

# COB - BOSAIR FORM

01/14/2026 10:10 AM (MST)

Submitted by Terri.Tillman@pima.gov



## BOARD OF SUPERVISORS AGENDA ITEM REPORT (BOSAIR)

**\*All fields are required. Enter N/A if not applicable. For number fields, enter 0 if not applicable.\***

**Award Type:** Agenda Item

**Is a Board Meeting Date Requested?** Yes

**Requested Board Meeting Date:** 02/03/2026

**Project Title / Description:** Co9-01-39 Hardin Et Al - Oracle Road Rezoning

### Agenda Item Report

<b>Introduction / Background:</b>	A. Proposal to close rezoning case Co9-01-39 as required by code; B. If not closed, applicant requests three five-year time extensions for the rezoning from CB-1 (GZ-1) (Local Business - Urban Gateway Overlay) to the CB-2 (GZ) © (General Business - Urban Gateway Overlay - Conditional) zone; and C. A modification of original rezoning conditions #11 and #15 to amend the preliminary development plan from a carwash to an auto parts store and reduce the gateway bufferyard to 15-feet.
<b>Discussion:</b>	The closure must be considered prior to consideration of a time extension and three, five-year time extensions will bring the rezoning current and the modification of rezoning condition #11 will allow amending of the preliminary development plan and modification of condition #15 will allow a 15-foot-wide-bufferyard on the east boundary in the gateway overlay zone.
<b>Conclusion:</b>	The proposed land use is suitable for the area, the time extension will allow a total of 25 years from the original Board of Supervisors' approval to complete rezoning conditions and the modification of rezoning conditions #11 and #15 will allow the change of use and reduction of the gateway bufferyard adjacent to Oracle Road.
<b>Recommendation:</b>	A. Staff recommends AGAINST CLOSURE; B. Staff recommends APPROVAL of the three five-year time extensions subject to original and modified standard and special conditions; C. Staff and the Planning and Zoning Commission recommend APPROVAL of a modification (substantial change) of rezoning conditions #11 and #15 (renumbered conditions #6 and #10 respectively) subject to original and modified standard and special conditions.
<b>Fiscal Impact:</b>	0
<b>Support of Prosperity Initiative:</b>	13. Support Small Business
<b>Provide information that explains how this activity supports the</b>	The time extensions and modifications will allow additional opportunity to permit business/commercial development in the area.

selected Prosperity Initiative

Board of Supervisor District: • 1

Department: Development Services - Planning

Name: Donna Spicola

Telephone: 5207246675

Department Director Signature: 

Date: 1/15/26

Deputy County Administrator Signature: 

Date: 1/10/2026

County Administrator Signature: 

Date: 1/20/26



**TO:** Honorable Rex Scott, Supervisor, District 1

**FROM:** Thomas Drzazgowski, Deputy Director  
Public Works-Development Services Department-Planning Division

**DATE:** January 13, 2026

**SUBJECT: Co9-01-39 HARDIN ET AL – ORACLE ROAD REZONING**

A handwritten signature in black ink, appearing to read "T. Drzazgowski".

The above referenced Rezoning Closure, Time Extensions and Modification (Substantial Change) of Rezoning Conditions is within your district and is scheduled for the Board of Supervisors' **TUESDAY, FEBRUARY 3, 2026** hearing.

**\*\*This case requires 3 separate motions and votes.**

**REQUEST:** **A. Rezoning Closure:** A 1.06-acre rezoning from the CB-1 (GZ-1) (Local Business – Urban Gateway Overlay) to the CB-2 (GZ-1) © (General Business – Urban Gateway Overlay – Conditional) zone located on the west side of the T-intersection of N. Oracle Road and E. Pinal Street, addressed as **16407 N. Oracle Road**. The rezoning was conditionally approved in 2002 and expired on February 5, 2012.

**B. Rezoning Time Extensions:** Three **five-year time extensions**. The 1.06-acre rezoning from the CB-1 (GZ-1) (Local Business – Urban Gateway Overlay) to the CB-2 (GZ-1) © (General Business - Urban Gateway Overlay - Conditional) zone expired February 5, 2012. The property is located on the west side of the T-intersection of N. Oracle Road and E. Pinal Street, addressed as **16407 N. Oracle Road**.

