

RETURN TO  
E-Z MESSENGER



OFFICIAL RECORDS OF  
MARICOPA COUNTY RECORDER  
HELEN PURCELL  
2002-0082106 01/25/02 16:52  
1 OF 1

GARCIAO

When recorded return to:  
Ekmark & Ekmark  
6720 N Scottsdale Road, Suite 261  
Scottsdale, Arizona 85253

**AMENDED AND RESTATED  
EASEMENT AND MAINTENANCE AGREEMENT**

THIS EASEMENT AGREEMENT is made this 11<sup>th</sup> day of January, 2002, by and between The Enclave at the Biltmore Financial District Condominium Owners Association, an Arizona non-profit corporation (hereinafter referred to as "Association I"), LaBrezza Condominium Owners Association, an Arizona non-profit corporation (hereinafter referred to as "Association II"), Windsor/Apex L.L.C., and Windsor Brezza, L.L.C. (hereinafter collectively referred to as "Developer").

RECITALS:

A. Association I is given the power, pursuant to the Declaration of Covenants, Conditions, and Restrictions for The Enclave at the Biltmore Financial District ("Declaration I"), recorded at recording number 98-0217720, records of Maricopa County, Arizona, and all amendments thereto, to maintain and otherwise manage the Common Elements of The Enclave at the Biltmore Financial District, and to exercise such rights, powers and duties as may be reasonably necessary to effectuate the objectives and purposes of the Association;

B. Association II is given the power, pursuant to the Declaration of Condominium Together with Covenants, Conditions, and Restrictions for LaBrezza Condominium Owners Association ("Declaration II"), recorded at recording number 00-0514323, records of Maricopa County, Arizona, amended by Amendment recorded at 01-0336459, records of Maricopa County, Arizona, and all amendments thereto, to maintain and otherwise manage the Common Elements of LaBrezza, and to exercise such rights, powers and duties as may be reasonably necessary to effectuate the objectives and purposes of the Association;

C. A Joint Use and Facilities Use Agreement was recorded at Recording number 2000-0514324, records of Maricopa County, Arizona ("Joint Agreement"), granting easements to the Members of the Association I and II and setting forth maintenance responsibilities;

D. Association I and Association II wish to amend the Joint Use and Facilities Use Agreement as set forth herein, and consolidate all responsibilities of Association I and Association II as to the Areas of Joint Responsibility into this Agreement.

NOW, THEREFORE, Association I and Association II hereby declare, covenant and agree to enter into the following agreement for the mutual benefit of both parties:

AGREEMENT

In consideration of the mutual covenants set forth herein, Association I and Association II agree as follows:

1. Incorporation of Recitals.

The Recitals set forth above are hereby incorporated into and made a part of this Agreement.

2. Definitions.

a. Areas of Joint Responsibility: The areas which require the joint maintenance responsibilities of Association I and Association II. The areas included as part of the Areas of Joint Responsibility are as follows:

(1) The following facilities located within Association I:

- (a) Swimming pool and all related facilities, including, but not limited to, its surrounding area, pool fence, ramadas, deck, pool equipment, and furniture.
- (b) Whirlpool and all related facilities, including, but not limited to, its surrounding deck and area, and whirlpool equipment.
- (c) Barbecues, barbecue areas and equipment.

(2) The following facilities located within Association II:

- (a) Exercise and workout room and all equipment, weights, and related items.
- (b) Associated walkways.
- (c) Entrance road from 22<sup>nd</sup> Street to the gates for The Enclave, the legal description which is attached hereto as Exhibit A.
- (d) Telephone line for gates, equipment boxes that contain equipment and telephone lines used by Association I and Association II.

b. Association I: The Enclave at the Biltmore Financial District Condominium Owners Association, an Arizona nonprofit corporation



Joint Responsibility located within The Enclave. Each of such easements shall include the right to reasonable ingress and egress over the common elements of The Enclave as is necessary to access the facilities, and each of such easements shall run with the land.

