

1 Lisa Marx
2 13610 N. 111th Ave.
3 Sun City, AZ 85351
4 602-748-7781
5 aimtodogood@gmail.com
6 Representing self

7 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
8 **IN AND FOR THE COUNTY OF MARICOPA**

9
10 Lisa Marx
11 Plaintiff,

Case No. CV 2025-012980

12 vs.

13 Tara Condominiums Association, Inc.,

14 **PLAINTIFF'S MOTION FOR**
15 **PARTIAL SUMMARY JUDGMENT**
16 **AND MEMORANDUM OF POINTS**
17 **AND AUTHORITIES**

18 **RE: VALIDITY OF THE 2025**
19 **DECLARATION AMENDMENT**

20 Honorable Adele Ponce

21 Plaintiff Lisa Marx, pursuant to Ariz. R. Civ. P. 56(a), moves for partial summary
22 judgment declaring the 2025 amendment to the Declaration of Restrictions – recorded
23 October 20, 2025 in the Official Records of Maricopa County as Instrument No. 2025-
24 0605584 (the “Amendment”) – invalid, void, and unenforceable. The Amendment is
void on any of several independent grounds, each sufficient standing alone, and the
material facts are undisputed because they are established by recorded instruments

1 and by the Association's own productions and admissions. This Motion is supported
2 by the following Memorandum of Points and Authorities, Plaintiff's separately filed
3 Separate Statement of Facts ("SSOF"), the Declaration of Lisa Marx, and the entire
4 record. A proposed form of order is lodged herewith.
5

6 MEMORANDUM OF POINTS AND AUTHORITIES

7 I. INTRODUCTION

8 Tara Condominiums is a condominium governed by the Arizona Condominium
9 Act, A.R.S. § 33-1201 et seq., and by a Declaration of Restrictions recorded in 1970.
10 (SSOF ¶¶ 2-4.) Under the original Declaration, the Association was responsible for
11 insuring the buildings. (SSOF ¶ 6.) In 2025, the Association recorded an amendment
12 that redefines a "Residential Unit" as "a structure," redefines the Common Elements,
13 eliminates the Association's duty to insure the buildings, and requires each owner to
14 obtain property insurance on the owner's unit on penalty of assessment. (SSOF ¶¶ 28-
15 33.)

16 The Amendment is invalid for at least four independent reasons, each of which
17 alone requires that it be declared void: (1) it offloads the Association's mandatory
18 insurance duty under A.R.S. § 33-1253; (2) it changes the boundaries of the units and
19 their allocated interests without the unanimous consent required by A.R.S. § 33-
20 1227(D); (3) it was adopted by written consent, without the open meeting and balloting
21 required by A.R.S. §§ 33-1248 and 33-1250(C); and (4) it imposes burdens not
22 foreseeable from the original Declaration, contrary to *Kalway v. Calabria Ranch HOA,*
23 *LLC*, 252 Ariz. 532, 506 P.3d 18 (2022).

24 No material fact is in dispute. Every fact necessary to this Motion is established by a

1 recorded instrument, by a document the Association produced in discovery, or by the
2 Association's own admissions in its Response to Plaintiff's Supplemental Pleading.
3 What remains is the legal effect of those undisputed facts — a question of statutory and
4 contract interpretation the Court may resolve as a matter of law.

5 **II. STATEMENT OF MATERIAL FACTS**

6 Plaintiff owns Unit 5, Tract G, Sun City Unit Fifteen C. (SSOF ¶ 1.) The Declaration
7 of Restrictions was recorded on February 19, 1970. (SSOF ¶ 2.) It defined a unit as "a
8 parcel and the improvements thereon, and an undivided interest in the common
9 elements," and defined the common elements. (SSOF ¶¶ 3-4.) It empowered the Board
10 "[t]o insure, and keep insured, all buildings and improvements on the property ...
11 against loss from fire or other casualty," and it did not require owners to insure their
12 units or define "Limited Common Elements." (SSOF ¶¶ 6, 8-9.) The Declaration also
13 empowered the Board to use assessments to maintain the common elements and
14 buildings "(other than interior of the buildings)" and "To protect and defend the
15 property from loss and damage by suit or otherwise." (SSOF ¶¶ 5, 7.) The Association
16 maintained a master policy with a blanket property limit of \$15,269,680. (SSOF ¶ 10.)

