

Tucson Estates Plaza, Inc.  
3025 S. Kinney Rd.  
Tucson, AZ 85713

11/3/14

Sierra Villa's Management,

We received the enclosed letter from Pima County Flood Control in regards to a violation with the wash that separates the Villas from the Tucson Estates Plaza. The violation specifically references the west side of the wash, which as agreed upon and recorded with the county, is the maintenance responsibility of the Sierra Villas. The notice requires action within 30 days. We would appreciate your prompt attention to this matter.

Thank you,  
Board of Directors  
Tucson Estates Plaza, Inc.



October 30, 2014

T E Plaza Inc.  
Attn: Randy Pressey  
3025 S Kinney Rd  
Tucson AZ 85713-5504

**Subject: Notice of Opportunity to Correct**  
**Complaint Number: 14-310—3067 S Kinney Rd**

Dear Mr. Pressey:

On October 28, 2014, field representatives of the Infrastructure Management Division of the Pima County Regional Flood Control District ("District") observed that the drainageway along the west side of the subject property requires maintenance (removal of a sand bar and vegetation overgrowth) in order to promote efficient flow. The District has determined that this issue is subject to the requirements of the Floodplain and Erosion Hazard Management Ordinance, Title 16 of the Pima County Code.

According to Section 16.64.010.A of the Code, "It is unlawful for any person or entity to engage in development which will divert, retard or obstruct the flow of waters in a watercourse if it creates a hazard to life or property without securing written authorization from the District." It appears from our initial site visit that the aforementioned obstructions in the drainageway could "divert, retard or obstruct" the natural drainage over your property and adjacent parcels.

In order to assist you in coming into compliance with Title 16 of the County Code and thereby avoid more stringent enforcement measures, we recommend you do the following:

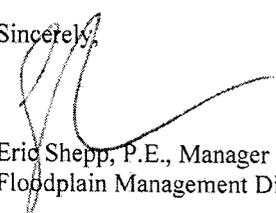
- 1) Remove brush and small volunteer trees within the wash channel (vegetation on the drainageway banks should not be removed since it helps stabilize the banks against erosion). In addition, remove the approximate 175' long sediment bar centered on Carmona Place.

It will be necessary for you to respond within 30 days of the date of this letter by notifying our office that the drainageway maintenance has been completed so that we may schedule a site visit to verify, or contacting our office to make other arrangements. Failure to respond could lead to more formal enforcement action.

If you have any questions regarding this letter, or would like to schedule a meeting with us, please contact Mindy Cox at 724-4600.

Thank you for your cooperation.

Sincerely,



Eric Shepp, P.E., Manager  
Floodplain Management Division

Suzanne Shields, P.E., Director

97 E. Congress, 3rd Floor, Tucson, Arizona 85701-1797 • Phone: 520-724-4600 • Fax: 520-724-4621

RECEIVED NOV 6 - 2014

F. ANN RODRIGUEZ, RECORDER  
Recorded By: JCC  
DEPUTY RECORDER  
305



SEQUENCE: 20131020883  
NO. PAGES: 7  
AG 04/12/2013  
18:00  
PICK UP  
AMOUNT PAID: \$11.00

W  
GET SMART-CARPENTER  
PICKUP

**When recorded, please return to:**

Jason E. Smith, Esq.  
Carpenter Hazlewood Delgado & Bolen, PLC  
35 E. University Blvd.  
Tucson, AZ 85705

**CAPTION:**

**DO NOT REMOVE**

**This is a part of the official document.**

CH File No: SIERRAVIL.0002

# JOINT COMMON AREA MAINTENANCE AGREEMENT RE: 45' DRAINAGEWAY

THIS JOINT MAINTENANCE AGREEMENT (this "Agreement") is made this 26<sup>th</sup> day of MARCH, 2013, by and between T.E. PLAZA, INC. ("T.E. Plaza"), an Arizona non-profit corporation; and SIERRA VILLAS HOMEOWNERS ASSOCIATION, INC. ("Sierra Villas") an Arizona non-profit corporation.