Association II hereby grants to Association I an easement over the property legally described on Exhibit A for ingress and egress of the Association's members and guests ("Easement"). Association I members shall have the right to use the Areas of Joint Responsibility located within the Easement for purposes of ingress and egress and for normal purposes associated with the use of roads and common areas. "Normal purposes" for the use of the roads shall include the operation of licensed, motorized vehicles operated by licensed drivers and the operation of non-motorized vehicles, but shall not include the use of non-licensed motorized vehicles. This right extends to public and emergency vehicles, and to all of Association I members' occupants, tenants, guests, invitees and persons lawfully conducting business in LaBrezza. This right shall run with the land, and shall extend to and bind all heirs, assigns, subsequent purchasers or purchasers of any portion of any of the parcels herein described. This right may not be revoked without the majority approval of the members of Association I and the majority approval of the Board of Directors of Association II, as evidenced by the signatures of the President and Secretary of the Board of Directors for both Associations. Pursuant to this right, Association I members shall abide by the reasonable rules and regulations established by Association II governing the use of the roads. Association I also grants Association II and its members, guests and invitees, a permanent easement for access to and use of the Areas of Joint Responsibility located within LaBrezza. Each of such easements shall include the right to reasonable ingress and egress over the common elements of LaBrezza as is necessary to access the facilities, and each of such easements shall run with the land.

#### 4 Maintenance.

Association I and Association II shall each contribute into a Joint Account for the purpose of maintaining and repairing Areas of Joint Responsibility. Said contributions shall be determined as follows:

a. Association I and Association II shall contribute equally with each Association paying fifty percent (50%) of the costs for both maintenance and reserves of the following facilities:

- (1) The entry road as legally described on Exhibit A from 22<sup>nd</sup> Street to the gates for The Enclave.
- (2) The fountain located in the entry road area by the gates for The Enclave.
- (3) The telephone line that controls both entry gates and the equipment boxes located by the entry gate for The Enclave that contains equipment for both

Associations I and II, and any equipment located therein that is shared jointly by the Associations I and II.

- (4) Landscaping in the entry road area
- (5) Reserves shall be established by each Association paying fifty percent (50%) of the amount to be contributed. The amount in the reserve shall be determined based on the age of the amenity.
- (6) Association I's obligation for paying fifty percent (50%) of the maintenance cost shall commence upon the recording of this Easement Agreement.

b. Association I shall contribute seventy-one percent (71%) and Association II shall contribute twenty-nine percent (29%) of the costs for both maintenance and reserves of the following facilities:

- (1) Swimming pool and all related facilities, including, but not limited to, its surrounding area, pool fence, ramadas, deck, pool equipment, and furniture.
- (2) Whirlpool and all related facilities, including, but not limited to, its surrounding deck and area, and whirlpool equipment.
- (3) Barbecues, barbecue areas and equipment.

(a) Association I's and Association II's contributions to the Joint Account shall begin as of November 1, 2001 to pay for the facilities listed in (1), (2), and (3). If the Joint Account is not yet established as of November 1, 2001, Association II shall contribute to Association I its percentage of the costs for the maintenance of these items each month until the Joint Account is established.

(b) Association II shall pay to Association I the sum of \$600.00 to pay for maintenance costs incurred prior to November 1, 2001 for the facilities listed in (1), (2), and (3). This amount does not cover contributions for reserves. All reserve amounts shall be determined based on the age of the amenity, with each Association contributing to the reserve based on the percentages set forth in this section.

- (4) Exercise and workout room and all equipment, weights, and related items upon Developer's completion of the room by installing carpeting, mirrors

throughout, bracket for television and VCR, television and VCR, wiring the television to the cable system of LaBrezza, and providing the Joint Maintenance Committee with \$5,000.00 for the purchase of exercise equipment for the exercise room. Developer shall complete the exercise room and provide the Joint Committee with the required funds no later than February 1, 2002.

5 Establishing Accounts

Association I and Association II shall establish two (2) accounts: (1) Joint Maintenance Account, and (2) Joint Reserve Account.

a. Each Association shall deposit its respective amount of funds into the Joint Maintenance Account for the general maintenance and operating expenses

b. Each Association shall deposit its respective amount of funds into the Joint Reserve Account for the long-term maintenance and capital improvement of the Areas of Joint Responsibility.

6 Joint Maintenance Committee

Association I and Association II shall establish a Joint Maintenance Committee ("Committee"). The purpose of the Committee shall be to determine the budget for the Areas of Joint Responsibility, to provide for the management and maintenance of the Area of Joint Responsibility, and to control the use of the Reserve Fund.