17 The declaration-change information included a letter from the Travis Law Firm
18 dated August 6, 2025, and the text of the proposed amendments. The letter states that
19 the amendments would define "Common Elements" and "Residential Units" and "will
20 no longer require the Association to provide property and liability insurance on the
21 Residential Units." (SSOF ¶¶ 11-14.) The Association solicited approval on an "Action
22 By Written Consent" form invoking A.R.S. § 33-1227(A) and A.R.S. § 10-3704, stating
23 that "at least 67%" of owners must consent, combining four (4) amendments and the
24 addition of Paragraph 24 into a single "YES" or "NO" vote, and directing owners to

1 return the form by mail by October 15, 2025. (SSOF ¶¶ 15–19.) The Board approved the
2 amendments on or about September 20, 2025, and distributed the written-consent
3 forms to the owners. (SSOF ¶¶ 20–21.) On September 25, 2025, Plaintiff e-mailed the
4 Board stating that a meeting was required and quoting A.R.S. § 33-1250(C) and § 33-
5 1227(D). (SSOF ¶ 22.) The Association told members the premiums had become
6 “unsustainable” and an “overwhelming burden.” (SSOF ¶ 23.)

7 A vote was conducted and the amendments were approved (SSOF ¶ 24), and on
8 October 18, 2025 the Association notified owners of the results (SSOF ¶ 25). The
9 Amendment, executed on October 17, 2025 by the Association’s Chairperson (SSOF ¶
10 34), was recorded on October 20, 2025 (SSOF ¶ 26). The Amendment recites adoption
11 by “the affirmative vote or written consent of at least 67%” of owners. (SSOF ¶ 27.) It
12 redefines “Residential Unit” as “a structure designated for separate ownership and
13 occupancy,” redefines the Common Elements and adds Limited Common Elements,
14 amends Paragraphs 12(B) and 12(H), adds Paragraph 12(Q), and adds Paragraph 24
15 requiring each owner to obtain property insurance on the owner’s unit, on penalty.
16 (SSOF ¶¶ 28–33.) The Amendment applies to the property that includes Plaintiff’s Unit
17 5. (SSOF ¶ 35.) After the amendment was recorded, the Association, by Mark
18 Gottmann, executed a cancellation of the master property policy effective December 8,
19 2025 — months before the policy’s August 1, 2026 term (SSOF ¶¶ 37–39), and the
20 Association admits the master policy “expired” (SSOF ¶ 40). Plaintiff has declined to
21 obtain the policy the Amendment requires. (SSOF ¶ 41.)

22 III. LEGAL STANDARD

23 Summary judgment shall be granted where “there is no genuine dispute as to any
24 material fact and the moving party is entitled to judgment as a matter of law.” Ariz. R.

1 Civ. P. 56(a). A party opposing summary judgment may not rest on “the slightest
2 doubt” or a mere “scintilla of evidence”; it must come forward with evidence on which
3 a reasonable factfinder could find in its favor. *Orme School v. Reeves*, 166 Ariz. 301, 309–
4 11, 802 P.2d 1000, 1008–10 (1990). Nor may the opposing party rest on the allegations of
5 its pleadings. Ariz. R. Civ. P. 56(e). Where, as here, the material facts are established by
6 recorded instruments and by the opposing party’s own admissions, and the dispute
7 concerns only the legal effect of those facts, the matter is appropriate for summary
8 judgment. The interpretation of a statute and of a recorded declaration are questions of
9 law. See *Kalway*, 252 Ariz. 532, ¶ 9, 506 P.3d 18 (2022). The Arizona Condominium Act
10 applies to Tara in full: A.R.S. § 33-1201 provides that “[t]his chapter applies to all
11 condominiums created within this state without regard to the date the condominium
12 was created.” This action seeks a declaration of the Amendment’s validity under the
13 Uniform Declaratory Judgments Act, A.R.S. § 12-1831 et seq.