**C. Modification (Substantial Change) of Rezoning Conditions:** A **modification (substantial change) of rezoning conditions #11 and #15**. Condition #11 which states. "Adherence to the preliminary development plan as approved at public hearing". The applicant requests to amend the preliminary development plan from a carwash to allow for an auto parts store and to revise the location of building due to the Erosion Hazard Setback. Condition #15 which states "A minimum 10-foot wide bufferyard is required on the south property line and on the west property line. A minimum 20-foot bufferyard on the east property line is required." The applicant requests a minimum 15-foot bufferyard on the east property line. The subject site is approximately 1.06 acres zoned CB-2 (GZ-1) © (General Business - Urban Gateway Overlay -Conditional), located on the west side of the T-intersection of N. Oracle Road and E. Pinal Street, addressed as **16407 N. Oracle Road**.

**OWNER:** Oracle Road Auto Plaza LLC  
Attn: Irwin Sattinger  
PO Box 31088  
Tucson AZ 85751

**AGENT:** The Planning Center  
Attn: Garrett Aldrete, Planner  
2 E. Congress Street, Suite 600  
Tucson, AZ 85701

**DISTRICT:** 1

**STAFF CONTACT:** Donna Spicola, Planner II

**PUBLIC COMMENT TO DATE:** As of January 13, 2026, no written public comment has been received.

**PLANNING & ZONING COMMISSION RECOMMENDATION FOR MODIFICATION (SUBSTANTIAL CHANGE) OF REZONING CONDITIONS ONLY: APPROVAL SUBJECT TO ORIGINAL AND MODIFIED STANDARD AND SPECIAL CONDITIONS 10 – 0.**

**STAFF RECOMMENDATION FOR CLOSURE, TIME EXTENSIONS AND MODIFICATION (SUBSTANTIAL CHANGE) OF REZONING CONDITIONS:** A) AGAINST CLOSURE; B) APPROVAL of three five-year time extensions SUBJECT TO ORIGINAL AND MODIFIED STANDARD AND SPECIAL CONDITIONS; and C) APPROVAL of the modification of original rezoning condition #11 to amend the preliminary development plan and condition #15 to reduce the 20-foot bufferyard to a 15-foot bufferyard and maintain the 10-foot wide bufferyards on the south and west property lines SUBJECT TO ORIGINAL AND MODIFIED STANDARD AND SPECIAL CONDITIONS.

**MAEVEEN MARIE BEHAN CONSERVATION LANDS SYSTEM DESIGNATIONS:** A small portion of the parcel is located within the Maeveen Marie Behan Conservation Land System (CLS) classified as Important Riparian Area.

TD  
Attachments



## BOARD OF SUPERVISORS MEMORANDUM

SUBJECT: Co9-01-39

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### FEBRUARY 3, 2026 MEETING OF THE BOARD OF SUPERVISORS

TO: HONORABLE BOARD OF SUPERVISORS

FROM: Thomas Drzazgowski, Deputy Director  
Public Works-Development Services Department-Planning Division

DATE: January 13, 2026

A handwritten signature in black ink, appearing to read "T. Drzazgowski".

### ADVERTISED ITEM FOR PUBLIC HEARING

### REZONING CLOSURE, TIME EXTENSIONS, MODIFICATION (SUBSTANTIAL CHANGE) OF REZONING CONDITIONS

\*\*This case requires 3 separate motions and votes

A. Rezoning Closure

Co9-01-39 **HARDIN ET AL – ORACLE ROAD REZONING**

Oracle Road Auto Plaza LLC, represented by the Planning Center, request a **closure** of a 1.06-acre rezoning from the CB-1 (GZ-1) (Local Business – Urban Gateway Overlay) to the CB-2 (GZ-1) © (General Business – Urban Gateway Overlay – Conditional) zone located on the west side of the T-intersection of N. Oracle Road and E. Pinal Street, addressed as **16407 N. Oracle Road**. The rezoning was conditionally approved in 2002 and expired on February 5, 2012. Staff recommends **DENIAL OF THE CLOSURE** of the rezoning.  
(District 1)

