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AMENDED DECLARATION OF PROTECTIVE COVENANTS
FOR
SAMALAYUCA ESTATES

(Note: This is a compilation of the Declaration
and all applicable Amendments to date)

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AMENDED DECLARATION OF PROTECTIVE COVENANTS
FOR
SAMALAYUCA ESTATES

THIS AMENDED DECLARATION OF PROTECTIVE COVENANTS is made as of the ____ day of _____, 2003, by the Owners of Lots 1-48, inclusive, of Samalayuca Estates (the "Owners"), a subdivision of Pima County, Arizona, recorded in the office of the Pima County Recorder, in Book 11, Maps and Plats, at page 7.

RECITALS:

WHEREAS, heretofore on July 5, 1955, Lewis B. Price and Wilma F. Price, as Owners of Lots 1-48, inclusive, of Samalayuca Estates, recorded in the office of the Pima County Recorder, in Book 11, Maps and Plats, at page 7, established certain conditions and restrictions for the improvement and development of said subdivision, which document entitled Declaration of Establishment of Conditions and Restrictions (hereinafter referred to as Declaration) was recorded in Book 863 at pages 65 through 67, in the office of the Pima County Recorder, Pima County, Arizona, which Declaration was amended by documents recorded in Book 1127, pages 35 and 36, Book 1481, pages 524 through 526, and Book 2272, pages 91 through 95; and

WHEREAS, said Declaration, by the terms thereof, expired on December 31, 1980; and

WHEREAS, the Owners of Samalayuca Estates subsequently established a Declaration of Protective Covenants for Samalayuca Estates, which was recorded on February 24, 1983, in Docket 6975 at pages 771 through 827, in the office of the Pima County Recorder, Pima County, Arizona (the "Declaration").

WHEREAS, at least fifty-one percent (51%) of the Owners voted to amend the Declaration on May 12, 1997.

WHEREAS, this Amended Declaration sets forth the Declaration as amended on May 12, 1997, with modifications to this "Recitals" section to clarify the history and purpose of this Amended Declaration, and with paragraph headings inserted in the Amended Declaration for ease of use and not for the purpose of making any substantive changes.¹

¹The 1997 amendments are shown in italicized print.

COVENANTS, CONDITIONS AND RESTRICTIONS:

NOW, THEREFORE, the undersigned, being the Owners of the lot(s) enumerated next to their signatures below², do hereby establish the following provisions, conditions, restrictions and covenants upon which and subject to which all lots, and portions of lots, in Samalayuca Estates, which are enumerated next to the various Owners' signatures below, shall be improved or sold and conveyed by them as Owners thereof, each and all of which are for the benefit of each Owner of lots in said subdivision which are enumerated by the Owners' signature below, and shall inure to and pass with, each and every lot or parcel of said subdivision and shall apply to, and bind the respective successors in interest of the present Owners thereof, and each and all thereof is, and are imposed upon said property as servitude in favor of each and every lot so designated for Samalayuca Improvement Association, Inc. as follows:

1. **No Commercial Use.** Said property and the whole thereof shall be used for private residence purposes only, and no business of any nature shall be conducted thereon; no building or structure intended for or adapted to business purposes; and no apartment house, flat building or lodging house, double house, sanitarium, sanitorium, hotel, elevated tanks, tank houses, towers, or billboard, shall be erected, placed, permitted or maintained on said property or any part thereof.

2. **No Drilling.** No derrick or other structure designated for use in boring for oil or natural gas shall be erected, placed or permitted upon any part of said property, nor shall any oil, natural gas, petroleum, asphaltum or hydrocarbon products or substances be produced or extracted therefrom.

3. **One Dwelling Unit on a Lot.** Only one private residence may be erected, placed or maintained on any building lot, as hereinafter defined. No trailers, mobile or modular homes shall be permitted in the subdivision, and any travel trailer or motor homes shall be adequately screened from neighboring lots and streets.

4. **Setbacks.** Any such residence erected upon any such lot and every part thereof shall be located no closer to the property line of said lot than thirty (30') feet or as minimum County Building and/or Zoning Restrictions permit.

5. **Building Material and Size.** All residences shall be constructed of brick, *brick veneer*, *stone*, or adobe, and shall contain a minimum of 1,650 square feet of living area under roof.

²The enumerated signatures appears in the Declaration, which remains in full force and effect with the 1997 amendments, as set forth in this document.

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6. Fences and Walls. *No chain link or wire fence shall be erected in the front yard of any building lot.* No fence or wall shall be erected on said property over *six (6')* feet in height, unless required by law *or approved by the Board of Directors.*

7. Livestock. No hogs, cattle, horses or goats shall be kept or maintained on any part of Samalayuca Estates, except Lot 19, which Lot shall be exempt from this Paragraph 7, as same pertains to horses.

8. Native Growth. The native growth on said property, including cacti and Palo Verde trees, shall not be destroyed or removed from any of the lots in said subdivision by any of the lot Owners, except such native growth as may be necessary for the construction and maintenance of roads, driveways, residences, and/ or wall-in service yards and patios, excepting land that is cleared for the purpose of planting trees, shrubs, etc., to beautify the acreage.

9. Maintenance. *All buildings and lots are to be maintained in good, safe, and clean conditions. Unsafe or unsightly conditions, such as unlicensed or inoperable vehicles, brush piles, improperly stored trash or rubbish, or buildings in disrepair, are prohibited.*

10. Combining Lots. Any ownership or single holding that is made up of two or more adjoining lots, or the whole of one lot and part or parts of one or more adjoining lots, or part of two or more adjoining lots, may at the option of the Owner there, be deemed as constituting a single lot.

