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**AMENDED AND RESTATED DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
VILLA MONTEREY  
UNIT FIVE and UNIT FIVE-A**

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**AMENDED AND RESTATED DECLARATION**  
**OF**  
**COVENANTS, CONDITIONS AND RESTRICTIONS**  
**OF**  
**VILLA MONTEREY**  
**UNIT FIVE and UNIT FIVE-A**

This AMENDED AND RESTATED DECLARATION is made on the date hereinafter set forth by Monterey Park Association, an Arizona non-profit corporation (“Association”).

RECITALS:

WHEREAS, PHOENIX TITLE AND TRUST COMPANY, an Arizona corporation, as trustee, recorded the Villa Monterey Unit Five and Unit Five-A Declaration of Restrictions on April 16, 1965 at Docket 5513, Page 583, official records of the Maricopa County, Arizona Recorder, the Association recorded the Amendment to the Declaration of Restrictions for Villa Monterey Units Five and Five-A on January 8, 1980, at Docket 14143, Page 842, official records of the Maricopa County, Arizona Recorder, the Association recorded the Amendment to the Declaration of Restrictions for Villa Monterey, Units Five and Five-A on March 2, 2000 at Recording No. 2000-0155281, official records of the Maricopa County, Arizona Recorder, the Association recorded the Amendment to the Declaration of Restrictions for Villa Monterey, Units Five and Five-A on June 26, 2000, at Recording No. 2000-0482403, official records of the Maricopa County, Arizona Recorder, and the Association recorded the Amendment to the Declaration of Restrictions for Villa Monterey, Units Five and Five-A on May 14, 2010, at Recording No. 2010-0411725, official records of the Maricopa County, Arizona Recorder (“Current Declaration”);

WHEREAS, the Current Declaration governs the following described real property, situated within the County of Maricopa, State of Arizona:

All of the lots and tracts in VILLA MONTEREY UNIT FIVE, as shown on the plat of record in Book 107 of Maps at page 44, Maricopa County Recorder’s office, and all of the lots and tracts in VILLA MONTEREY UNIT FIVE-A, as shown on the plat of record in Book 108 of Maps at page 49, Maricopa County Recorder’s office and as more particularly described on the attached “Exhibit A” (the “Property”).

WHEREAS, the Association, by and through its members, wishes to amend and restate the Current Declaration in its entirety as set forth herein;

NOW THEREFORE, the Association hereby declares that all of the Property shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the Property and be binding on all parties having any right, title or interest in the

Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

## **ARTICLE I DEFINITIONS**

Section 1. “Articles” shall mean and refer to the Articles of Incorporation of the Association, as the same may be amended from time to time.

Section 2. “Association” shall mean and refer to Monterey Park Association, an Arizona non-profit corporation, its successors and assigns.

Section 3. “Board” or “Board of Directors” shall mean and refer to the Board of Directors of the Association.

Section 4. “Common Area” shall mean all real property owned by the Association for the common use and enjoyment of the Owners. The Common Area owned by the Association at the time of the recording of this Declaration is described as follows:

TRACT A, VILLA MONTEREY UNIT 5, as shown on the plat of record in Book 107 of Maps at page 44, Maricopa County Recorder’s office.

Section 5. “Declaration” shall mean this Amended and Restated Declaration of Covenants, Conditions and Restrictions for Villa Monterey Unit Five and Unit Five-A, as amended, modified or supplemented from time to time.

Section 6. “Lot” shall mean and refer to any plot of land shown upon any recorded subdivision map of the Property with the exception of the Common Area.

Section 7. “Member” shall mean any person, corporation, partnership, association, or other legal entity who is an Owner of a Lot within the Property.

Section 8. “Owner” shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation. In the case of a deed placing ownership of the Lot in a revocable trust, the trustor shall be deemed to be the Owner and in the case of a deed placing ownership of the Lot in an irrevocable trust, the trustee shall be deemed to be the Owner.

Section 9. “Single Family” shall mean an individual living alone, a group of two or more persons each related to the other by blood, marriage or legal adoption, or a group of not more than three persons not all so related, together with their domestic employees, who maintain a common household in a dwelling.

Section 10. “Visible From Neighboring Property” shall mean that an object is or would be visible to a person six feet (6') tall standing on a neighboring Lot or street at an elevation not greater than the elevation of the base of the object being viewed.

