

When recorded send to:

**Green Valley Villas West**

**460 S Paseo Quinta**

**Green Valley, Az, 85614**

**AGREEMENT FOR ENCROACHMENT**

This Agreement for Encroachment (“Agreement”) is made and entered into by and between the following parties (“Parties”):

GREEN VALLEY VILLAS WEST CONDOMINIUM ASSOCIATION, an Arizona nonprofit corporation (“Association”); and

\_\_\_\_\_ (“Owner(s)”) \_\_\_\_\_

**RECITALS**

The Parties acknowledge that the following Recitals are true and correct and constitute an integral part of this Agreement:

1. Owner is the record owner of the property located at \_\_\_\_\_ Green Valley, Arizona, 85614 and legally described as follows:

Lot No. \_\_\_\_\_ of HAVEN GREEN VALLEY WEST, a subdivision of Pima County, Arizona, according to the map or plat thereof of record in the office of the County Recorder of Pima County, Arizona, in Book 27 of Maps and Plats, at page 75 thereof; and as amended by Declaration of Scrivener’s Error recorded September 10, 1976, in Docket 5352, at page 952.

TOGETHER WITH an undivided interest to the common elements as set forth in the Amended and Restated Declaration of Covenants, Conditions, and Restrictions for Green Valley Villas West recorded on January 6, 2000, in the office of the County Recorder for Pima County, Arizona in Docket 11208 at Page 1968 (“Lot”).

2. The Lot is subject to that Amended and Restated Declaration of Covenants, Conditions, and Restrictions for Green Valley Villas West recorded at Docket 11208 at page 1968 in the office of the Recorder for Pima County, Arizona, as same may be amended from time to time (Declaration”).

3. Owner has requested permission from the Association to construct a structure which is attached to or adjacent to his Lot and encroaches, in whole or in part, onto the common elements (“Encroachment”) (Exhibit “A”) and the Association has granted permission to Owner to build same.

4. For due consideration, the sufficiency of which is hereby acknowledged, the Parties agree to the terms stated below.

## TERMS

1. Description of Encroachment. The Encroachment shall extend approximately \_\_\_\_\_ feet from the boundary of the Lot into the common elements. The total square footage of the Encroachment will be approximately \_\_\_\_\_ square feet.
2. Construction. Owner shall construct the Encroachment in accordance with the plans and specifications that have been approved by the Association as set forth in Exhibit "A."
3. Maintenance Obligation. Owner hereby agrees to be solely responsible for the maintenance and repair of all portions of the Encroachment; provided, however, that Owner agrees that the Association shall cause the Encroachment to be painted in accordance with the Association's painting schedule for the exterior of the condominium project then in effect, the cost of which shall be the personal obligation of Owner and shall be part of the Association's assessment lien against the Lot collectible in the manner set forth in Article 7 of the Declaration.
4. Approval Requirement. Before removing or making any change in the appearance of the Encroachment after its construction, Owner must submit plans and specifications to the Association and obtain the Association's written approval.
5. Obligations Run with the Land. The obligations and undertaking of this Agreement shall be the personal obligation of Owner and shall run with the land so that all heirs, successors, and assigns of Owner and any subsequent purchasers of the Lot shall be liable for the performance of all obligations hereunder.
6. Remedies of Association. In the event that Owner fails to perform maintenance and/or repairs to the Encroachment which would bring it into conformance with the standards to which exterior portions of the condominium project have been maintained by the Association within thirty (30) days after receiving a written request to do so by the Association, the Association shall have the following rights and remedies in addition to any other remedies available at law or equity:
  - A. To enter the Lot and perform maintenance and/or repairs to the Encroachment without being deemed guilty of a trespass;
  - B. To enter the Lot and remove the Encroachment and restore the common elements to its original condition; or
  - C. To file an action against the Owner for damages and/or an injunction.
7. Costs. All costs associated with the remedies set forth in paragraph 6, including, without limitation, contractor's charges, parts, materials, and reasonable attorney's fees and related costs, shall be deemed the personal obligation of Owner and shall be part of the Association's assessment lien against the Lot collectible in the manner set forth in Article 7 of the Declaration.
8. Damage to Common Elements. If Owner removes the Encroachment, Owner agrees to repair and restore any and all damage to the common elements caused by the existence or removal of the Encroachment within thirty (30) days after its discovery. Any costs incurred by the Association in restoring and/or repairing the common elements as a result of Owner's failure to do so, including, without

limitation, contractor's charges, parts, materials, and reasonable attorney's fees and related costs, shall be deemed the personal obligation of Owner and shall be part of the Association's assessment lien against the Lot collectible in the manner set forth in Article 7 of the Declaration.

9. Amendment. The rights and obligations of the Parties may be amended by written instrument executed by Owner and the President of the Association after approval of any such amendment by the Board of Directors.

10. No Waiver. The Association, at its option, may waive any of the provisions of this Agreement and any such waiver shall not constitute a waiver of the Association's right to enforce any other provision hereof nor in any way affect the continuing obligations of Owner hereunder.

11. Acceptance of Risk and Release. Owner understands that the Association's authority to enter into this Agreement is potentially subject to challenge by an Association member or third party. Owner acknowledges and accepts the risk that a challenge to the validity of this Agreement could result in the required removal or modification of the Encroachment. In the event of such challenge, Owner hereby releases the Association, its officers, committee members and directors from any and all liability or damages arising from any such claim, demand, action, or suit, including, without limitation, the cost of removing or modifying the Encroachment.

12. Rules and Regulations. Owner shall comply with all rules and regulations relating to the Encroachment adopted by the Association, as they may be supplemented or amended from time to time.

13. Benefit. The terms and conditions of this Agreement shall run with the land and shall be binding upon and shall inure to the benefit of the Association, Owner, and their respective successors in interest and assigns.

14. Attorney's Fees. If any suit or action is initiated to enforce any of the terms or provisions of this Agreement, the prevailing party shall be entitled to the costs and reasonable attorneys' fees that it incurs in any such suit or action and in any appeal or review therefrom.

15. Counterparts. This agreement may be executed in counterparts (including faxed pages), and all the counterparts, together, shall comprise the fully executed Agreement.

**GREEN VALLEY VILLAS WEST CONDOMINIUM ASSOCIATION**, an Arizona nonprofit corporation.

By: \_\_\_\_\_ (Its President)

State of \_\_\_\_\_ )

) ss

County of \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, before me the undersigned Notary Public,

personally appeared \_\_\_\_\_, who acknowledged to me that (s)he executed the foregoing agreement for the purposes expressed herein.

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

My Commission expires: \_\_\_\_\_

**OWNER(S)**

Printed Name: \_\_\_\_\_

Signature: \_\_\_\_\_

State of \_\_\_\_\_ )

) ss

County of \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, before me the undersigned Notary Public,

personally appeared \_\_\_\_\_, (name of signer) who acknowledged to me that (s)he executed the foregoing agreement for the purposes expressed herein.

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

My Commission expires: \_\_\_\_\_

**OWNER(S)**

Printed Name: \_\_\_\_\_

Signature: \_\_\_\_\_

State of \_\_\_\_\_ )

) ss

County of \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, before me the undersigned Notary Public,

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

My Commission expires: \_\_\_\_\_