## RECITALS

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

A. T.E. Plaza is the homeowners association governing the Pima County commercial subdivision known as Tucson Estates Unit 4 Lots 1-93.

B. T.E. Plaza owns Lot 92 of Tucson Estates Unit 4 as Association Common Area.

C. According to the subdivision plat for Tucson Estates Unit 4 recorded in Book 19 Page 47 Maps and Plats, office of the County Recorder for Pima County, Arizona (the "Unit 4 Plat"), Lot 92 includes a 45 foot wide segment of property located on the northwestern boundary of Tucson Estates Unit 4 dedicated to the public for use as a Drainage Easement (the "Easement").

D. Sierra Villas is the homeowners association governing the Pima County residential subdivision known as Sierra Villas Lots 1-46 and Lot "A."

E. Sierra Villas is located immediately adjacent to T.E. Plaza to the northwest and shares a contiguous boundary with T.E. Plaza along the northwestern edge of the Easement.

F. The dedication in the subdivision plat for Sierra Villas, recorded in Book 26 Page 35 Maps and Plats, office of the County Recorder for Pima County, Arizona, Sierra Villas (the "Sierra Villas Plat") provides for the establishment of "an Association of individual lot owners as established by Declaration of Covenants, Conditions and Restrictions recorded in Docket

4779 at Page 65 in the Office of the Pima County Recorder,” and states that the Association “will accept all responsibility for the control, maintenance, safety and liability of Lot ‘A’ and the maintenance and control for the 20’ drainageway and the 45’ drainage easement as shown hereon.”

G. For several decades since the development of T.E. Plaza and Sierra Villas, T.E. Plaza has generally maintained the southwestern edge of the Easement at its own expense, and Sierra Villas has likewise done the same for the northwestern edge of the Easement.

H. In June 2011, T.E. Plaza received a notice of violation from the Pima County Department of Environmental Quality regarding garbage and debris within the Easement. In response, T.E. Plaza had the debris removed and also removed overgrown shrubs and trees along the southeastern edge of the Easement that were encroaching into T.E. Plaza’s parking lot and causing the accumulation of debris.

I. In January 2012, Sierra Villas attorney contacted T.E. Plaza to demand the restoration of the shrubs and trees based on its claim of control over the Easement pursuant to the Sierra Villas Plat. In August 2012, Sierra Villas installed “No Dumping” signs and several new trees along the same southeastern edge of the Easement.

J. A dispute has arisen between T.E. Plaza and Sierra Villas regarding which Association is responsible for the maintenance and control of the Easement. T.E. Plaza wishes to ensure proper maintenance of the Easement to prevent encroachment of the growth within the Easement across, below and over its adjacent parking lot. Sierra Villas wishes to ensure the maintenance of a natural visual buffer between its residential community and the business complex.

K. Therefore, in order to avoid the expense and uncertainty of litigation, and without admitting or denying any contested issue of fact or law, the parties, by this Agreement, intend to effectuate a full compromise with respect to the maintenance and control of the Easement between the parties, and to enter into this Agreement to set forth the terms and conditions of the joint maintenance of the Easement.

## COVENANTS

Now, therefore, in consideration of the foregoing Recitals, which are incorporated herein, the promises and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the Parties agree as follows:

1. Authority. The Parties, by their signatures below, and each of them, represent and warrant to each other as follows:

a. The foregoing Recitals are true and correct.

b. They have full and sufficient authority to enter into this Agreement and bind themselves and the parties hereto.

2. Ownership. Pursuant to the T.E. Plaza Plat, Sierra Villas acknowledges that T.E. Plaza is and shall continue to be the sole owner of the real property underlying the Easement as part of Lot 92 of Tucson Estates Unit 4, until such time as T.E. Plaza conveys title.