Section 11. “Walkway Easement Areas” shall mean the walkway areas (i) between the walls on Lots 52 and 53 leading from Tract A to Mariposa Drive, (ii) between the walls on Lots 58 and 59 leading from Tract A to 78<sup>th</sup> Street and (iii) between the walls on Lots 72 and 73 and 81 and 82 leading from Mariposa Drive to Northland Drive.

## **ARTICLE II USE RESTRICTIONS**

### Section 1. Owner-Occupancy; No Rentals or Leases.

(a) At least one Owner of each Lot must be fifty-five (55) years of age or older, subject to the following exceptions. In the case of the death of an Owner aged fifty-five (55) or older, an Owner who is a surviving spouse under the age of fifty-five (55) and who has been occupying the Lot may continue to own the Lot. In addition, if anyone under the age of fifty-five (55) inherits a Lot, they may continue to own the Lot, subject to all of the requirements of this Declaration and the Bylaws, but they shall not occupy the Lot until at least one resident of the Lot is at least fifty-five (55) years of age or older.

(b) Each occupied Lot shall at all times be Owner-occupied. Thus, at least one Owner of the Lot must reside on the Lot at any time the Lot is occupied. No one is allowed to reside on the Lot unless at least one Owner of the Lot is also residing on the Lot at the same time. For purposes of determining Owner-occupancy in this Section 1, when a Lot is owned by an LLC, then a member or manager of the LLC is the Owner; when a Lot is owned by a partnership, a partner is the Owner; and when a Lot is owned by a corporation, an officer of the corporation is the Owner.

(c) No Lot may be leased or rented at any time.

(d) No Lot may be sold to any person or persons having a child or children living with such person or persons under the age of eighteen (18) years.

(e) Notwithstanding the foregoing, house sitters and other similar arrangements for temporary occupancy of a Lot, whereby the Owner does not receive any monetary compensation from the occupants, may be permitted and such permitted temporary occupancy shall be an exception to the occupancy restrictions of subsection (b) of this Section 1 and shall not be considered a lease or rental of the Lot. For such temporary occupancy to be permitted, the Owner must notify the Board of Directors at least three (3) days in advance of the commencement of the occupancy.

(f) Notwithstanding the foregoing, the Board of Directors, may, in its sole and absolute discretion and on a case-by case basis, after review of the circumstances involved, grant variances of the restrictions set forth in Subsections (a), (b) and (d) in this Section 1, so long as at



least eighty percent (80%) of the occupied Lots remain occupied by at least one person age fifty-five (55) or older.

Section 2. Housing for Older Persons: Age Restriction. The Property is intended to constitute housing intended and operated for occupancy by at least one person fifty-five (55) years of age or older per unit under the Fair Housing Amendments Act of 1988, 42 U.S.C. § 3600, et seq., as amended by the Housing for Older Persons Act of 1995, and the rules and regulations interpreting such act published by the Department of Housing and Urban Development under 24 CFR Part 100 et al (the "HOPA") and the Arizona Fair Housing Act, A.R.S. § 44-1491, et seq. Except as provided below, at least one occupant of each Lot must be fifty-five (55) years of age or older, and no person under the age of eighteen (18) may occupy a Lot for more than forty-five (45) days in any calendar year. Unless a variance has been granted as provided herein, no one is allowed to reside on the Lot unless the person who is fifty-five (55) or older is also residing on the Lot at the same time.

(a) Exception. Notwithstanding the foregoing, the Board of Directors, may, in *its* sole and absolute discretion and on a case-by case basis, after review of the circumstances involved, allow exceptions to the restrictions set forth in this Section 2, so long as at least eighty percent (80%) of the occupied Lots remain occupied by at least one person age fifty-five (55) or older.

(b) Policies and Procedures. The Board shall adopt, publish and enforce such policies and procedures and rules and regulations as are deemed necessary by the Board in order to demonstrate an intent to provide housing for occupancy for at least one person fifty-five (55) years or older per Lot and to maintain the status of the Properties as housing for older persons under HOPA. Such policies and procedures shall provide for verification of the age of residents by reliable surveys and affidavits, and each resident, if requested to do so by the Association, shall furnish the Association with the names and ages of all occupants of the Lot and such affidavits and other documents as the Association may request to verify the age of such occupants.