14 IV. ARGUMENT

15 A. The Amendment Is Void Because It Eliminates the Association’s Mandatory 16 Insurance Duty Under A.R.S. § 33-1253.

17 The Condominium Act requires the Association to insure the buildings. Section 33-
18 1253(A)(1) provides that the association “shall maintain, to the extent reasonably
19 available,” property insurance on the common elements “and, if required by the
20 condominium documents, the units,” against all risks of direct physical loss, in an
21 amount not less than eighty percent of actual cash value. The Act defines the common
22 elements the Association must insure: A.R.S. § 33-1202(8) provides that “common
23 elements” means “all portions of the condominium other than the units.” The
24 structural shells of the buildings — the portions outside the finished interiors of the

1 units — are therefore common elements the Association must insure under § 33-
2 1253(A)(1), and the Amendment’s redefinition of “Common Elements” as only “all
3 portions of the land which is not the Residential Units” (SSOF ¶ 29) cannot override
4 that statutory definition to relieve the Association of the mandatory floor. The original
5 Declaration imposed the same duty on the Association, empowering the Board “[t]o
6 insure, and keep insured, all buildings and improvements on the property ... against
7 loss from fire or other casualty.” (SSOF ¶ 6.) The Association carried out that duty
8 through a master policy with a \$15,269,680 blanket property limit. (SSOF ¶ 10.)

9 The Amendment eliminates that duty and shifts it to individual owners. It amends
10 Paragraph 12(H) and adds Paragraph 24, which requires each “Residential Unit
11 Owner” to “obtain property insurance on their Residential Unit” and to provide proof,
12 on penalty of assessment. (SSOF ¶¶ 31, 33.) The Travis Law Firm letter and the
13 Association’s Chairperson report state that the object was to relieve the Association of
14 the cost of insuring the buildings. (SSOF ¶¶ 11-13, 36.) No vote of the owners — by
15 majority, by sixty-seven percent, or otherwise — can adopt an amendment that
16 contradicts a mandatory provision of the Condominium Act. Because § 33-1253(A)(1)
17 makes the Association’s property-insurance duty mandatory, an amendment
18 purporting to offload that duty onto owners contradicts the statute and is void.

19 The Association cannot invoke the statute’s single exception. Section 33-1253(C)
20 excuses the insurance duty only “[i]f the insurance described in subsection A ... is not
21 reasonably available,” and even then requires the association “promptly” to “cause
22 notice of that fact to be hand-delivered or sent prepaid by United States mail to all unit
23 owners.” None of those conditions is met. First, the insurance was reasonably available:
24 the Association held the master property policy in force (SSOF ¶ 10), and it then, by its

own hand, terminated that building coverage: on November 13, 2025 it directed its broker to cancel the property package effective December 1, 2025 (SSOF ¶ 37), it told owners the building insurance would expire December 1 (SSOF ¶ 38), and Mark Gottmann executed a Cancellation Request marked “REQUESTED BY INSURED” for the property policy, effective December 8, 2025 — months before the policy’s August 1, 2026 term (SSOF ¶ 39). The replacement coverage confirms the point: effective December 1, 2025 the Association obtained, through American Family Brokerage, only general-liability, directors-and-officers, umbrella, and crime coverage, and no property insurance on the buildings or common elements (SSOF ¶¶ 44–45). The common-element structures the master policy insured to \$15,269,680 are therefore now uninsured — the § 33-1253(A)(1) floor breached by the Association’s own hand, not coverage that was “not reasonably available.” Coverage that the Association holds in force and then cancels by its own hand is, by definition, available; § 33-1253(C) excuses the insurance duty only where coverage is “not reasonably available,” not where the Association elects to terminate coverage it already has. Second, the Association’s stated reason was cost, not unavailability: it told members the premiums were “unsustainable” and an “overwhelming burden” (SSOF ¶ 23) and reported that it “successfully amended” the governing documents because insuring the units had become “cheaper” for owners (SSOF ¶ 36). Section 33-1253(C) turns on whether insurance is “reasonably available,” not on whether it is affordable; cost is not the statutory test. Third, the Association never gave the notice subsection (C) requires, because it never contended the insurance was unavailable. The exception does not apply, and the Amendment’s elimination of the mandatory insurance duty renders it void.

1 **B. The Amendment Is Void Because It Changed the Boundaries and Allocated**
2 **Interests of the Units Without the Unanimous Consent A.R.S. § 33-1227(D) Requires.**

3 A condominium declaration may be amended “only by a vote” of at least sixty-
4 seven percent of the owners. A.R.S. § 33-1227(A). But that 67% threshold does not reach
5 every amendment. Section 33-1227(D) provides that, absent unanimous consent, “no
6 amendment may ... change the boundaries of any unit, the allocated interests of a unit,
7 or the uses to which any unit is restricted.” An amendment that makes such a change
8 on less than unanimous consent is void.

