

**SIXTH AMENDMENT
TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR TOWNE PARK, A PLANNED RESIDENTIAL COMMUNITY**

THIS SIXTH AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR TOWNE PARK, A PLANNED RESIDENTIAL COMMUNITY (this "Amendment") amends that certain Declaration of Covenants, Conditions and Restrictions for Towne Park a Planned Residential Community, recorded May 2, 1984, in Book Misc. 112A, Pages 761-840, Records of Bernalillo County, New Mexico (the "Declaration"), and is made by the Unit Lessees, as defined in Section 1.49 of the Declaration, pursuant to Section 20.2 of the Declaration, which provides for the amendment of the Declaration by the Unit Lessees, with reference to the following facts:

A. The Declaration has previously been amended by the First Amendment, recorded May 1, 1985, in Book Misc. 225A, Page 356, Records of Bernalillo County, New Mexico, the Second Amendment, recorded February 6, 1986, in Book Misc. 319A, Page 401, Records of Bernalillo County, New Mexico, the Third Amendment, recorded June 15, 1987, in Book Misc. 499A, Page 72, Records of Bernalillo County, New Mexico, the Fourth Amendment, recorded June 30, 1988, in Book Misc. 637A, Page 844, Records of Bernalillo County, New Mexico, and the Fifth Amendment recorded March 27, 1989, in Book Misc. 729A, Page 32, Records of Bernalillo County, New Mexico (collectively, the "Prior Amendments"). There are no valid amendments to the Declaration other than the Prior Amendments described above.

B. In connection with the proposed acquisition by Towne Park Homeowners Association, Inc., a New Mexico non-profit corporation (the "Association") of the fee title interest to Towne Park, a Planned Residential Community Development, described with further particularity in Exhibit I to the Declaration, and the lessor's interest under the Master Ground Lease and all Unit Leases, the Unit Lessees have voted to amend the Declaration as provided in this Amendment.

NOW, THEREFORE, in consideration of the foregoing and as provided in Sections 20.2 and 15.3 of the Declaration, the Declaration is amended as follows:

1. **Defined Terms.** Defined terms used herein but not defined herein shall have the meaning assigned to them in the Declaration.
2. **Amendments.** The following Sections of the Declaration are hereby modified as follows:

Return to FATICO/Main 1811009-DL

Recorded Electronically	
ID	<u>2013061376</u>
County	<u>Bernalillo</u>
Date	<u>5-31-2013</u> Time <u>1:49 pm</u>
Simplifile.com 800.460.5657	

**SIXTH AMENDMENT
TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR TOWNE PARK, A PLANNED RESIDENTIAL COMMUNITY**

THIS SIXTH AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR TOWNE PARK, A PLANNED RESIDENTIAL COMMUNITY (this "**Amendment**") amends that certain Declaration of Covenants, Conditions and Restrictions for Towne Park a Planned Residential Community, recorded May 2, 1984, in Book Misc. 112A, Pages 761-840, Records of Bernalillo County, New Mexico (the "**Declaration**"), and is made by the Unit Lessees, as defined in Section 1.49 of the Declaration, pursuant to Section 20.2 of the Declaration, which provides for the amendment of the Declaration by the Unit Lessees, with reference to the following facts:

A. The Declaration has previously been amended by the First Amendment, recorded May 1, 1985, in Book Misc. 225A, Page 356, Records of Bernalillo County, New Mexico, the Second Amendment, recorded February 6, 1986, in Book Misc. 319A, Page 401, Records of Bernalillo County, New Mexico, the Third Amendment, recorded June 15, 1987, in Book Misc. 499A, Page 72, Records of Bernalillo County, New Mexico, the Fourth Amendment, recorded June 30, 1988, in Book Misc. 637A, Page 844, Records of Bernalillo County, New Mexico, and the Fifth Amendment recorded March 27, 1989, in Book Misc. 729A, Page 32, Records of Bernalillo County, New Mexico (collectively, the "**Prior Amendments**"). There are no valid amendments to the Declaration other than the Prior Amendments described above.

B. In connection with the proposed acquisition by Towne Park Homeowners Association, Inc., a New Mexico non-profit corporation (the "**Association**") of the fee title interest to Towne Park, a Planned Residential Community Development, described with further particularity in Exhibit I to the Declaration, and the lessor's interest under the Master Ground Lease and all Unit Leases, the Unit Lessees have voted to amend the Declaration as provided in this Amendment.