Section 3. Residential Use. The Lots are hereby restricted to residential dwellings for residential use. No trade or business may be conducted on any Lot, except that an Owner or other resident of a Lot may conduct a business activity on the Lot so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside of the Lot; (ii) the business activity conforms to all applicable zoning ordinances or requirements for the Property; (iii) the business activity does not involve persons coming onto the Lot or the door-to-door solicitation of Owners or other residents in the Property; and (iv) the business activity is consistent with the residential character of the Property and does not constitute a nuisance or a hazardous or offensive use or threaten security or safety of other residents in the Property, as may be determined from time to time in the sole discretion of the Board. Furthermore, no advertising or directional signs may be placed upon the Lot or any portion of the Common Area regarding the business activity. The terms "business" and "trade" as used in this section shall be construed to have ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's



family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether: (a) such activity is engaged in full or part time; (b) such activity is intended or does generate a profit; or (c) a license is required for such activity.

Section 4. Residential Buildings. No buildings except high-class residential dwellings and car ports and other ancillary buildings for use in connection with such dwellings shall be erected, maintained, or permitted on the Lots. No more than one (1) Single Family dwelling shall be erected, maintained, or permitted on any Lot. No Owner shall build, erect, or maintain buildings or improvements on any Common Area. All buildings or structures erected on the Property shall be of new construction and no buildings or structures shall be moved from other locations onto the Property. No structures of a temporary character, trailer, basement, tent, shack, garage, barn or other out building shall be used on the Property at any time as a residence, either temporarily or permanently.

Section 5. Nuisances or Offensive Activities. No noxious or offensive activity may be carried on or permitted on any part of the Property, nor shall anything be done thereon which may be or become an annoyance, nuisance, or embarrassment to the Association, the Property, or the occupants thereon. Without limiting the generality of any of the foregoing provisions, no horns, whistles, bells or other sound devices, except security devices used exclusively for security purposes shall be located, used or placed on any such Property, without prior written approval of the Board of Directors. The Board of Directors in its sole discretion shall have the right to determine the existence of any such nuisance.

Section 6. Signs. No signs shall be permitted on any of the Common Areas without the prior written consent of the Board. No signs of any type or character shall be erected or permitted on any Lot without the prior approval of the Board of Directors, except:

- (a) a name and address sign, which shall be subject to the Rules;
- (b) commercially-produced "For Sale" and temporary "Open House" signs, each no larger than eighteen by twenty-four inches (18" x 24") and sign riders no larger than six by twenty-four inches (6" x 24") erected in connection with the marketing of any Lot;
- (c) political signs as permitted by the City of Scottsdale and Maricopa County may be placed on the Lot up to seventy-one (71) days before an election and up to three (3) days after an election; and
- (d) signs required by legal proceedings and signs required by law to be allowed on the Lot.

Section 7. Trash; Unsightly Items. All clothes lines, equipment, garbage cans, incinerators, service yards, woodpiles or storage piles shall be kept screened by adequate planting or fencing so they are not Visible From Neighboring Property except as expressly authorized by the Rules or as may be permitted by the Board of Directors. No rubbish, trash, garbage or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot and no odors shall be permitted to arise therefrom, so as to render any such Property or any

portion thereof unsanitary, unsightly, offensive, or detrimental to any other Property in the vicinity thereof or to its occupants. No rubbish, trash, garbage or debris shall be burned on the Property. No incinerators shall be permitted on the Property, except those approved in writing by the Board of Directors.

Section 8. Vehicles and Parking.

(a) Commercial Vehicles, Recreational Vehicles, Equipment, and Trailers. No Commercial Vehicle, mobile home, motorhome, boat, recreational vehicle, ATV, dune buggy, go kart, trailer of any kind, camper, permanent tent, or similar equipment or structure shall be parked, kept, placed, maintained, constructed, reconstructed or repaired upon any Property or street within the Property, in such a manner as will be Visible From Neighboring Property without the prior written approval of the Board of Directors except for: (i) the temporary parking of any such vehicle or equipment on a driveway or street in accordance with the Association Rules, (ii) emergency repairs, (iii) temporary construction shelters or facilities maintained during, and used exclusively in connection with the construction of any improvements or structures approved by the Board of Directors, and (iv) vehicles that the Association must allow to be parked on a driveway pursuant to Arizona law. For purposes of this Declaration, "Commercial Vehicle" shall be defined as any vehicle that meets any one or more of the following criteria: displays any type of exterior signage, design or lettering for advertising; vehicle classed by manufacturer's rating exceeding 3/4-ton; commercial utility racks located on the vehicle, or work equipment stored on the vehicle that is visible from outside of the vehicle.