7 Members of Committee. The Committee shall be comprised of the following members:

a. The Board of Directors of Association I shall appoint two (2) members. The members of the Committee shall be members of the Board of Directors. The Board of Directors of Association I has the right to remove its members at any time and appoint new members to the Committee. The Board of Directors of Association I shall empower the two (2) members appointed on behalf of Association I to act on behalf of the Board of Directors of Association I in making decisions. Association I shall sign all contracts for maintenance and repair of all of the Areas of Joint Responsibility located on the Common Elements of The Enclave, including, but not limited to, the swimming pool and related facilities, whirlpool and related facilities, and barbecues, barbecue areas and equipment.

b. The Board of Directors of Association II shall appoint two (2) members. The members of the Committee shall be members of the Board of Directors. The Board of Directors of Association I has the right to remove its members at any time and appoint new members to the Committee. The Board of Directors of Association II shall empower the two (2) members appointed on behalf of Association II to act on behalf of the Board of Directors of Association II

in making decisions. Association II shall sign all contracts for maintenance and repair of all of the Areas of Joint Responsibility located on the Common Elements of LaBrezza, including, but not limited to. Exercise and workout room, entrance road from 22<sup>nd</sup> Street, telephone line for gates, and equipment boxes.

(c) The Committee shall be comprised of the following members:

(i) The Board of Directors of Association I shall appoint two (2) members. Said members do not need to be members of the Board of Directors of Association I. The Board of Directors of Association I has the right to remove its members at any time and appoint new members to the Committee

(ii) The Board of Directors of Association II shall appoint two (2) members. Said members do not need to be members of the Board of Directors of Association II. The Board of Directors of Association II has the right to remove its members at any time and appoint new members to the Committee.

(iii) All decisions of the Committee shall require the approval of at least three (3) members. Said Committee members shall attempt to work together to resolve disputes.

d The Committee will meet on a regular basis to conduct business, preferably monthly. Notice shall be given to all Committee members of all meetings by mail, facsimile, e-mail, telephone, or any other reasonable means of communication at least forty-eight (48) hours prior to the meeting

e. The Committee shall keep minutes of all meetings, and provide Association I and Association II with a copy of said minutes.

f. A quorum shall be required for the Committee to conduct business. A quorum shall consist of three (3) persons. All decisions of the Committee shall require the approval of at least three (3) members.

g The Committee may conduct business by a telephone vote when a prompt resolution needs to be made. Any matters decided by a telephone vote shall be documented and included as a part of the next meeting's minutes.

8. Duties of the Committee. The Committee shall have the following duties:

a The Committee shall prepare an annual budget by October 15th of every year to establish both the maintenance costs for the Areas of Joint Responsibility and the monthly contributions of Association I and Association II for maintenance and capital improvements of the Areas of Joint Responsibility. For the 2002 budget, the Committee shall meet as soon as

practicable after the recording of this Easement Agreement to determine the budget for the year 2002, and shall establish the costs to be paid by each Association accordingly.

b. The Committee shall establish a Joint Reserve Fund for the capital improvements of the Areas of Joint Responsibility. It shall approve any expenditures to be made from the Joint Reserve Fund

c. The Committee shall establish policies for investing the Joint Reserve Fund.

d. The Committee shall establish procedures for making requests to the Committee to alter or make additions to the Areas of Joint Responsibility. No alterations or additions to the Areas of Joint Responsibility shall be made without the prior written approval of the Committee.

e. The Committee shall provide for the maintenance and management of the Areas of Joint Responsibility and incur such expenses as are necessary and/or appropriate within the limits established by the budget

f. The Committee shall establish a procedure for dealing with emergency situations concerning the Areas of Joint Responsibility. Once such emergency procedures are established, the Board of Directors for Association I and Association II shall comply with the established emergency procedures, and shall pay the appropriate percentage of the costs to cover the emergency procedures.

g. The Committee (or the Property management company employed by the Committee) shall provide Association I and Association II with a financial statement at least quarterly comparing the budgeted amounts with the actual expenditures for the Areas of Joint Responsibility

h. The Committee may appoint various sub-committees from time to time. The sub-committees shall serve at the discretion of the Committee, and will have no spending authority.

i. The Committee shall provide Association I and Association II with notice of the address to which all payments must be made.