B. Rezoning Time Extensions

Co9-01-39 **HARDIN ET AL – ORACLE ROAD REZONING**

Oracle Road Auto Plaza LLC, represented by the Planning Center, request three **five-year time extensions**. The 1.06-acre rezoning from the CB-1 (GZ-1) (Local Business – Urban Gateway Overlay) to the CB-2 (GZ-1) © (General Business - Urban Gateway Overlay - Conditional) zone expired February 5, 2012. The property is located on the west side of the T-intersection of N. Oracle Road and E. Pinal Street, addressed as **16407 N. Oracle Road**. Staff recommends **APPROVAL OF FIVE-YEAR TIME EXTENSIONS SUBJECT TO ORIGINAL AND MODIFIED STANDARD AND SPECIAL CONDITIONS**.  
(District 1)

## C. Modification (Substantial Change) of Rezoning Conditions

Co9-01-39 **HARDIN ET AL – ORACLE ROAD REZONING**

Oracle Road Auto Plaza LLC, represented by the Planning Center, request a **modification (substantial change) of rezoning conditions #11 and #15**. Condition #11 which states. "Adherence to the preliminary development plan as approved at public hearing". The applicant requests to amend the preliminary development plan from a carwash to allow for an auto parts store and to revise the location of building due to the Erosion Hazard Setback. Condition #15 which states "A minimum 10-foot wide bufferyard is required on the south property line and on the west property line. A minimum 20-foot bufferyard on the east property line is required." The applicant requests a minimum 15-foot bufferyard on the east property line. The subject site is approximately 1.06 acres zoned CB-2 (GZ-1) © (General Business - Urban Gateway Overlay -Conditional), located on the west side of the T-intersection of N. Oracle Road and E. Pinal Street, addressed as **16407 N. Oracle Road**. On motion, the Planning and Zoning Commission voted to recommend **APPROVAL SUBJECT TO ORIGINAL AND MODIFIED STANDARD AND SPECIAL CONDITIONS 10 – 0**. Staff recommends **APPROVAL SUBJECT TO ORIGINAL AND MODIFIED STANDARD AND SPECIAL CONDITIONS**.

(District 1)

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**Planning and Zoning Commission Public Hearing Summary (December 17, 2025)**

The public hearing was held in person and virtually. Some commissioners were present while others attended virtually. The applicant and some staff attended virtually and other staff attended in person.

Staff presented information from the staff report to the commission regarding the Modification (Substantial Change) of original Rezoning Conditions #11 and #15 with a recommendation of approval subject to original and modified standard and special conditions.

A commissioner asked about the path shown on the west side of the site plan. The applicant stated that the dashed line shows the grading limits.

Staff stated that this property has been through multiple public hearings. The Design Review Committee reviewed for aesthetics due to the Gateway Overlay zone and the Board of Adjustment for the bufferyard reduction. A commissioner asked if the bufferyard reduction from 20 feet to 15 feet was approved by the variance process and staff stated that the Board of Adjustment granted approval of the reduction. Staff replied that the reasons for these requests are mainly due to the wash west of the property and the erosion hazard setback requirement.

The applicant presented their case.

A commissioner asked if parking is allowed inside the erosion hazard setback. The applicant stated that parking is acceptable, but the building is not allowed within the setback.

The hearing was open to the public and there were no speakers.

The public hearing was closed.

A commissioner asked for clarification regarding the closure and the time extensions. Staff stated those actions only require Board of Supervisors motion and votes. The commission only reviews and provides recommendation on the modification (substantial change) of rezoning conditions and the remainder of requests are for Board of Supervisors' action.

Commissioner Lane made a motion to recommend **APPROVAL SUBJECT TO ORIGINAL AND MODIFIED STANDARD AND SPECIAL CONDITIONS**, Commissioner Becker gave second.

The commission voted to recommend **APPROVAL** 10 – 0 subject to the following modified standard and special conditions:

1. ~~Submittal of a development plan if determined necessary by the appropriate County agencies.~~
2. ~~Recording of a covenant holding Pima County harmless in the event of flooding.~~
3. ~~Recording of the necessary development related covenants as determined appropriate by the various County agencies.~~
4. ~~Provision of development related assurances as required by the appropriate agencies.~~
5. ~~Prior to the preparation of the development related covenants and any required dedication, a title report (current to within 60 days) evidencing ownership of the property shall be submitted to the Public Works Department, Real Property Services.~~
61. ~~There shall be no further lot splitting or subdividing of residential development without the written approval of the Board of Supervisors.~~
72. ~~Transportation conditions:~~
  - A. ~~Written certification from Arizona Department of Transportation (ADOT) stating satisfactory compliance with all its requirements regarding access to the subject property shall be submitted to the Pima County Development Review Section prior to the final inspection of any development.~~
  - B. ~~The location of the access point onto Oracle Road requires shall need the approval of Arizona Department of Transportation ADOT approval along with. Provision of all any necessary access improvements shall need the approval of Arizona Department of Transportation prior to the approval of Development Plans or Subdivision Plats approval for any portion of the property.~~
  - C. ~~Only one (1) access point is allowed onto Oracle Road. The Aaccess shall be shared with the adjacent property owners to the north and south and shall be located approved by ADOT, on the south property boundary opposite Pinal Street. The property owner(s) shall provide cross-access with for internal access to the adjacent properties to the north and south, (future).~~
  - D. ~~Joint access must be provided by the property owner for the parcels to the north and south.~~
  - E. ~~The property owner shall provide pedestrian access within this rezoning site and to the north and south.~~
83. ~~Flood Control conditions:~~
  - A. ~~Drainage shall not be altered, disturbed or obstructed without the written approval of the Flood Control District.~~
  - B. ~~The property owner(s) shall provide all necessary drainage related improvements created by the proposed development both on-site and off-site of the property. The location, design and construction of said improvements are subject to the approval of the Flood Control District.~~
  - C. ~~A drainage study shall be submitted for review and approval that addresses the impacts of development to the Big Wash floodplain and local area drainage. The~~

~~study shall address erosion hazard setbacks, detention, maintenance, and outflow to Big Wash.~~

- A. First flush retention shall be provided in Low Impact Development practices distributed throughout the site.
- B. In lieu of providing on-site detention, a Detention Waiver with supporting analysis may be submitted for approval prior to the submittal of the Site Construction Plan set.
- C. At the time of development, the developer shall be required to select a combination of Water Conservation Measures from Table B such that the point total equals or exceeds 15 points and includes a combination of indoor and outdoor measures.

94. Wastewater Reclamation conditions:

~~The property owner shall connect to the public sewer system at the location and in the manner specified by Wastewater Management at the time of review of the tentative plat, development plan or request for building permit.~~

- A. The owner(s) shall construe no action by Pima County as a commitment of capacity to serve any new development within the rezoning area until Pima County executes an agreement with the owner(s) to that effect.
- B. The owner(s) shall obtain written documentation from the Pima County Regional Wastewater Reclamation Department (PCRWRD) stating that treatment and conveyance capacity is available for any new development within the rezoning area, no more than 90 days before submitting any tentative plat, development plan, preliminary sewer layout, sewer improvement plan, or request for building permit for review. Should treatment and/or conveyance capacity not be available at that time, the owner(s) shall enter into a written agreement addressing the option of funding, designing and constructing the necessary improvements to Pima County's public sewerage system at his or her sole expense or cooperatively with other affected parties. All such improvements shall be designed and constructed as directed by the PCRWRD.
- C. The owner(s) shall time all new development within the rezoning area to coincide with the availability of treatment and conveyance capacity in the downstream public sewerage system.
- D. The owner(s) shall connect all development within the rezoning area to Pima County's public sewer system at the location and in the manner specified by the PCRWRD in its capacity response letter and as specified by PCRWRD at the time of review of the tentative plat, development plan, preliminary sewer layout, sewer construction plan, or request for building permit.
- E. The owner(s) shall fund, design and construct all off-site and on-site sewers necessary to serve the rezoning area, in the manner specified at the time of review of the tentative plat, development plan, preliminary sewer layout, sewer construction plan or request for building permit.
- F. The owner(s) shall complete the construction of all necessary public and/or private sewerage facilities as required by all applicable agreements with Pima County, and all applicable regulations, including the Clean Water Act and those promulgated by ADEQ, before treatment and conveyance capacity in the downstream public sewerage system is permanently committed for any new development within the rezoning area.

105. Cultural Resources condition: Prior to ground modifications modifying activities, an on-the-ground archaeological and historic sites survey and appropriate mitigation measures shall be conducted on the subject property. A cultural resources mitigation plan for any identified archaeological and historic sites on the subject property shall be submitted at the time of, or prior to the submittal of any tentative plat or development plan. All work shall be conducted by an archaeologist permitted by the Arizona State museum, or a

registered architect, as appropriate. Following rezoning approval, any subsequent development requiring a grading permit The mitigation plan shall will be prepared and reviewed for compliance with the Pima County's cultural resources requirements under Chapter 18.81 of the Pima County Zoning Code, Site Analysis Requirements.