NOW, THEREFORE, in consideration of the foregoing and as provided in Sections 20.2 and 15.3 of the Declaration, the Declaration is amended as follows:

1. **Defined Terms.** Defined terms used herein but not defined herein shall have the meaning assigned to them in the Declaration.

2. **Amendments.** The following Sections of the Declaration are hereby modified as follows:

(a) **Authority.** Article XI, Section 11.1, which sets forth the authority of the Association, is hereby amended to add the following text:

The Association shall also have the authority to (i) to acquire and own the fee title interest in the land comprising Towne Park, a Planned Residential Community, as described in Exhibit I to this Declaration, and the lessor's interest under the Master Ground Lease and the Unit Leases, including without limitation the authority to borrow money to pay the purchase price for the acquisition and to pay expenses incident to the acquisition, and to retain and compensate professionals to advise and assist with same, (ii) to amend the Master Ground Lease to extend the term through February 28, 2062, and to amend any Unit Lease to extend the term through February 28, 2062, on terms set forth in Section 11.3(l) of this Declaration, as amended, (iii) to sell the fee title interest in the Lots to the Unit Lessee of each such Lot on terms set forth in in Section 11.3(l) of this Declaration, as amended, and (d) to take all such additional actions as may be necessary or appropriate in furtherance of the foregoing.

(b) **Purchase; Loan; Sale of Lots; Etc.** Section 11.3, which sets forth certain rights, functions and obligations of the Association, is amended to add the following subsection (l):

(l) Acquisition of Fee Title; Extension of Unit Lease Terms; Sale of Fee Title to Lots. The Association is authorized to undertake the following:

(i) Purchase. To purchase from Sandia Foundation the fee title interest in the land comprising Towne Park, a Planned Residential Community described in Exhibit I to this Declaration, for a purchase price of \$11,000,000, and upon such additional terms and conditions as the Board of Directors of the Association shall deem necessary or appropriate;

(ii) Loan. To obtain a loan to pay the entire purchase price for the acquisition described above as well as expenses incident to the acquisition (the "Loan"), to be secured by a mortgage encumbering the land comprising Towne Park, a Planned Residential Community described in Exhibit 1 to this Declaration, on such terms and conditions as the Board of Directors of the Association shall deem necessary or

appropriate, to include without limitation that the Lots can be released from the mortgage securing the lien of the Loan pursuant to the following terms:

(A) The Association not being in default pursuant to the terms of the Loan;

(B) A prepayment principal reduction on the Loan of \$25,000.00 for Lot sales consummated during the first 24 months of the term of the Loan, \$26,000.00 for Lot sales consummated during months 25 through 48 of the term of the Loan and \$27,000.00 thereafter until the lender is paid in full;

(C) Payment to the lender of an administrative partial release fee of \$500.00 during the first 24 months of the term of the Loan, \$600.00 during months 25 through 48 of the term of the Loan, and \$700.00 thereafter until the lender is paid in full.

(iii) Term Extensions. To amend the Master Ground Lease to extend the term from February 28, 2052, through February 28, 2062, and to amend any Unit Lease to extend the term from February 28, 2052 through February 28, 2062, with the rent increases during the two five year periods of the extended term of the Unit Lease to be based on approximately the same percentage increase as in the two five year periods of the Unit Lease preceding the extended term;

(iv) Sale of Lots to Unit Lessees. To irrevocably offer to sell the fee title interest in the Lots to the Unit Lessee of each such Lot on the following terms and conditions:

(A) Purchase Price; Partial Release Fee. The purchase price for each Lot shall be \$25,000.00 for Lot sales consummated during the first 24 months of the term of the Loan, \$26,000.00 for Lot sales consummated during months 25 through 48 of the term of the Loan and \$27,000.00 thereafter. The Unit Lessee shall pay to the lender's administrative partial release fee of \$500.00 during the first 24 months of the term of the Loan, \$600.00 during months 25 through 48 of the term of the Loan, and \$700.00 thereafter until the lender is paid in full.

(B) Conveyance; Closing Costs, Etc. Each Lot shall be conveyed by Special Warranty Deed, subject to reservations, restrictions and easements of record and taxes for the year of closing, and such other closing documents as are reasonable and appropriate. Taxes will not be prorated, because the Unit Lessees are responsible for the taxes under the Unit Leases. The Unit Lessee shall pay all closing costs, including without limitation escrow fees, title insurance premiums, recording fees, document preparation fees, financing expenses incurred by the Unit Lessee to finance purchase of the Lots, and the Association shall not pay any brokerage fees or commissions. The Lots shall be sold “as is” and “with all faults, without any representation or warranty on the part of the Association.