(b) Passenger Vehicles. Only passenger vehicles not otherwise described in subsection (a) above may be parked in driveways, carports or other uncovered parking areas so as to be Visible From Neighboring Property, so long as such passenger vehicle is not abandoned or inoperative. For purposes of this Declaration, an abandoned or inoperative vehicle is one that is not running, has one or more flat tire(s) for ten (10) or more days, is up on blocks, is not properly licensed, or is not currently registered. Permitted passenger vehicles may only be parked on driveways if they do not encroach upon or block sidewalks. No passenger motor vehicle shall be parked overnight on any road or street in the Property, except as permitted by the Rules adopted by the Board of Directors and vehicles that the Association must allow to be parked on a road or street pursuant to Arizona law. Except for emergency vehicle repairs, no passenger vehicle shall be constructed, reconstructed or repaired upon a Lot or other property in the Property.

Section 9. Carports. Carports are primarily for parking passenger vehicles. Storage in carports shall only be as specifically permitted by the Association Rules or with the written approval of the Board of Directors.

Section 10. Architectural Control. No building, fence, wall or other structure shall be commenced, erected or maintained upon a Lot, nor shall any exterior addition to or change or alteration that is or would be Visible From Neighboring Property shall be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and

location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board.

Section 11. Animals, Pets. No animals, birds, fowl, poultry, fish, swine, reptiles or livestock shall be permitted or kept on or in connection with any Lot or the Property except that a reasonable number of dogs, cats, birds or other commonly accepted household pets in accordance with the Association Rules may be kept on a Lot if they are kept, bred or raised thereon solely as domestic pets and not for commercial purposes. No structure for the care, housing or confinement of any animal shall be maintained on a Lot so as to be Visible From Neighboring Property. Household pets shall be restrained by fence, cage or leash at all times when not on the Lot. It shall be the responsibility of each owner to remove immediately any pet droppings on the Common Area or on other Lots. No household pet may make an unreasonable amount of noise or create a nuisance. Upon written request of any Owner, the Association may conclusively determine, in its sole and absolute discretion, whether any animal as described herein is a commonly accepted household pet, whether the number of pets on the Lot is reasonable, and whether one or more pets constitutes a nuisance. The Board may require the removal of any animal that does not meet the qualifications of this Section. Any decision rendered by the Association shall be enforceable as are other restrictions contained herein. Owners shall be liable for any and all damage to property and injuries to persons and other animals caused by their household pets.

Section 12. Antennas and Satellite Dishes. No radio, television or other antennas or devices of any kind or nature, or device for the reception or transmission of television, radio, microwave or other similar signals, shall be placed or maintained upon any Lot except in compliance with the Rules and except those devices covered by 47 C.F.R. § 1.400 (Over-the-Air Reception Devices Rule), as amended, repealed, or recodified, will be permitted. Any such device shall comply with the applicable antenna installation rules of the Association and shall be mounted, to the extent reasonably possible, so as to not be Visible From Neighboring Property. The devices governed by 47 C.F.R. § 1.400 (Over-the-Air Reception Devices Rule) as of the date of the recording of this Declaration are as follows: (i) Direct Broadcast Satellite (“DBS”) antennas one meter in diameter or less, and designed to receive direct broadcast satellite service, including direct-to-home satellite service, or receive or transmit fixed wireless signals via satellite; (ii) Multi-point Distribution Service (“MDS”) antennas one meter or less in diameter or diagonal measurement, designed to receive video programming services (wireless cable) or to receive or transmit fixed wireless signals other than via satellite; (iii) Antennas designed to receive local television broadcast signals (“TVBS”); and (iv) Antennas designed to receive and/or transmit data services, including Internet access. If the FCC expands the types of antennas that fall under the FCC Rule, this Section 12 shall encompass those antennas as well.