3. Maintenance of the Easement. T.E. Plaza and Sierra Villas shall jointly maintain the Easement as follows:

a. Division of the Easement. The Easement shall be divided into equal halves along the centerline of the Easement, as shown on the T.E. Plaza Plat, being 22.5 feet equidistant from the northwestern and southeastern boundaries of the Easement.

b. T.E. Plaza Maintenance Responsibility. T.E. Plaza shall be responsible for the control and maintenance of the southeastern half of the Easement.

c. Sierra Villas Maintenance Responsibility. Sierra Villas shall be responsible for the control and maintenance of the northwestern half of the Easement.

d. Scope of Maintenance and Control. Each Association shall be solely responsible for the maintenance and control of the landscaping within the bounds of the portion of the Easement assigned under this Agreement. Maintenance and Control shall include but not be limited to trimming of trees and shrubs, removal of dead or damaged plants and/or weeds, and planting and/or replanting of trees and shrubs as each Association deems appropriate under the circumstances.

e. Maintenance Costs. Each Association shall be solely responsible for the expense of regular maintenance within the bounds of the portion of the Easement assigned under this Agreement. In the event, that damage within a portion of the Easement is caused by the willful or reckless actions of the Association responsible for the other half of the Easement, the Association injured by the action of the other Association may seek

reimbursement of the costs of repair and/or replacement from the Association responsible for the damage.

f. Pima County Regulations. Control and maintenance of the Easement is subject at all times to any and all applicable Pima County regulations regarding the use of drainageways dedicated to the public and within the jurisdiction of the Pima County Flood Control District.

4. Removal of "No Dumping" signs. Sierra Villas shall, within thirty (30) days of the execution of this Agreement, remove the "No Dumping" signs that it installed along the southeastern edge of the Easement at its own cost. Sierra Villas shall have the authority to reinstall the "No Dumping" signs on the northwestern edge of the Easement at its discretion.

5. Removal of newly planted trees. Sierra Villas shall remove the recently-planted trees along the southeastern edge of the Easement at its own cost. Sierra Villas shall have the right to remove and replant the trees along the northwestern edge of the Easement at its discretion.

6. Mutual Release. The Parties hereby release and discharge each other from any and all claims, debts, causes of action, demands, liabilities, obligations or rights, which exist or which may exist, as of the date hereof, whether known or unknown, whether sounding in contract or tort with respect to any and all matters, transactions or occurrences arising out of or related to the disputes between T.E. Plaza and Sierra Villas regarding past maintenance and related actions taken by either Association and claims for reimbursement of expenses for past maintenance performed by either Association within the Easement.

7. Running with the Land; Term. All of the terms, provisions and covenants of this Agreement, including the benefits and burdens contained herein, shall run with the land and real property described herein and shall be binding upon and shall inure to the benefit of the successors and assigns of the parties hereto. This Agreement is intended to be perpetual and shall continue until terminated, amended or modified in accordance with Paragraph 9 herein.

8. Notices. All notices, demands, requests, elections or other communications required or permitted to be given by either party to the other shall be in writing and shall be either personally delivered or deposited in the United States mail, first-class registered or certified postage prepaid, return receipt requested, and addressed to the Parties as follow or at such other address or addresses as may from time to time be designated in writing by either party to the other:

If to T.E. Plaza:

T.E. Plaza, Inc.  
c/o Monroe McDonough Goldschmidt & Molla,  
PLLC  
4578 N. First Ave., Ste 160  
Tucson, AZ 85718

If to Sierra Villas:

Sierra Villas Homeowners Association, Inc.  
c/o Carpenter, Hazlewood, Delgado & Bolen,  
PLC  
35 East University Blvd  
Tucson, Arizona 8570

9. Amendment, Modification. This Agreement may be amended, modified or supplemented only by an instrument in writing, signed and acknowledged by both parties and properly recorded in the Office of the Recorder of Pima County, Arizona.

10. Dispute Resolution. This Agreement and the rights and duties of the parties hereto shall be construed and enforced in accordance with the laws of the State of Arizona, both statutory and decisional. Venue for any dispute hereunder shall be in Pima County, Arizona. If any dispute arises under this Agreement, the prevailing Party shall be entitled to an award of the costs and reasonable attorneys' fees that it incurs in any court proceeding or other action.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth above.

T.E. PLAZA, INC.

SIERRA VILLAS HOMEOWNERS ASSOCIATION, INC.

By: 

By: 

Its: President

Its: President

State of Arizona )  
: ss )  
County of Pima )