(C) Existing Mortgagees. If a mortgage encumbers the leasehold interest under the Unit Lease, the Unit Lessee will acquire the lessor’s interest under the Unit Lease and the conveyance will be made with the express provision that the Unit Lease will remain in full force and effect and will not be merged with the fee title to the Lot or extinguished so long as a mortgage encumbering the leasehold interest of the Unit Lease remains in effect.

(v) Administration, Etc. To take all actions necessary to administer payment of the Loan and compliance with the terms of the Loan documents and all actions necessary to administer sales of the Lots to Unit Lessees, and if any surplus funds result from the Association’s ownership of fee title to the Lots and the lessor’s interest under the Unit Leases or from the sale of the fee title interest in the Lots, to apply such surplus exclusively to the maintenance and repair fund of the Association.

3. **Miscellaneous Conforming Amendments.** The following sections of the Declaration are amended to conform to the amendments set forth in Sections 1 and 2 above, by adding the following:

(a) Section 1.6: The phrase “*to own and manage the leasehold estate in the Common Areas and Facilities,*” as it appears twice in Section 1.6, is replaced in each instance by the following phrase: “*to own and manage the Common Areas and Facilities.*”

(b) Section 1.48: The following sentence is added to the end: “*References in this Declaration to ‘Unit’ shall also include, after acquisition of fee title to a Lot by a Unit Lessee, the fee title interest in the Lot.*”

(c) Section 1.49: The following sentence is added to the end: “*References in this Declaration to ‘Unit Lessee’ shall also include, after acquisition of fee title to a Lot by a Unit Lessee, the owner of fee title to the Lot.*”

(d) Section 5.1: The following is substituted for the second sentence: “*Ownership of the leasehold estate in the Unit created pursuant to the Unit Lease, or (after acquisition of fee title to a Lot by a Unit Lessee) ownership of the fee title interest in a Lot, is the sole qualification for membership in the Association.*” The following is substituted for the third sentence: “*Upon any transfer of the entire Unit Lessee’s interest in the leasehold estate created under any Unit Lease, or (after acquisition of fee title to a Lot by a Unit Lessee) transfer of the fee title interest in a Lot, however caused or brought about, the transferor shall automatically cease to be a member of the Association and the transferee shall automatically be and become a member of the Association.*”

(e) Section 12.5: The following is substituted for the third sentence: “*Each Unit Lessee shall, however, be relieved of personal liability for Regular Monthly Assessments and Special Assessments accruing with respect to his Unit after the date on which the Unit Lessee transfers the entire interest in the leasehold estate created under any Unit Lease, or (after acquisition of fee title to a Lot by a Unit Lessee and termination of the Unit Lease) transfers the fee title interest in the Lot.*”

(f) Section 12.6: The following is substituted for the sixth sentence: “*In the event any Mortgagee succeeds to the Unit Lessee’s leasehold estate in any Unit or (after acquisition of fee title to a Lot by a Unit Lessee and termination of the Unit Lease) the fee title interest in any Lot pursuant to foreclosure or conveyance in lieu of foreclosure, then such Mortgagee shall not be liable for the payment of any unpaid regular Monthly Assessments of Special Assessments levied against the Unit Lessee and his Unit or Lot which accrued prior to the acquisition of the Unit or Lot by the Mortgagee; nor shall any such Mortgagee who acquires title to the leasehold interest in the Unit or (after acquisition of fee title to a Lot by a Unit Lessee and termination of the Unit Lease) the fee title interest in any Lot pursuant to foreclosure or conveyance in lieu of foreclosure be subject or subordinate to any Individual Assessment as to which the Association failed to file a recorded Notice of Assessment Lien pursuant to Section 12.1 below prior to recordation of such Mortgagee’s mortgage.*”

(g) Section 21.3: The following is substituted for the last sentence: *“Upon acceptance or recordation of any Unit Lease or any assignment, deed or other instrument conveying the leasehold interest in any Unit, or (after acquisition of fee title to a Lot by a Unit Lessee and termination of the Unit Lease) conveying the fee title interest in any Lot, the Unit Lessee shall be deemed to have accepted and agreed to and shall be bound by and subject to each and all of the provisions of this Declaration, the By-Laws and the Rules.”*

4. **Condition.** The effectiveness of the foregoing amendments to the Declaration, with the exception of items (i) and (ii) of subsection (l) of Section 11.3 set forth above, is conditioned upon the Association’s acquisition of the fee title interest in the land comprising Towne Park, a Planned Residential Community, as described in Exhibit 1 to this Declaration.

