may be so designated in the Supplemental Declaration annexing such Additional Properties with the exception of the Declarant. The Class B members shall be entitled to one (1) vote for each Lot owned. When more than one (1) person holds an interest in any such Lot, all such persons shall be members. The vote for such Lot shall be exercised as they, among themselves, determine, but in no event shall more than one (1) vote be cast with respect to any Lot. The Class B members shall, in addition, be entitled to such other rights and obligated by such other restrictions as may be specifically set out in the Supplemental Declaration annexing their properties and designating them as Class B members.

Class C. The Class C member shall be the Declarant (including its successors and assigns) and shall be entitled to three (3) votes for each Lot owned, whether voting on a matter presented to the Class A members, Class B members, or both. The Class C membership shall cease and be converted into Class A and Class B memberships, as appropriate, on the happening of any of the following events, whichever first occurs: (i) when all of the Lots have been conveyed to purchasers; (ii) when the Declarant notifies the Association in writing that it relinquishes its Class C memberships; or (iii) on January 1, 2011.

6.3 “Voting”. The vote for each Lot must be cast as a unit, and fractional votes shall not be allowed. In the event that joint Owners are unable to agree among themselves as to how their vote shall be cast, they shall lose their right to vote on the matter in question. If any Owner casts a vote representing a certain Lot, it will thereafter be conclusively presumed for all purposes that he is acting with the authority and consent of all other Owners of the same Lot. In the event more than

one (1) vote is cast for a particular Lot, none of said votes shall be counted, and said votes shall be deemed void.

6.4 “Cumulative Voting”. In any election of the members of the Board, cumulative voting shall be permitted.

6.5 “Suspension of Voting Rights”. In the event any Owner is in arrears in the payment of any assessments or other amounts due under any of the provisions of this Declaration for a period of thirty (30) days, the Owner’s right to vote as a Member of the Association shall be suspended until all payments, including accrued interests and attorneys’ fees are brought current.

6.6 “Additional Rights”. Each member shall have such other rights, duties and obligations as set forth in the Articles and Bylaws, as they may be amended from time to time.

6.7 “Transferability”. The Association membership of each Owner of a Lot within Encanto Paseo Homeowners’ Association or within any Additional Properties shall be appurtenant to said Lot and shall run with the title to said Lot. The rights and obligations of an Owner and membership in the Association shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership to the Lot, and then only to the transferee of ownership to such Lot, or by intestate succession, testamentary disposition, or foreclosure of a mortgage of record, or such other legal process as is now in effect or as may hereafter be established under or pursuant to the laws in the State of Arizona. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership of said Lot shall operate to transfer said membership to the new Owner thereof.

## ARTICLE 7

### Permitted Uses and Restrictions

#### Common Area

7.1 “Maintenance by Association”. The Association may alter the community for good, as allowed by laws and rules and be compensated when necessary and, it may at any time, as to any

Common Area conveyed, leased or transferred to it, or otherwise placed under its jurisdiction, in the discretion of the Board of the Association, without any prior approval of the Owners being required:

- A. Reconstruct, repair, replace or refinish any improvement or portion thereof upon any such area in accordance with original design, finish or standard of construction of such improvement or in accordance with the last plans thereof approved by the Committee; and
- B. Replace injured and diseased trees or other vegetation in any such area, and plant trees, shrubs, and ground cover to the extent deemed necessary by the Board for the conservation of water and soil and for aesthetic purposes; and
- C. Place and maintain upon any such area such signs as the Board may deem appropriate for the proper identification, use and regulation thereof; and
- D. Do all such other and further acts that the Board deems necessary to preserve and protect the Property and the beauty thereof, in accordance with the general purposes specified herein.

The Board shall be the sole judge as to the appropriate maintenance of all grounds and improvements within the Common Area. It is specifically acknowledged that all landscaping and tracts are contemplated and intended to be a part of the Common Area.