116. Adherence to the revised Preliminary Development Plan as approved at public hearing.

127. The proposed project shall be reviewed and approved by the Pima County Design Review Committee for compliance to section 18.78. Gateway Overlay Zone.

138. In the event the subject property is annexed into the City of Tucson, the property owner shall adhere to all applicable rezoning conditions, including, but not limited to, development conditions which require financial contributions to, or construction of infrastructure, including without limitation, transportation, flood control, or sewer facilities.

149. The property owner shall execute and record the following disclaimer regarding Prop 207 rights. the Private Property Rights Protection Act: "Property Owner acknowledges that neither the rezoning of the Property nor the conditions of rezoning give Property Owner any rights, claims or causes of action under the Private Property Rights Protection Act (Arizona Revised Statutes Title 12, chapter 8, article 2.1). To the extent that the rezoning or conditions of rezoning may be construed to give Property Owner to any rights or claims under the Private Property Rights Protection Act, Property Owner hereby waives any and all such rights and/or claims pursuant to A.R.S. § 12-1134(I)."

1510. A minimum 10-foot wide bufferyard is required on the south property line and on the west property line. A minimum 20 15-foot bufferyard on the east property line is required.

1611. Building height shall not exceed 24 feet.

1712. The project shall share signage with properties to the north and south unless otherwise specified by the Pima County Design Review Committee.

1813. Water System Plan will need to be reviewed and approved by the Golder Ranch Fire District's Fire Marshall prior to the issuance of the certificate of compliance

14. Environmental Planning condition: Upon the effective date of the Ordinance, the owner(s) shall have a continuing responsibility to remove buffelgrass (*Pennisetum ciliare*) from the property. Acceptable methods of removal include chemical treatment, physical removal, or other known effective means of removal. This obligation also transfers to any future owners of property within the rezoning site; and Pima County may enforce this rezoning condition against the property owner.

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c: The Planning Center, Garrett Aldrete, Planner

* E RECORDING * Page 1 of 14	
	
SEQUENCE:	20141920369
No. Pages:	14
7/11/2014 2:51 PM	
<b>F. ANN RODRIGUEZ, RECORDER</b> <b>Recorded By: HEM(e-recording)</b>	
	

**Title Security Agency**

Order # 61750,285

WHEN RECORDED, MAIL TO:

David A. McEvoy, Esq.  
 4560 East Camp Lowell Drive  
 Tucson, Arizona 85712

### **EASEMENT AGREEMENT**

**(Properties Located Along Oracle Road, Pima County, Arizona)**

This EASEMENT AGREEMENT ("Declaration") is made effective this 26 day of June, 2014, by the undersigned entities (each, a "Party" and together, "Parties"), in recognition of the following facts and intentions:

A. The undersigned Owner of Parcel 1, Oracle Road Auto Plaza, L.L.C., an Arizona limited liability company, is the fee title owner of certain real property defined as Parcel 1. The undersigned Owner of Parcel 2, DCM Development Company, LLC, an Arizona limited liability company, is the fee title owner of certain real property defined as Parcel 2. Parcels 1 and 2 each may be referred to herein as a "Parcel" or together as the "Parcels" and are as legally described in Exhibits A and B, respectively, attached hereto and incorporated herein by this reference.

B. Immediately prior to the execution and recordation of this Declaration, the Owner of Parcel 1 conveyed to the Owner of Parcel 2 fee title in and to certain real property that is a part of the Easement Area as defined below ("Property Conveyance").

C. As and for consideration of the Property Conveyance, the Owners desire to execute and record in the official records of Pima County, Arizona, this Declaration in order to provide for (1) the creation of an access easement ("Easement") for ingress and egress upon, across and over the portion of Parcel 2 as legally described and depicted in Exhibit C attached hereto and incorporated herein by this reference ("Easement Area"), and (2) the ongoing maintenance and repair of the Easement Area.