5. **Approvals.** This Amendment was approved and adopted by the Unit Lessees as follows:

(a) The Board of Directors of the Association adopted, as of March 18, 2013, certain Amendments to the Bylaws of the Association to authorize the submission to the Members of the Association, who also constitute the Unit Lessees, of proposed amendments (the **“Proposed Amendments”**) to the Articles of Incorporation of the Association and to the Declaration.

(b) A Special Meeting of the Unit Lessees/Members for April 20, 2013, was duly noticed on April 9, 2013, to all Unit Lessees/Members and all Eligible Unit Mortgagees, and there being no Eligible Insurers and Guarantors (as defined in Section 1.18 of the Declaration), no notice to Eligible Insurers and Guarantors was or could be given.

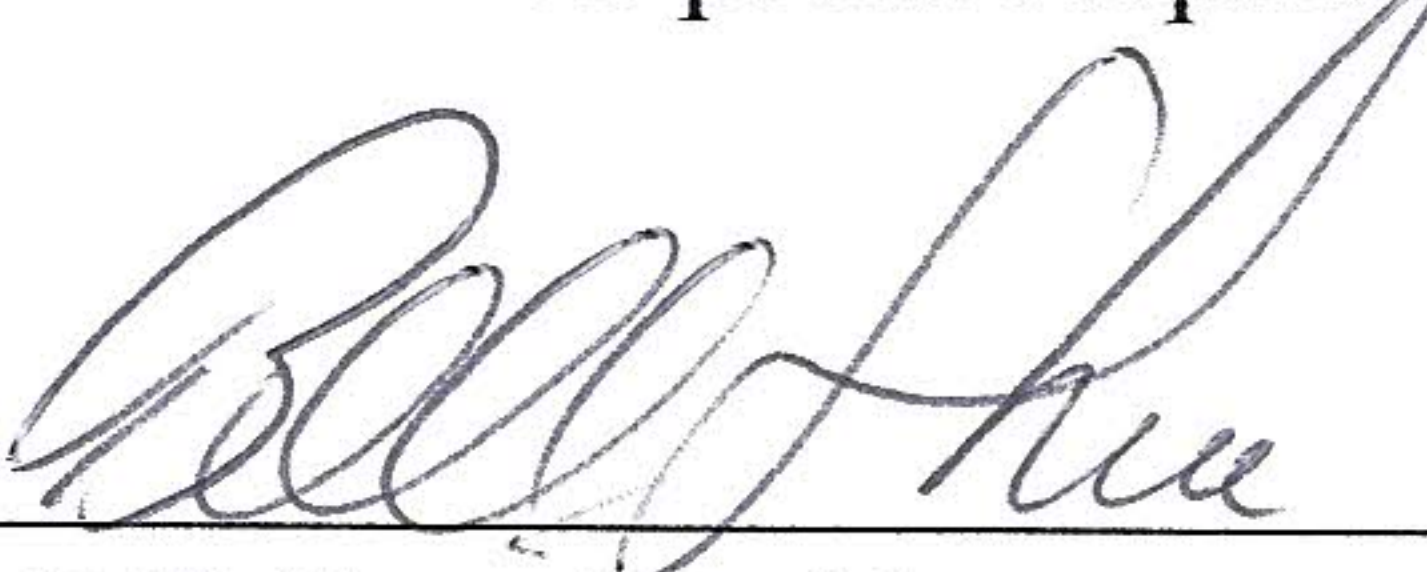
(c) Over 325 Unit Lessees/Members, being over two thirds (2/3) of the Unit Lessees/Members, approved the Proposed Amendments, either in person at the Special Meeting of the Members conducted on April 20, 2013, or by signed proxy.