7.2 “Damage or Destruction of Common Area by Owners”. In the event any Common Area is damaged or destroyed by an Owner or any member of his family, such Owner does hereby authorize the Association to repair said damaged area, and the Association shall so repair said damaged area in a good workmanlike manner in conformance with the original plans and specifications of the area involved, or as the area may have been modified or altered subsequently by the Association, in the discretion of the Association. The amount necessary for said Owner, upon demand, to the Association, shall pay such repairs and the Association may enforce collection in the same manner as provided elsewhere in this Declaration for collection and enforcement of assessments.

7.3 “Use of Common Area”. The Common Area shall be operated for the use and enjoyment of the Owners and the Board shall have the right to make, promulgate, supplement, amend, change or revoke rules pertaining to the use and operation of the Common Area as deemed necessary by the Board.

## ARTICLE 8

### Covenant for Maintenance Assessments

8.1 “Creation of Lien and Personal Obligation of Assessments”. The Declarant for each Lot owned within Encanto Paseo Homeowners’ Association hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the Association:

- A. Annual assessments or charges consisting of a pro rata share of the actual cost to the Encanto Paseo Homeowners’ Association Community Association relating to or incurred as a result of the upkeep, repair, maintenance or improvement of the Common Area, and a pro rata share of any and all taxes and assessments paid by the Association relating to or incurred as a result of the Common Area;
- B. A pro rata share of such sums as the Board shall determine to be fair and prudent for the establishment of necessary reserves for expenses, maintenance and the payment of taxes, all as herein required; and
- C. A pro rata share of any special assessment for capital improvements, such assessments to be established and collected as herein provided;

The annual and special assessments, together with interest, costs and reasonable attorneys’ fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each assessment, together with interest, costs and reasonable attorneys’ fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent

assessment shall not pass to his successor in title unless expressly assumed by said successor in title.

8.2 “Purpose of Assessment”. Assessments levied by the Association of Encanto Paseo Homeowners’ Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents within Encanto Paseo Community Association and for the improvement and maintenance of its Common Areas and for the establishment of a reserve fund.

8.3 “Maximum Assessment”. Until January 1, 2007, the maximum assessment for all Lots within Encanto Paseo Community Association shall not exceed sixty-five dollars (\$65.00) per month. From January 1, 2007, the maximum assessment may be increased each year not more than Twenty percent (20%) above the maximum assessment for the previous year, or the amount of increase in the “Cost of Living Index”, whichever is greater, without a vote of the membership. For purposes hereof, “Cost of Living Index” shall mean the “United States Consumer Price Index” published monthly by the United States Department of Labor, Bureau of Labor Statistics, which index shall have as its base the number 100.00 for the period from 1982-1984. Any successor index or modification of the above-described index shall be adjusted to relate to the 1982-1984 index of 100.00. (If the Cost of Living Index ceases to be published, then it may be replaced for the purposes hereof by a different consumer price index selected by the Board.) From and after January 1, 2007, the maximum annual assessment may be increased more than the normal increase allowed (twenty percent [20%] or Cost of Living increase, whichever is greater) above the maximum assessment for the previous year by a vote of two-thirds (2/3) of the members of each class of membership who are voting in person or by proxy, at a meeting duly called for this purpose. The Board may fix the annual assessment at an amount not in excess of the applicable maximum.

8.4 Establishment of Reserve Fund: To ensure that the Association shall have adequate funds to meet its expenses or to purchase necessary equipment or services, each person or entity, with the exception of the Declarant, who purchase a Lot shall pay to the Association immediately upon becoming the Owner of the Lot a sum equal to one fourth (1/4) of the current annual assessment for the Lot. Funds paid to the Association pursuant to this Section may be used by the Association for payment of operating expenses, or any other purpose permitted under this

Declaration. Payments made pursuant to this Section shall be nonrefundable and shall not be offset or credited against or considered as advance payment of any assessments levied by the Association pursuant to this Declaration.