## 9 Responsibilities

a. Association I and Association II shall pay a quarterly budgeted amount for the maintenance of the Areas of Joint Responsibility to the Joint Maintenance Fund at the address designated by the Committee. The quarterly amount shall be due on January 1, April 1, July 1, and October 1 of each year, and shall be delinquent if not paid within fifteen (15) days of the due date. The amount of the quarterly assessment shall be adjusted annually based on the budget established by the Committee. The Committee may also adjust the amount to be paid to the Joint Maintenance Fund when the exercise room is completed, as set forth above. The Committee



shall examine the budgeted amounts versus the actual expenditures for the year by February 15 of the following year. If the actual expenditures for maintenance items exceeded the budgeted amounts or was less than the budgeted amounts for the year, the Committee shall notify Association I and Association II of this difference, and the amount owed for the subsequent year shall be adjusted accordingly.

b. Association I and Association II shall pay a quarterly budgeted amount for the capital improvements of the Areas of Joint Responsibility into the Joint Reserve Fund, which shall have the same due dates and delinquency dates as set forth in paragraph 7(a). The amount of the quarterly assessment shall be adjusted annually based on the budget established by the Committee.

10. Execution

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, with the same force and effect as if all signatures were appended to one instrument.

11. Notice

All notices provided for herein shall be in writing and shall be delivered to Association I at the following address: Board of Directors, The Enclave at the Biltmore Financial District Condominium Owners Association, c/o Nancy Wilson, Dowdown, Inc, 3600 North 19<sup>th</sup> Avenue, Phoenix, Arizona 85015, and to Association II at the following address: Board of Directors, LaBrezza Condominium Owners Association, 4501 North 22<sup>nd</sup> Street, Suite 170, Phoenix, Arizona 85016. Except for the quarterly payment of required contributions, notices shall be sent by certified mail, return receipt requested, or personally delivered and receipted. If either Association I or Association II wish to change the address to which notices shall be sent, said party shall send notification to the other party, via certified U.S. mail, return receipt requested, of the new address. Notices shall be sent to the other party to the address indicated in said notification.

12. Default

The failure by either Association I or Association II to fully perform this Agreement in a manner complying with this Agreement shall entitle either party to take all such actions against the defaulting party as shall be provided by law. All costs, attorneys' fees, and other expenses incurred enforcing the Agreement shall be paid to the prevailing party by the losing party.

13. Term.

This Agreement shall be recorded against both The Enclave and LaBrezza, and shall run with the land, and shall be binding upon all heirs and assigns. This Agreement shall remain in full force and effect for a period of twenty (20) years from the date hereof. Thereafter, this Agreement shall be deemed to have been renewed for successive terms of twenty (20) years, unless revoked or amended at any time as specified in paragraph 12 of this Agreement

14. Amendments.

Except as otherwise specified in this Agreement, this Agreement may be amended or revoked by the approval of the Board of Directors for both Association I and Association II. Said amendment or revocation shall be signed and executed by the President and Secretary of both Association I and Association II, confirming that said amendment or revocation has been approved by the majority of the Board for each Association. Any amendment or revocation shall become effective upon recordation with the Maricopa County Recorder's Office.

15. Miscellaneous

a. This Agreement shall supercede and replace the Joint Use and Facilities Use Agreement in its entirety.

b. If any provision of this Agreement is held to be illegal, invalid or unenforceable, any such illegality, invalidity or unenforceability shall not affect the remaining provisions of this Agreement, unless the terms held to be illegal, invalid or unenforceable make it impractical for the Associations to continue to maintain and manage the Areas of Joint Responsibility through the Committee. In that event, either Board shall have the right to terminate this Agreement without regard to the provisions of Paragraph 11.

c. This Agreement shall be binding upon and inure to the benefit of the Associations and their successors in interest, provided, however, that neither party may assign, delegate or transfer any of its obligations under this Agreement without the prior written consent of the other party.

d. The parties represent and warrant to each other that all necessary corporate consents have been obtained, and that each person executing this Agreement on behalf of his or her Association has authority to do so.

e. This Agreement is to be governed by, and interpreted pursuant to, Arizona law.

20070106

IN WITNESS WHEREOF, the parties have hereunto set their hands this 11<sup>th</sup> day of January, 2002, at Phoenix, Arizona.