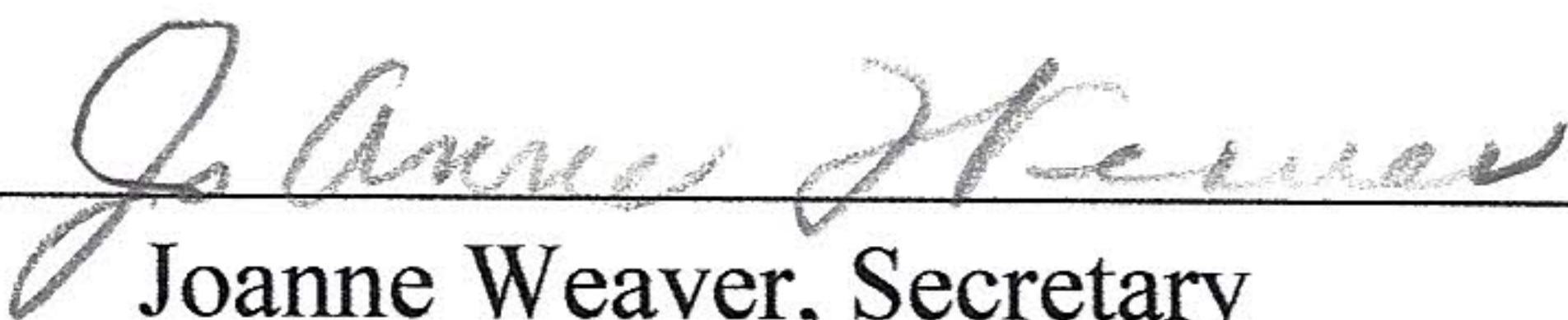
(d) The Board of Directors of the Association determined that the Proposed Amendments do not involve a material change as regards Eligible Unit Mortgagees, because the Proposed Amendments (i) do not impair or otherwise affect the liens of the mortgages held by Eligible Unit Mortgagees, (ii) do not impair or reduce the value of the property which secures the mortgages held by Eligible Unit Mortgagees, and (iii) enhance the long-term value of the residences in Towne Park and the long-term viability of the Towne Park development by extending the expiration date of the Master Ground Lease and the Unit Leases by 10 years to February 28, 2062, and by providing for the purchase of fee title to individual lots and the protection of the holders of a recorded mortgage against the Unit, and this determination was described in the Notice to Eligible Unit Mortgagees. By failing to

give a negative written response as contemplated under Section 15.3 of the Declaration, over fifty-one percent (51%) of the Eligible Unit Mortgagees are deemed to have approved the request for approval of the Proposed Amendments.

EXECUTED by the President and Secretary of the Association, who certify to the foregoing, to be effective as of the date of the recording of this Amendment in the Records of Bernalillo County, New Mexico.

TOWNE PARK HOMEOWNERS ASSOCIATION, INC.,
a New Mexico non-profit corporation

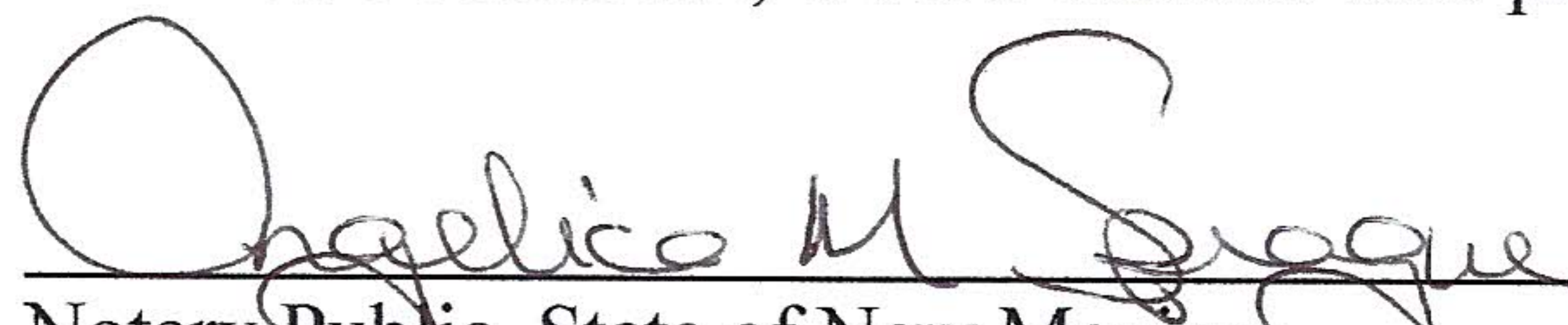
By: 
Bill Shue, President

By: 
Joanne Weaver, Secretary

THE STATE OF NEW MEXICO §
 §
COUNTY OF BERNALILLO §

This instrument was acknowledged before me on May 22, 2013, by Bill Shue, President of TOWNE PARK HOMEOWNERS ASSOCIATION, a New Mexico non-profit corporation.




Notary Public, State of New Mexico
Angelica M Sprague
(Printed Name)

My Commission Expires:
4-30-2014

(Additional Acknowledgment Follows)