11. Duration. All of the provisions, conditions, covenants, restrictions and reservations set forth herein, shall continue and remain in full force and effect at all times as against the Owner of any portion of said property; however, his/her title thereto may be acquired, until the commencement of the calendar year 2009, and shall be automatically continued thereafter for successive period of ten (10) years each; provided, the Owners of a majority of the lots subject to these restrictions may, by executing and acknowledging an appropriate agreement or agreements in writing for such purpose and recording the same at any time at least one (1) year prior to January 1, 2009, release all of the land so restricted from any one or more of said restrictions or may release any of the property subject to these restrictions or any one or more of said restrictions, said release, change or modification to be effective January 2, 2009. During each successive ten (10) year period after January 1, 2009, a majority of Owners shall have the same power to amend or modify said restrictions by executing, acknowledging and recording an appropriate agreement or agreements at least one (1) year prior to expiration of said ten (10) year period, said release, change or modification to be effective at the expiration of said ten (10) year period.

12. Architectural Approval. No building shall be erected, placed, *added to*, or altered on the exterior on any lot in said subdivision until the construction plans,

specifications and location plan have been submitted to and approved by the Board of Directors of the Samalayuca Improvement Association, Inc. *All projects affecting the exterior of the building and requiring a building permit must be submitted to and approved by the Board of Directors.*

13. **Association Duties.** Samalayuca Improvement Association, Inc. (hereinafter referred to as "the Association") has been formed for the general purpose of providing for maintenance, preservation and architectural control of the property of the Owners and the Association, and promoting the health, safety and welfare of the Owners, and for these purposes to exercise the rights and powers and perform the duties assigned to it herein and granted to it by the Articles of Incorporation of the Association.

14. **Association Membership.** Each Owner shall automatically become a member of the Association; provided, however, that the Board of Directors of the Association may establish additional requirements for maintaining such membership. Where Owner as defined by this Declaration includes more than one person or entity, such persons or entities shall be deemed one member, and each member shall be entitled to one vote.

15. **Assessment Obligation.** The Owner of each lot bound by this Declaration shall pay to the Association within ten (10) days of its due date a sum equal to the total of the following:

A. The prorata share of the cost to the Association of all installation, maintenance and improvements of streets, private access easements, rights-of-way, common areas, street signs, entrance gates, entrance gas lights, and common recreational facilities in Samalayuca Estates, taxes and insurance on said property, operation and management of recreational facilities, and any other costs which in the judgment of the Association are incurred to promote the preservation and architectural control of said property and the health, safety and welfare of the Owners, and professional fees incurred by the Association in connections therewith, to the extent such costs and other expenses are not covered by funds theretofore collected and reserved for such purposes.

B. The prorata share of the estimated future costs and expenses listed in subparagraph A above which the Association determines shall be necessary to collect in advance and which are not covered by funds theretofore collected and reserved for such purposes.

C. The proration of the total of such costs and expenses shall be made on the basis that each lot will bear an equivalent share of such charges.

16. **Amount of Assessments.** The amount of any such assessments against any single lot shall be established by the Association at its annual meeting, or any special meeting called for that purpose.

17. **Assessment Collection.** Each Owner shall be deemed to covenant and agree to pay to the Association the assessment(s) provided for herein, and agrees to the enforcement of the assessment(s) in the manner herein specified. The due dates of assessments shall be established by the Board of Directors of the Association, and all delinquent assessments shall bear interest at an interest rate not to exceed eighteen (18%) percent per annum, and late payments shall first be credited toward interest due, then towards assessments first due. In the event the Association employs an attorney for 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 agrees to pay reasonable attorneys' fees and costs thereby incurred, in addition to any other amounts due or any other relief or remedy obtained against said Owner. In the event of a default in payment of any such assessment when due, in which case the assessment shall be deemed delinquent, and in addition to any other remedies herein or by law provided, the Association may enforce each such obligation in the manner provided by law or in equity, or without any limitation to the foregoing, by either or both of the following procedures:

A. 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, together with interest thereon from the date of delinquency until paid, court costs, and reasonable attorneys' fees in such amount as the Court may adjudge against the delinquent Owner or member.

B. There is hereby created a right of claim of lien, with power of sale, on each and every lot to secure payment to the Association of any and all assessments levied against any and all Owners together with interest thereon from the date of delinquency until paid, and all costs of collection which may be paid or incurred by the Association in connection therewith, including reasonable attorneys' fees. At any time within thirty (30) days after occurrence of any default in the payment of 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. Said demand shall state the date and amount of delinquency. Each default shall constitute a separate basis for demand or claim of lien but any number of defaults may be included within a single demand or claim of lien. If such delinquency is not paid within ten (10) days after delivery of such demand, or, even without such a written demand being

made, the Association may elect to file such 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 of the lot against which claim of lien is made;
- (3) The total amount claimed to be due and owing for the amount of the delinquency, interest thereon, collection costs, and reasonable attorneys' fees (with any proper offset allowed);
- (4) That the claim if lien is made by the Association pursuant to this Declaration; and
- (5) That a lien is claimed against said lot in an amount equal to the amount stated.

Upon recordation of a duly executed original or copy of such a claim of lien, and mailing a copy thereof to said Owner, the lien claimed therein shall immediately attach and become effective in favor of the Association as a lien upon the lot. Such a lien shall have priority over all claims of liens created subsequent to the recordation of the claim of lien thereof, except only tax liens for real property taxes on any lot, assessments on any lot in favor of any municipal or other governmental assessing unit, and the lien of any first mortgage. 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 fore 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 hereby expressly waives any objection to the enforcement and foreclosure of this lien in this manner.

18. **No Exemption from Assessment Obligation.** No Owner is exempt from liability for payment of assessments by waiver of the use or enjoyment of the common areas, or by abandonment of his/her lot.