9 The Amendment makes precisely those changes. The original Declaration defined a
10 unit as “a parcel and the improvements thereon, and an undivided interest in the
11 common elements.” (SSOF ¶ 3.) The Amendment redefines a “Residential Unit” as “a
12 structure designated for separate ownership and occupancy” (SSOF ¶ 28), redefines the
13 Common Elements and introduces “Limited Common Elements” where none existed
14 before (SSOF ¶¶ 4, 9, 29), and reallocates obligations among the units — imposing a
15 proportional deficiency assessment (amended Paragraph 12(H)) and a special
16 assessment (new Paragraph 12(Q)) on each Residential Unit (SSOF ¶¶ 31–32).
17 Redefining what a unit is, and reallocating the interests and obligations attached to it,
18 changes “the boundaries” and “the allocated interests” of the units within the meaning
19 of § 33-1227(D).

20 Those changes required unanimous consent. The Amendment was adopted on the
21 consent of “at least 67%” of owners (SSOF ¶¶ 16, 27), not unanimously. It is therefore
22 void under § 33-1227(D). The Amendment is independently invalid under *Kalway*, in
23 which the Arizona Supreme Court held that a general power to amend by majority
24 vote may be used to amend only those restrictions for which the original declaration

1 gave sufficient notice, and that an association may not use that power to impose new
2 affirmative obligations the original declaration did not make foreseeable. *Kalway*, 252
3 Ariz. 532, ¶¶ 1, 10, 14–15, 506 P.3d 18 (2022). Redefining the unit and imposing a new
4 obligation to insure the structure were not foreseeable from a 1970 Declaration that
5 placed the insurance duty on the Association. See *Dreamland Villa Cmty. Club, Inc. v.*
6 *Raimy*, 224 Ariz. 42, 51 ¶ 38, 226 P.3d 411 (App. 2010) (a general amendment power
7 does not authorize new affirmative obligations without notice); *Wilson v. Playa de*
8 *Serrano*, 211 Ariz. 511, 513 ¶ 7, 123 P.3d 1148 (App. 2005); *Shamrock v. Wagon Wheel Park*
9 *Homeowners Ass’n*, 206 Ariz. 42, 45–46 ¶ 14, 75 P.3d 132 (App. 2003).

10 **C. The Amendment Is Void Because It Was Adopted Without the Open Meeting**
11 **and Balloting A.R.S. §§ 33-1248 and 33-1250(C) Require.**

12 The Condominium Act requires association action to be taken at an open meeting
13 and, after the period of declarant control, requires votes to be cast in person and by
14 absentee ballot. A.R.S. § 33-1248(A) (meetings of the association shall be open to the
15 members); A.R.S. § 33-1250(C) (the association “shall provide for votes to be cast in
16 person and by absentee ballot,” shall not permit proxies, and shall use ballots
17 complying with subsections (C)(1) through (C)(7)).

18 The Association did neither. It adopted the Amendment by an “Action By Written
19 Consent” form (SSOF ¶ 15), invoking A.R.S. § 33-1227(A) and A.R.S. § 10-3704 — the
20 latter a general nonprofit-corporation statute — and combining four (4) amendments
21 and Paragraph 24 into a single “YES” or “NO” consent (SSOF ¶ 18). It directed owners
22 to return the form by mail by October 15, 2025 (SSOF ¶ 19). The Association admits that
23 “the Board approved amendments to the Declaration on or about September 20, 2025,”
24 (SSOF ¶ 20); it does not contend that an open meeting of the members was held at