8.5 Transfer, Refinance and Disclosure Fees: Each Purchaser of a Lot shall pay to the Association immediately upon becoming the Owner of the Lot a transfer fee in such amount as is established from time to time by the Board. Any Owner of a Lot who sells or refinances his Lot and requires a status or disclosure statement from the Association in connection therewith shall pay to the Association a refinance or disclosure fee in such amount as is established from time to time by the Board. Fees charged pursuant hereto shall be secured by the Association lien established pursuant to this document.

8.6 "Special Assessments for Capital Improvements". In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property relating thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of the Members of each class of membership who are voting in person or by proxy at a meeting duly called for this purpose.

8.7 "Notice and Quorum for Any Action Authorized Under Sections 8.3, 8.4, 8.5 and 8.6". Written notice for any meeting called for the purpose of taking any action authorized under Section 8.3, 8.4, 8.5 or 8.6 shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first meeting called, the presence of members or of mail in ballots entitled to cast sixty percent (60%) of all the votes of each class membership constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

8.8 “Uniform Rate of Assessment”. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly, quarterly, or annual basis.

8.9 “Commencement of Assessments”. The annual assessments provided for herein shall commence as to all Lots at such time as the Board determines in its sole and absolute discretion. The first annual assessment shall be adjusted according to the number of months remaining in that calendar year. The Board shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment. Written notice of the annual assessment shall be sent to every Owner subject thereto. The Board of Directors shall establish the due date.

8.10 “Effective Non-Payment of Assessment; Remedies of the Association”. Each Owner of any Lot shall be deemed to covenant and agree to pay to the Association the assessment provided for herein, and agrees to the enforcement of the assessments in the manner herein specified. In the event the Association employs an attorney or attorneys for the collection of any assessment, whether by suit or otherwise, or to enforce compliance with or specific performance of the terms and conditions of this Declaration, or for any other purpose in connection with the breach of this Declaration, each Owner and member 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 or member. In the event of a default in payment of any such assessment when due and such default continues for a period of fifteen (15) days, the assessment shall be deemed delinquent, and the Association shall have the right to assess a late payment fee (the amount of which shall be determined in the light of the facts and in accordance with the limitations dictated by the Arizona Revised Statutes, but at the sole and absolute discretion of the Board) and, in addition to any other remedies herein or by law provided, the Association may enforce each such obligation in any manner provided by law or in equity or without any limitation of the foregoing, by either or both of the following procedures:

- A. 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 such assessment obligation. Any judgment rendered in any such action shall include the amount of the delinquency (and late payment fees, if any),



together with interest thereon at the rate of twelve percent (12%) per annum from the date of delinquency, court costs, and reasonable attorneys' fees in such amount as the Court may adjudge against the delinquent Owner.

- B. Enforcement by Lien. There is hereby created a claim of lien, with power of sale, on each and every Lot within Encanto Paseo Homeowners' Association to secure payment to the Association of any and all assessments (and late payment fees, if any) levied against any and all Owners of such Lots under these restrictions, together with interest thereon at the rate of twelve percent (12%) per annum from the date of delinquency, and all costs of collection which may be paid or incurred by the Association in connection therewith, including reasonable attorneys' fees. At any time within ninety (90) days after the occurrence of any default in the payment of any such 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. The demand shall state the date and amount of the delinquency. Each default shall constitute a separate basis for a demand or claim of lien or a 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 written demand, even without such a written demand being made, the Association may elect to file such 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, and shall contain substantially the following information: (1) the name of the delinquent Owner; (2) the legal description and street address of the Lot against which the claim of lien is made; (3) the amount claimed to be due and owing for the amount of the delinquency, interest thereon, collection costs, and reasonable attorneys' fees; and language indicating that the claim of lien is made for such amount by the Association pursuant to this Declaration.

For purposes of enforcement of the Owner's obligations hereunder, the Property shall be deemed to constitute a "Planned Community" under Title 33, Chapter 16 of the Arizona Revised Statutes and Section 33-1807 thereof (or the replacement thereof) shall govern the priority and perfection of any lien created by this Declaration. 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 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, by becoming an Owner of a Lot in Encanto Paseo Community Association, hereby expressly waives any objection to the enforcement and foreclosure of this lien in this manner.