NOW, THEREFORE, the Owners hereby declare:

1. Property Subject to the Declaration The Parties declare that all of the property within the Parcels shall be held, sold and conveyed subject to this Declaration. By acceptance of a deed or by acquiring any interest in any of the property subject to this Declaration, each person or entity, for himself or itself, his heirs, personal representatives, successors, transferees and assigns,

binds himself, his heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, rules, and regulations now or hereafter imposed by this Declaration and any amendments thereof. In addition, each such person by so doing thereby acknowledges that this Declaration evidences its intention that all the restrictions, conditions, covenants, rules and regulations contained in this Declaration shall run with the land and be binding on all subsequent and future Owners, grantees, purchasers, assignees, lessees and transferees thereof. Furthermore, each such person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by any and all Owners. The Parties, and their respective successors, assigns and grantees, covenant and agree that the rights and obligations created by this Declaration shall not be separated or separately conveyed, and each shall be deemed to be conveyed or encumbered with its respective Parcel even though the description in the instrument of conveyance or encumbrance may refer only to the Parcel.

2. **Definitions.**

2.1 "Owner" means the record owner, whether one or more Persons, of beneficial or equitable title (and legal title if the same has merged with the beneficial or equitable title) to the fee simple interest of a Parcel or a building on a Parcel. Owner shall not include Persons having an interest in a Parcel merely as security for the performance of an obligation or a Lessee. Owner shall include a purchaser under a contract for the conveyance of real property subject to the provisions of Arizona Revised Statutes Section 33-741 et seq. Owner shall not include a purchaser under a purchase contract and receipt, escrow instructions or similar executory contracts which are intended to control the rights and obligations of the parties to the executory contracts pending the closing of a sale or purchase transaction. In the case of a Parcel, the fee simple title to which is vested in a trustee pursuant to Arizona Revised Statutes Section 33-801, et seq., the trustor shall be deemed to be the Owner.

2.2 "First Mortgage" means any mortgage or deed of trust on a Parcel or a building on a Parcel which has priority over all other mortgages and deeds of trust on the same Parcel or a building on such Lot.

2.3 "First Mortgagee" means a First Mortgage holder or beneficiary.

2.4 "Lessee" means the lessee or tenant under a lease, oral or written of any Parcel including an assignee of a lease.

2.5 "Person" means a natural person, corporation, business trust, estate trust, partnership, limited liability company, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.

2.6 "Recording" means placing an instrument of public record in the office of County Recorder of Pima County, Arizona, and "Recorded" means having been so placed of public record.

3. **Easement.**

3.1 The Owner of Parcel 2 hereby grants, creates and establishes the non-exclusive, perpetual right, easement and privilege of ingress and egress upon, across and over the Easement Area on Parcel 2 as depicted in Exhibit C attached hereto in favor of the Owner of Parcel 1, for the purpose of providing to Parcel 1 ingress and egress upon for the use, enjoyment and benefit of pedestrians, motorized or non-motorized vehicular traffic, including any governmental or emergency vehicles, related to or in connection with the use or ownership of Parcel 1. No structure of any kind shall be constructed or placed upon or within the Easement Area located on Parcel 2. Notwithstanding the foregoing, (a) such prohibition shall not preclude the installation of underground utility and similar service facilities within the Easement Area located on Parcel 2 by the Owner thereof or (b) any paving of the Easement Area located on Parcel 2 by the Owner thereof.

3.2 The Owner of Parcel 1 covenants and agrees to indemnify, hold harmless and defend (with legal counsel reasonably acceptable to the indemnitees) the Owner of Parcel 2 for, from and against any and all claims, liabilities, and expenses, and reasonable attorneys' fees and court costs, which may be claimed or asserted against the Owner of Parcel 2, or Parcel 2, on account of the exercise by the indemnifying Owner of Parcel 1 and/or its invitees, licensees, agents, employees, successors and assigns of any and all rights granted to the Owner of Parcel 1 under the Easement to the extent of the Easement Area located on Parcel 2, including, but without limitation, claims for property damage and bodily injury and any mechanics' or materialmen's liens or claims of lien which may be asserted against the Owner of Parcel 2, or Parcel 2, except to the extent such claims, liabilities and expenses are the result of (a) the negligence or intentional misconduct of the Owner of Parcel 2 and/or its invitees, licensees, agents, employees, successors and assigns on or about the Easement Area located on Parcel 2, or (b) the failure of the Owner of Parcel 2 to maintain and repair the Easement Area as required by this Declaration.