Section 13. Flags and Flagpoles. An Owner may install a flagpole on the Lot, no higher than the rooftop of the residence thereon, after first obtaining the written approval of the Association in accordance with Article VII herein. The following flags may be flown on the Lot in accordance with the Federal Flag Code (P.L. 94-344): the United States flag, the Arizona state flag, the Gadsden flag, the flag of the United States Army, Navy, Air Force, Marine Corps, or the Coast Guard, the POW/MIA flag, and an Arizona Indian Nations; however, the Rules may limit

the number of flags flown to no more than two at once. Other flags may be flown only as permitted by the Rules or with the prior written approval of the Board of Directors.

### **ARTICLE III THE ASSOCIATION, MEMBERSHIP AND VOTING RIGHTS**

Section 1. The Association. The Association has been formed to serve as the governing body for all of the Owners. The Association shall be charged with the duties and invested with the powers prescribed by law and set forth in the Bylaws and this Declaration.

Section 2. Entryway Contribution. The Association shall contribute to the maintenance of, and real estate taxes imposed upon, the fountain and entryway (more particularly described as Tracts B, C, D, E and F of Villa Monterey, Unit Two, as shown in Book 97 of Maps at page 13 thereof, official records of Maricopa County, Arizona Recorder) in proportion as the number of Lots in the Property bears to the whole number of lots having the benefit of use of such fountain and entryway. Such contribution shall be made by payment to Villa Monterey Recreational Association, an Arizona corporation.

Section 3. Board of Directors. The affairs of the Association shall be conducted by a Board of Directors and such officers and committees as the Board may elect or appoint in accordance with the Articles and the Bylaws. Unless the Declaration, the Articles, the Bylaws, the Rules, or any other documents governing the Association specifically require a vote of the Members, approvals or actions to be given or taken by the Association shall be valid if given or taken by the Board.

Section 4. Rules. By a majority vote of the Board, the Association may, from time to time and subject to the provisions of this Declaration, adopt, amend, and repeal rules and regulations to be known as the "Rules". The Association Rules may (i) restrict and govern the use of any area by any Owner, occupant, and/or guest of a Lot (ii) adopt standards concerning the maintenance, landscaping, color scheme and other related matters affecting the outside appearance of the Property, and (iii) govern all aspects of the Association's rights, activities and duties. Anything to the contrary notwithstanding, the Rules may not discriminate among Owners and shall not be inconsistent with this Declaration, the Articles or Bylaws. A copy of the Rules as they may from time to time be adopted, amended or repealed, shall be mailed or otherwise delivered to each Owner and may be recorded. Such Rules shall have the same force and effect as if they were set forth in and were a part of this Declaration.

Section 5. Membership. Every Owner of a Lot shall be a Member of the Association. Although all persons who are Owners of a Lot shall be Members of the Association, only one (1) membership shall exist for a single Lot. Membership shall be appurtenant to and may not be separated from ownership of any Lot. The rights and obligations of an Owner and a membership in the Association shall not be assigned, transferred, pledged or alienated in any way, except upon the transfer of the Lot to which it appertains (and then only to such transferee), whether by sale, intestate succession, testamentary disposition, foreclosure of a



mortgage or other legal process transferring fee simple title to such Lot. Any attempt to make a prohibited transfer shall be void.

Section 6. Residency Certification. Except as provided below, in connection with a proposed change in ownership and occupancy of a Lot, each new Owner of a Lot shall submit to the Association a residency certification on a form to be approved by the Board setting forth all information requested by the Board in connection with the proposed change of ownership and occupancy. The form shall be due to the Association before the close of escrow or before recording the deed transferring ownership of the Lot, whichever occurs first. The Owner is required to certify the following:

(a) At least one Owner of the Lot is fifty-five (55) years of age or older.

(b) At least one resident of the Lot will be fifty-five (55) years of age or older during all times that the Lot is occupied, unless an exception in Article II, Section 1 is applicable. Absent any applicable exceptions, if the age-qualified person is not residing on the Lot, the Lot must be vacant and no one is allowed to reside on the Lot unless the person who is fifty-five (55) or older is also residing on the Lot at the same time.

(c) At least one Owner of the Lot will reside on the Lot at any time the Lot is occupied. No one is allowed to reside on the Lot unless at least one Owner of the Lot is also residing on the Lot at the same time.