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

## ARTICLE 9

### General Provisions

9.1 "Enforcement". The Association, or any Owner, shall have the right to enforce by any proceeding at law or in equity all restrictions, conditions, covenants reservations, liens and charges now or hereinafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no way be deemed a waiver of the right to do so thereafter

9.2 “Interpretation of the Declaration”. Except for judicial construction, the Association, by its Board, shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association’s construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all persons and property benefited or bound by the covenants and provisions hereof.

9.3 “Severability”. Invalidation of any of these covenants or restrictions by judgment or court order shall in no way affect any other provisions that shall be in full force and effect.

9.4 “Rule Against Perpetuities”. If any interest purported to be created by this Declaration is challenged under the Rule Against Perpetuities or any related rule, the interest shall be construed as becoming void and of no effect as of the end of the applicable period of perpetuities computed from the date when the period of perpetuities starts to run on the challenged interest; the “lives in being” for computing the period of perpetuities shall be (i) those which should be used in determining the validity of the challenged interest, plus (ii) those of the issue of the Board who are living at the time the period of perpetuities starts to run on the challenged interest.

9.5 “Amendment”. The covenants and restrictions of this Declaration shall run with and bind the land until December 31, 2030, after which they shall be automatically extended for successive periods of ten (10) years. So long as there are Class C memberships in existence, this Declaration may be amended by an instrument signed by (i) the Declarant or its successors or assigns (except in the event where the Declarant has assigned its rights for only part of the Property and retained the rights for the remainder, in which event the instrument shall be signed by the Declarant and its successors or assigns), and (ii) the Owners owning not less than seventy-five percent (75%) of the Lots within the Subdivision. After the expiration or termination of all Class C memberships and at any time prior to December 31, 2030, this Declaration may be amended by an instrument signed by the Owners owning not less than seventy-five percent (75%) of the Lots within the Subdivision. At any time subsequent to December 31, 2030, this Declaration may be amended by an instrument signed by the Owners owning not less than sixty-five percent (65%) of the Lots within the Subdivision. Any amendment must be recorded.

9.6 “Violations and Nuisances”. Every act or omission whereby any provision in this Declaration is violated, in whole or in part, is hereby declared to be a nuisance and may be enjoined or abated, whether or not the release sought is for negative or affirmative action, by Declarant, the Association, or any Owner of a Lot within Encanto Paseo Homeowners’ Association. However, any other provision to the contrary notwithstanding, only Declarant, the Association, the Board, or the duly authorized agent of any of them, may enforce by self help any of the provisions of this Declaration.

9.7 “Violation of Law”. Any violation of any state, municipal, or local law, ordinance or regulation, pertaining to the ownership, occupation, or use of any Property within Encanto Paseo Homeowners’ Association is hereby declared to be a violation of this Declaration and subject to any and all of the enforcement procedures set forth herein.

9.8 “Remedies Cumulative”. Each remedy provided by this Declaration is cumulative and not exclusive.

9.9 “Delivery of Notices and Documents”. Any written notice or other documents relating to or required by this Declaration may be delivered either personally or by mail. If by mail, it shall be deemed to have been delivered forty-eight (48) hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to the last known address of the addressee.

9.10 “References to Covenants in Deeds”. Deeds to and instruments affecting any Lot or any part of the Property may contain the covenants herein set forth by reference to this Declaration; but regardless of whether any such reference is made in any deed or instrument, each and all of the covenants shall be binding upon the grantee Owner or other person claiming through any instrument, and his heirs, executors, administrators, successors and assigns.