3.3 The Owner of Parcel 2 shall be responsible for constructing, maintaining and keeping the Easement Area located on Parcel 2 in a good state of repair and in a safe, legal and functional condition for its intended purposes, subject to the cost thereof being the sole responsibility of the Owner of Parcel 2. Without limiting the generality of the foregoing, the Owner of Parcel 2 will maintain the Easement Area so as to be in compliance with the functional requirements of applicable governmental codes, rules and regulations concerning accessibility, ingress and egress.

3.4 Liability and property insurance in such amounts of coverage and upon such terms may be obtained and maintained as desired by the Owner of Parcel 2 for the Easement Area.

#### 4. Lienholder Provisions

4.1 The lien of this Declaration shall be prior to all liens and encumbrances recorded against the Parcels, subject to Section 4.2 below.

4.2 No violation or breach of, or failure to comply with, any provision of this Declaration and no action to enforce any such provision shall affect, defeat, render invalid or

impair the lien of any First Mortgage on any Parcel or a building on a Parcel taken in good faith and for value and Recorded prior to the time of Recording of an instrument describing the Parcel or a building on a Parcel and listing the name(s) of the Owner(s) thereof and giving notice of such violation, breach or failure to comply; nor shall such violation, breach or failure to comply or action to enforce affect, defeat, render invalid or impair the title or interest of any First Mortgagee or fee title or interest acquired by any purchaser upon foreclosure of any such First Mortgage or result in any liability, personal or otherwise, of any such First Mortgagee or purchaser. Upon foreclosure of any such First Mortgage, no such First Mortgagee or purchaser who thereby assumes title to a Parcel shall be required to correct past violations hereof with respect to said Parcel. Any violation existing prior to such sale and continuing thereafter, which the Owners determine to be impossible, unfeasible or impractical to cure, shall be deemed to be a "past violation" for purposes of the foregoing sentence. Any continuing violation which is not determined by the Owners to be impractical, impossible or unfeasible to cure shall be deemed to be a violation occurring after such sale.

5. Miscellaneous Provisions.

5.1 Duration of Agreement. Each of the provisions contained in this Declaration shall run with the land and continue and remain in full force and effect until December 31, 2090, and shall automatically be extended thereafter for successive periods of ten (10) years each unless an instrument executed by the Owners has been Recorded agreeing to terminate this Declaration on December 31, 2090, or at the end of an applicable ten (10) year extension period, or at any other date so stated in such instrument.

5.2 Effect of Provisions of Declaration. Each provision of this Declaration, and any agreement, promise, covenant and undertaking to comply with each provision of this Declaration, and any necessary exception or reservation or grant of title, estate, right or interest to effectuate any provision of this Declaration (a) shall be deemed incorporated in each deed or other instrument by which any right, title or interest in any Parcel or a building on a Parcel is granted, devised or conveyed, whether or not set forth or referred to in such deed or other instrument; (b) shall, by virtue of acceptance of any right, title or interest in any Parcel or a building on a Parcel by an Owner, be deemed accepted, ratified, adopted and declared as a personal covenant of such Owner, and, as a personal covenant, shall be binding on such Owner and such Owner's heirs, executors, representatives, personal representatives, successors and assigns and shall be deemed a personal covenant to, with and for the benefit of the other Owner; (c) shall be deemed a real covenant by the parties for themselves, their successors and assigns and also an equitable servitude, running, in each case, as a burden with and upon the title to the Parcels or a building on a Parcel and as a real covenant and also as a equitable servitude and shall be deemed a covenant and servitude for the benefit of the Parcels or a building on a Parcel; and (d) shall be deemed a covenant, obligation and restriction secured by a lien in favor of the other Owner burdening and encumbering the title to the Parcels or a building on a Parcel in favor of the other Owner.

5.3 Enforcement and Remedies. In addition to any other remedies herein provided, each provision of this Declaration with respect to an Owner, the Parcel or a building on a Parcel of an Owner and the other Owner shall be enforceable by any Owner by a proceeding for a

prohibitive or mandatory injunction, specific performance or by a suit or action to recover damages.

5.4 Construction. The provisions of this Declaration shall be liberally construed to promote and effectuate the fundamental purposes for the Parcels as set forth in this Declaration.

5.5 Non-Avoidance. No Owner through non-use or abandonment of its Parcel or a building on a Parcel may avoid the burdens or obligation imposed on it by this Declaration.

5.6 Real Property Taxes. All real property taxes and assessments relating to the Easement Area shall be paid prior to delinquency by the Owner of Parcel 2 on which the Easement Area is located.