(d) The Lot will not be owned by any person or persons having a child or children living with such person or persons under the age of eighteen (18) years and no person under the age of eighteen (18) will occupy a Lot for more than forty-five (45) days in any calendar year.

(e) The Lot will not be leased or rented at any time.

For purposes of this Section 6, “resident” shall mean a person who occupies the Lot as his or her dwelling during all periods of time in which that person is living within Maricopa County Arizona.

Notwithstanding the foregoing, the requirements of this Section 6 shall not apply to or be enforced by any person with respect to: (i) a sale, transfer, or conveyance of any Lot to any person pursuant to a judgment or foreclosure of a mortgage of record by an institutional lender upon such Lot, or (ii) a sale, transfer, conveyance or lease of any Lot to any person by an institutional lender which has acquired title through or by virtue of foreclosure by it of a mortgage of record upon such Lot.

Section 7. Voting Rights and Procedures. All Owners shall be entitled to one (1) vote for each Lot owned. Such vote may be suspended as provided herein in Article IV, Section 1. When more than one person owns a Lot, the vote for the Lot shall be exercised as they themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot and fractional votes shall not be permitted. If the Owners are unable to agree among

themselves as to how their vote(s) shall be cast, they shall lose their right to cast their vote(s) on the matter in question. If any Member casts a vote representing a certain Lot, it will thereupon conclusively be presumed for all purposes that he or she was acting with the authority and consent of all other Owners of the same Lot unless objection thereto is made prior to the deadline for casting the vote. In the event that more than one vote is cast for a particular Lot, and one or more conflicting votes are cast, then none of the votes shall be counted and all of the votes for the Lot shall be deemed void.

#### **ARTICLE IV PROPERTY RIGHTS AND EASEMENTS**

Section 1. Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) the right of the Association to adopt reasonable Rules regarding the use of the Common Area;

(b) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area; and

(c) the right of the Association to suspend the voting rights and right to use of the recreational facilities by an Owner for any period during which any Assessment against his or her Lot remains unpaid; and for reasonable periods, as defined by the Board, for each infraction or violation of this Declaration and/or the Rules by such Owner, any resident of the Lot, or by any guest or invitee of an Owner or resident; provided, however, that if the violation is of a continuing nature, the Owner's rights shall remain suspended until such violation has been cured.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the Rules, his or her right of enjoyment to the Common Area and facilities to the Owner's family members who reside on the Lot.

Section 3. Restriction on Deed, Mortgage or Encumbrance of Tract A. No deed, mortgage, or encumbrance of any kind whatsoever upon Tract A or upon any of the improvements thereon shall be valid unless there shall be endorsed upon the instrument of transfer or encumbrance a written approval by all of the owners or holders of record of institutional mortgages upon any of the Lots. An institutional mortgage shall be understood to mean a mortgage given to secure a debt due to a regularly organized bank, insurance company, savings and loan association, or other corporation, or association regularly engaged in the making of mortgage loans.

Section 4. Blanket Easements for Utilities. There is hereby created a blanket easement upon, across over and under the above the Property for ingress, egress, installation, replacing, repairing and maintaining all utilities including, but not limited to, water, sewer, gas, telephones and electricity. By virtue of this easement, it shall be expressly permissible for the

providing electrical and/or telephone company to erect and maintain the necessary poles and other necessary equipment on the Property and to affix and maintain electrical and/or telephone wires, circuits and conduits on, above and across the roofs and exterior walls of the dwelling units. Notwithstanding anything to the contrary contained in this Section, no sewer lines, electrical lines, water lines, or other utilities may be installed or relocated on the Property except as approved by the Board of Directors. This easement shall in no way affect any other recorded easements on the Property.

Section 5. Easement for Maintenance and Emergencies. Each Owner hereby grants a right of entry to the management agent or to any other person authorized by the Board of Directors or the Association in case of any emergency originating in or threatening the Owner's Lot, whether or not the Owner is present at the time. Each Lot shall be subject to an easement for the Association to carry out its maintenance duties as provided in this Declaration, and each Lot Owner shall provide the Association or its representatives access to the Lot to carry out its maintenance responsibilities. An Owner shall reasonably permit other Owners, or their representatives, when so required, to enter the Owner's Lot for the purpose of performing installations, alterations, or repairs to the mechanical or electrical services required to be maintained by Owners, provided that, except in case of an emergency, requests for entry are made in advance and entry is at a time convenient to the Owner. In case of an emergency, as determined by the management agent or Board of Directors, such right of entry shall be immediate.