9.11 “Declaration”. By acceptance of a deed, or by acquiring any ownership interest, any of the Property within this Declaration, each person or entity, for himself or itself, his or its heirs,

personal representatives, successors, transferees and assigns, binds himself or itself, his or its heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, rules, and regulations now or hereinafter imposed by this Declaration and any amendments thereof. In addition, each person or entity, by so doing, thereby acknowledges that this Declaration sets forth a general scheme for the improvement and care of the Property covered thereby, and hereby evidences that his or its interest in all of the restrictions, conditions, rules, and regulations contained herein shall run with the land and be binding on all subsequent and future Owners, grantees, purchasers, assignees, and transferees thereof. Furthermore, each such person or entity fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the various subsequent and future Owners.

9.12 “Gender and Number”. Wherever the context of this Declaration so requires, words used in the masculine gender shall include the feminine and neuter genders; words used in the neuter gender shall include the masculine and feminine genders; words in the singular shall include the plural; and words in the plural shall include the singular.

9.13 “Captions and Titles”. All captions, titles or headings of the Articles and Sections in this Declaration are for the purpose of reference and convenience only, and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof, or to be used in determining the intent or context thereof.

IN WITNESS WHEREOF the undersigned ENCANTO PASEO AT SAN TANS, LLC, an Arizona limited liability company, has caused its company name to be signed by the signature of a duly authorized member, on this 30 day of April, 2007.

Lot 33 High in the Country, L.L.C., an Arizona Limited Liability Company.

Its: J. Denton Dobbins, Jr., its Managing Member

**Encanto Paseo at the San Tans, LLC**

An Arizona Limited Liability Company

By: 

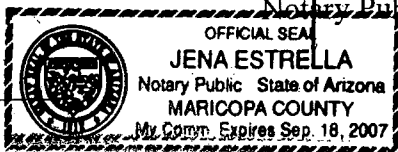
Chris Anderson, its Attorney in Fact,  
Limited Special Power of Attorney

STATE OF )  
 ) ss.  
County of )

The foregoing instrument was acknowledged before me this 30 day of April, 2007, by Chris Anderson, Attorney in Fact for Encanto Paseo at the San Tans, LLC., An Arizona Limited Liability Company.

Jena Estrella

Notary Public



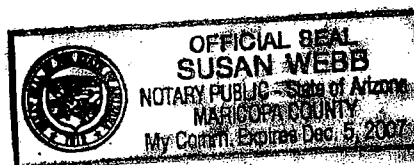
My Commission Expires: \_\_\_\_\_

IN WITNESS WHEREOF the undersigned RANCHWOOD HOMES AND DEVELOPMENT, LLC, an Arizona limited liability company, owner of lot #13, has caused its company name to be signed by the signature of a duly authorized member, on this \_\_\_\_ day of May, 2007.

Ranchwood Homes and Development, L.L.C., an Arizona Limited Liability Company.

By: Robert LaRocque

Its: MANAGING MEMBER



STATE OF ARIZONA )  
 ) ss.  
County of MARICOPA )

The foregoing instrument was acknowledged before me this 4 day of May, 2007, by ROBERT PAUL LAROCQUE, on behalf of Ranchwood Homes and Development, LLC., An Arizona Limited Liability Company.

Susan Webb

Notary Public

My Commission Expires: 12/05/2007

IN WITNESS WHEREOF the undersigned SANTAN GATED COMMUNITY HOLDINGS CORPORATION, an Arizona Corporation, has caused its company name to be signed by the signature of a duly authorized member, on this 7 day of May, 2007.

Santan Gated Community Holdings Corporation, an Arizona Corporation

By: Wm R Pickron

Its: PRESIDENT

STATE OF ARIZONA )  
 ) ss.  
County of MARICOPA )

The foregoing instrument was acknowledged before me this 7 day of May, 2007, by Wm Pickron, on behalf of Santan Gated Community Holdings Corporation, An Arizona Corporation.

Susan Webb  
Notary Public

My Commission Expires: 12/05/2007



**RATIFICATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned, being the Beneficiary of record, MERIDIAN BANK of that certain Deed of Trust, dated May 12, 2006, and recorded May 17, 2006, at Recording No. 2006-071073, records of Pinal County, Arizona, hereby ratifies, confirms and approves: the Covenant, Conditions and Restrictions for Encanto Paseo, recorded concurrently herein.