5.7 Covenant Running With the Land. This Declaration is executed pursuant to a general plan for the mutual benefit of the Parcels or a building on a Parcel, and shall obligate, inure to, and pass with the Parcels or a building on a Parcel. The provisions of this Declaration shall run with the land and create equitable servitudes with respect to the Parcels or a building on a Parcel, shall bind each person having any fee, leasehold or other interest or estate therein and shall bind and inure to the benefit of the Owners and their respective successors and assigns. Any provision of this Declaration to the contrary notwithstanding, this Declaration shall not be construed to restrict the rights of the Owners, or their respective successors and assigns, to sell, convey, mortgage, pledge or otherwise freely deal with the respective Parcels or a building on a Parcel; provided that, in so doing, no such Owner or other Person shall have the power or authority to subordinate this Declaration or any of the provisions hereof without the written consent of all of the other Owners, which may be withheld in the sole and absolute discretion of all such other Owners. Upon conveyance by an Owner of its interest in its Parcel or a building on a Parcel, such Owner shall be relieved of and from any claim or liability arising by reason of any act or occurrence after the date of such conveyance.

5.8 Default. A default hereunder shall include the breach or failure of any Party to perform any of its obligations under this Declaration. In the event of any default hereunder by any Party that is not cured within ten (10) days after written notice from any other Party (provided that, if the nature of the cure of such default reasonably shall require more than ten (10) days, the Party in default shall have such reasonable time as is reasonably necessary to cure such default, as long as he or she shall commence such cure within such ten (10) day period and shall diligently pursue completion of the cure thereafter), the other Party shall be entitled to pursue all rights and remedies set forth in Section 5.3 above and as available at law or in equity, including, but not limited to, the right of specific performance.

5.9 No Public Dedication. The provisions of this Declaration shall not be deemed to constitute a dedication for public use nor to create any rights in the general public of any kind.

5.10 Recordation. This Declaration shall be Recorded after its execution by the Owners.

5.11 No Joint Venture or Partnership. The Parties shall not be deemed to be joint venturers, partners or otherwise members of a joint enterprise.

5.12 Notices. All notices required to be given hereunder shall be in writing and shall be conveyed by (a) personal delivery or (b) U.S. Mail by certified or registered mail, postage prepaid, with return receipt requested, to the Owners at their respective addresses as reflected in the official records of the Pima County Treasurer for his or her respective Parcel or a building on a Parcel. Notice given by personal delivery shall be deemed to be given upon delivery to the appropriate address against receipt therefor (or upon refusal of acceptance), and notice given by U.S. Mail shall be deemed to have been given two days after deposit in the U.S. Mail. Each party may designate from time to time another address in place of the address set forth above by notifying the other party in the same manner as provided in this Section 5.12.

5.13 Time of Essence. Time is of the essence of this Declaration .

5.14 Attorney's Fees. If any legal proceedings are instituted in connection with the rights of enforcement and remedies provided in this Declaration, the substantially prevailing party or parties shall be entitled to recover from the losing party or parties any costs and expenses in connection therewith, including reasonable attorneys' fees.

5.15 Interpretation. In the event of any ambiguity, this Declaration shall not be construed in favor of or against any Party on account of the one of the Parties having prepared this Declaration or any documents that may be prepared pursuant to this Declaration.

5.16 Binding Effect. This Declaration shall be binding upon and inure to the benefit of the Parties and their successors and assigns.

5.17 Entire Agreement. This Declaration constitutes the entire agreement between the Parties and there are no other agreements or understandings in regard to this transaction other than as set forth herein.

5.18 Other Documents. The Parties each shall execute and deliver to each other such other documents or instruments as may be reasonably necessary to give effect to the terms and provisions of this Declaration.

5.19 Incorporation of Recitals. The recitals of fact and intention on the first page of this Declaration are true and correct, and constitute an integral part of this Declaration.

5.20 Counterparts. To facilitate execution, this Declaration may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature and acknowledgment of, or on behalf of, each party, or that the signature and acknowledgment of all persons required to bind any party, appear on each counterpart. All counterparts shall collectively constitute a single instrument. It shall not be necessary in making proof of this Declaration to produce or account for more than a single counterpart containing the respective signatures and acknowledgment of, or on behalf of, each of the parties hereto. Any signature and acknowledgment page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures and acknowledgments thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature and acknowledgment pages.