1 which votes were cast in person or the written consents were counted. Plaintiff objected
2 to this procedure before the vote, quoting § 33-1250(C) and § 33-1227(D). (SSOF ¶ 22.)
3 Tara is long past the period of declarant control, so § 33-1250(C) governs the manner in
4 which any owner vote is cast: in person and by absentee ballot, not by proxy or off-
5 meeting written consent. An “Action By Written Consent” returned by mail is neither,
6 and it denied owners the balloting process § 33-1250(C) guarantees. The form
7 compounded the defect by grouping several separate amendments into a single “YES”
8 or “NO” consent (SSOF ¶ 18), depriving owners of the ability to vote on each
9 amendment on its own. Nothing in § 33-1227(A) excuses those manner-of-voting
10 requirements: § 33-1227(A) fixes the approval threshold, while § 33-1250(C) fixes how
11 the vote must be taken, and the Association satisfied neither the balloting nor the open-
12 meeting requirement. Section 10-3704 is a mechanism of the nonprofit-corporation
13 code; it does not displace the specific condominium-voting requirements of §§ 33-1248
14 and 33-1250(C), with which it conflicts. Voting and other formal association action must
15 occur at an open meeting. Because the Amendment was adopted without the required
16 open meeting and balloting, it is void on this independent ground as well. *See A Z N H*
17 *Revocable Trust v. Sunland Springs Village Homeowners Ass'n*, No. 1 CA-CV 25-0424 (Ariz.
18 App. Apr. 28, 2026) (construing the open-meeting requirement of A.R.S. § 33-1804,
19 which is materially identical to A.R.S. § 33-1248 and construed *in pari materia*).

20 **D. Plaintiff’s Challenge Is Direct, and She Has Standing to Bring It.**

21 An individual unit owner may directly challenge an invalid amendment. *Johnson v.*
22 *Pointe Cmty. Ass'n, Inc.*, 205 Ariz. 485, 73 P.3d 616 (App. 2003) (owners may sue directly
23 to enforce the declaration); *Kalway*, 252 Ariz. 532, ¶ 5, 506 P.3d 18 (2022) (single owner’s
24 declaratory-judgment action to invalidate amendments); *Prieve v. Flying Diamond*

1 *Airpark, LLC*, 252 Ariz. 195, 500 P.3d 1045 (App. 2021) (granting summary judgment to
2 a member challenging an unauthorized vote). The Uniform Declaratory Judgments Act
3 permits “[a]ny person ... whose rights, status or other legal relations are affected” by
4 an instrument to obtain a declaration of validity. A.R.S. § 12-1832.

5 Plaintiff’s injury is direct and particular to her. The recorded Amendment applies to
6 her Unit 5 (SSOF ¶¶ 1, 35); it imposes on her, as a Residential Unit Owner, the
7 obligation to obtain property insurance and a monetary penalty for non-compliance
8 (SSOF ¶ 33); and she has declined to assume that obligation (SSOF ¶ 41). Those are
9 injuries to Plaintiff’s own property rights and obligations, not a generalized grievance
10 shared with the community at large. The Association’s reliance on *Iqtunheimr, LLC v.*
11 *Val Vista Lakes Community Ass’n*, 586 P.3d 1081 (Ariz. App. 2026), is therefore
12 misplaced: that decision turned on a plaintiff who alleged only a derivative harm — the
13 association’s general failure to maintain the common areas. Here, by contrast, Plaintiff
14 challenges a recorded amendment that redefines her own unit and imposes obligations
15 and penalties directly upon it. That is a direct claim, properly brought by Plaintiff in
16 her own right.

17 V. CONCLUSION

18 Each of the foregoing grounds independently requires that the 2025 Amendment be
19 declared void. The material facts are established by recorded instruments and by the
20 Association’s own documents and admissions, and the only remaining questions are
21 questions of law. Plaintiff respectfully requests that the Court grant partial summary
22 judgment and declare the amendment recorded as Instrument No. 2025-0605584
23 invalid, void, and unenforceable. A proposed form of order is lodged herewith.
24

1 RESPECTFULLY SUBMITTED this 5th day of July, 2026.

2 /s/ Lisa Marx

3 Lisa Marx, Plaintiff Pro Se

4 13610 N. 111th Ave.

5 Sun City, AZ 85351

6 602-748-7781

7 aimtodogood@gmail.com

8
9 **CERTIFICATE OF SERVICE**

10 I certify that on July 5th, 2026, a true copy of the foregoing was served via e-file to the
11 Court and Defendant's Counsel and by email on counsel for Defendant:

12 Chuck Oldham — Chuck.Oldham@chdblawn.com

13 Ari Bowhay — Ari.Bowhay@chdblawn.com

14 /s/ Lisa Marx

15 Lisa Marx, Plaintiff Pro Se

16 13610 N. 111th Ave.

17 Sun City, AZ 85351

18 602-748-7781

19 aimtodogood@gmail.com
20
21
22
23
24