**The Enclave at the Biltmore Financial District Condominium Owners Association,**  
an Arizona nonprofit corporation

**LaBrezza Condominium Owners Association,**  
an Arizona nonprofit corporation

By [Signature]  
PRESIDENT  
[Title]

By [Signature]  
PRESIDENT  
[Title]

**WINDSOR/APEX L.L.C.**

**Windsor Brezza L.L.C.**

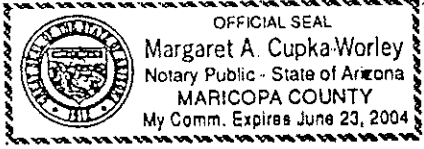
By [Signature]  
Doug Edgelow  
Manager  
[Title]

By [Signature]  
MANAGER  
[Title]

STATE OF ARIZONA     )  
  ) ss.  
COUNTY OF MARICOPA )

On this 11<sup>th</sup> day of January, 2002, before me, the undersigned officer, personally appeared CHARLES WHITMAN, President, known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the foregoing instrument, who acknowledged before me that he/she is the President of THE ENCLAVE HOMEOWNERS ASSOC. and the he/she, in such capacity, being authorized so to do, executed the foregoing instrument, for the purposes therein stated, on behalf of the Association, and that the instrument is the act of the Association for the purposes therein stated.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



Margaret A. Cupka-Worley  
Notary Public

My Commission Expires:  
June 23, 2004

STATE OF ARIZONA )  
 ) ss  
COUNTY OF MARICOPA )

On this 5 day of December 2001, before me, the undersigned officer, personally appeared Douglas J. Edgelow, President, known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the foregoing instrument, who acknowledged before me that he/she is the President of La Brea Condo Owners Assn. and the he/she, in such capacity, being authorized so to do, executed the foregoing instrument, for the purposes therein stated, on behalf of the Association, and that the instrument is the act of the Association for the purposes therein stated.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Kristine K. Fowl  
Notary Public

My Commission Expires:  
Oct 20, 2002



STATE OF ARIZONA )  
 ) ss.  
COUNTY OF MARICOPA )

On this 5 day of December 2001, before me, the undersigned officer, personally appeared Douglas J. Edgelow, known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the foregoing instrument, who acknowledged before me that he/she is the Manager of Hindson Apex LLC, and the he/she, in such capacity, being authorized so to do, executed the foregoing instrument, for the purposes therein stated, on behalf of the Association, and that the instrument is the act of the Association for the purposes therein stated.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Kristine K. Fowl  
Notary Public

My Commission Expires:  
Oct. 20, 2002

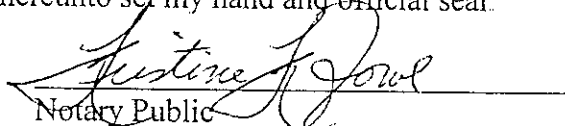


0012007007

STATE OF ARIZONA        )  
  ) ss.  
COUNTY OF MARICOPA    )

On this 5 day of December 2001, before me, the undersigned officer, personally appeared Douglas J. Edgelow, known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the foregoing instrument, who acknowledged before me that he/she is the Manager of Vendron Burgin LLC, and the he/she, in such capacity, being authorized so to do, executed the foregoing instrument, for the purposes therein stated, on behalf of the Association, and that the instrument is the act of the Association for the purposes therein stated.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

  
Notary Public

My Commission Expires:

Oct. 20, 2002

C:\WPWIN60\WPDOCS\HOA\Enclave at Biltmore\Easement Agreement modified 11-19-01 wpd

2005092106

INGRESS-EGRESS EASEMENT  
for  
"The Enclave"

An easement for Ingress-Egress and Parking located in the South half of the Southeast Quarter of the Northeast Quarter of Section 22, Township 2 North, Range 3 East of the Gila and River Base and Meridian. Maricopa County, Arizona more particularly described as follows:

COMMENCING at the Southwest corner of the said Southeast Quarter of the Northeast Quarter of Section 22;  
thence North 00° 37' 37" East, a distance of 450.02 feet;  
thence South 89° 59' 24" East, a distance of 30.00 feet to the East right-of-way line of 22<sup>nd</sup> Street and the TRUE POINT OF BEGINNING;  
thence continuing South 89° 59' 24" East, a distance of 102.01 feet;  
thence North 00° 37' 37" East, a distance of 18.75 feet;  
thence South 89° 59' 24" East, a distance of 19.00 feet;  
thence South 00° 37' 37" West, a distance of 19.75 feet;  
thence South 89° 59' 24" East, a distance of 13.90 feet;  
thence South 00° 37' 37" West, a distance of 55.00 feet;  
thence North 89° 59' 24" West, a distance of 134.94 feet to a point on the said right-of-way line of 22<sup>nd</sup> Street;  
thence North 00° 37' 33" East along said East right-of-way line of 22<sup>nd</sup> Street, a distance of 55.00 feet to the TRUE POINT OF BEGINNING.

EXHIBIT "A"