Dated this 2nd day of May, 2007.

MERIDIAN BANK

By: Susan Webb

Its: SVP

STATE OF )  
 ) ss.  
County of )

The foregoing instrument was acknowledged before me this day of May, 2007, by Sue McAtee, on behalf of Meridian Bank.

Kristen Kurchev  
Notary Public

My Commission Expires: Jan. 26, 2009





When Recorded, Return to:

Encanto Paseo at San Tan Homeowners' Association, Inc.  
c/o Snow Property Services  
4135 S. Power Road, Suite 122  
Mesa, Arizona 85212

**FIRST AMENDMENT TO AMENDED AND RESTATED COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR ENCANTO PASEO**

THIS First Amendment to the Amended and Restated Covenants, Conditions and Restrictions for Encanto Paseo (this "First Amendment") is dated this 18<sup>th</sup> day of February, 2015 by and between the Owners, and shall amend, supplement and modify that certain Amended and Restated Covenants, Conditions and Restrictions ("Declaration") for Encanto Paseo dated April 30, 2007 and recorded by the County Record in the official records of Pinal County, Arizona at 2007-05585114028, which wholly superseded and replaced the Original Declaration of Covenants, Conditions and Restrictions recorded in Fee No. 2006-163219 Pinal County.

**3.12 of the CC&Rs currently reads:**

3.12 "Minimum Livable Area". All single-family residences constructed within Encanto Paseo Homeowners' Association, shall have a width of at least seventy (70) feet. All residences shall contain a minimum livable area of two thousand nine hundred fifty (2,950) square feet. All single family residences may be one story (with or without basement) with a maximum height of not more than eighteen (18) feet above grade level. All square footage requirements shall be exclusive of porches and attached garages.

**The new CC&R language that would be recorded and run with the lots, if adopted, would eliminate all two story homes and would read as follows:**

3.12 "Minimum Livable Area". All single-family residences constructed within Encanto Paseo Homeowners' Association, shall have a width of at least seventy (70) feet, with the exception of lots one through nine (1-9) which lots shall have a width of at least fifty-five (55) feet and at least four hundred and fifty (450) feet of that width of the front of the residence that faces the street shall be covered with stone. All residences shall contain a minimum livable area of two thousand nine hundred fifty (2,950) square feet, with the exception of lots one through nine (1-9) which lots shall contain a minimum livable area of two thousand five hundred (2,500) square feet. All single family residences may be one story (with or without basement) with a maximum height of not more than eighteen (18) feet above grade level. All square footage requirements shall be exclusive of porches and attached garages. Two- story homes are prohibited.

The President of the Association, duly elected to act for Encanto Paseo at San Tan Homeowners' Association, Inc., acknowledges the affirmative vote of at least 75% of the current owners of Encanto Paseo at San Tan Homeowners' Association, Inc. by written instrument for the above amendment to the CC&R's.

All other aspects of the CC&R's shall remain unchanged and remain in full force as previously adopted and recorded in the official records of Pinal County, Arizona.

IN WITNESS WHEREOF, I being President of Encanto Paseo at San Tan Homeowners' Association, Inc., hereby set my hand this \_\_\_\_ day of March, 2015.

Encanto Paseo at San Tan Homeowners'  
Association, Inc.

By: \_\_\_\_\_  
Bill Pickron, President

STATE OF ARIZONA        )  
  ) ss.  
COUNTY OF MARICOPA    )

On this \_\_\_\_ day of March, 2015, before me, the undersigned Notary Public, personally appeared Bill Pickron, who acknowledged himself to be the Board President of the Encanto Paseo at San Tan Homeowners Association, Inc. and that he, as such officer, being authorized so to do, executed the within instrument of the purposes therein contained by signing the name of the said corporation by himself as such officer.

IN WITNESS WHEREOF, I have hereunto set my hand and seal.

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public