## ARTICLE V COVENANT FOR ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation for Assessments. Each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) Annual Assessments, (2) Special Assessments, (3) a Working Capital Fee Assessment and (4) Individual Assessments (collectively or individually referred to herein as "Assessments"). The Assessments, together with all interest, taxable court costs, reasonable attorney's fees, late charges, recording fees, and all other collection expenses, shall be a continuing lien upon the Lot against which each such assessment is made or with reference to which each such charge is incurred (hereinafter sometimes called an "Assessment Lien"). The Assessments, together with all interest, taxable court costs, reasonable attorney's fees, late charges, recording fees, and all other collection expenses, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due or charge was incurred. The liability of multiple Owners of a Lot shall be joint and several. The personal obligation for delinquent assessments shall not pass to such Owner's successors in title unless expressly assumed by them. No Owner may waive or otherwise escape liability for the assessments or charges provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 2. Purpose of Assessments. The Assessments levied by the Association shall be used to carry out the duties and powers of the Association, to promote the recreation, health, safety, and welfare of the Lot Owners and residents and to provide for the improvement and maintenance of the Common Areas and of the improvements situated upon the Common Areas.



The Assessments may also be used to establish and maintain a reserve fund for the periodic maintenance, repair and replacement of improvements to the Common Areas which the Association is obligated by this Declaration to maintain.

Section 3. Annual Assessments. The Board shall fix the amount of the Annual Assessment against each Lot in accordance with the limitations set forth below in advance of each Annual Assessment period and give each Owner written notice of the Annual Assessment at least thirty (30) days in advance of each Annual Assessment period. However, the failure to give such notice shall not affect the validity of the Annual Assessment established by the Board nor relieve any Owner from its obligation to pay the Annual Assessment equal to the Annual Assessment for the year immediately preceding until the Owner has been given thirty (30) days notice of the new Annual Assessment amount. Until January 1, 2015, the maximum Annual Assessment shall be Five Hundred Fifty Dollars (\$550.00) per Lot. From and after January 1, 2015, the maximum Annual Assessment may be increased each year by the Board without a vote of the members by an amount not to exceed twenty percent (20%) over the Annual Assessment for the immediately preceding calendar year; provided, however, that such limitation may be exceeded at any time with the approval of the majority of the Members, or as otherwise provided by Arizona law. Subject to the restrictions contained herein, the Board may increase or decrease the Annual Assessments as deemed necessary or desirable by the Board and the Annual Assessments may be changed or modified during any fiscal or calendar year.

Section 4. Special Assessments. In addition to the Annual Assessments authorized above, the Association may levy a Special Assessment for any proper Association purpose. Such Special Assessment must have the approval of a majority vote of the Members who are voting in person or by absentee ballot at a duly called meeting of the Members, provided that the quorum requirement shall be follows. At the first meeting called, the presence of Members, in person and/or by absentee ballot, entitled to cast fifty-one percent (51%) of all the votes of the Members shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting. The Association may continue to hold subsequent meetings with the same notice requirements and a quorum requirement of one-half (1/2) of the required quorum at the preceding meeting until a quorum is present in person and/or by absentee ballot.

Section 5. Working Capital Fee Assessment. To ensure that the Association shall have adequate funds to meet its expenses or to purchase necessary equipment or services, each person who purchases or otherwise becomes the Owner of a Lot shall pay to the Association a sum equal to one half (1/2) of the then current Annual Assessment. Such payment shall become due at the close of escrow or immediately upon the transfer of title to the Lot, whichever occurs first. Such payment shall be required upon each transfer of title to each Lot except with respect to (1) transfer of a Lot among family members, as defined in A.R.S. § 42-12053 (as amended, repealed, or recodified) or (2) transfer of a Lot into a revocable living trust for the benefit of the trustor, where the Owner(s) of the Lot becomes the trustor of the trust. Any working capital fee not paid as required under this Section shall become a part of the Assessment Lien on the Lot and collectible in the same manner as Assessments. Funds paid to the Association pursuant to

this Section shall be separately accounted for and may be used by the Association for payment of maintenance, repairs, replacements and additions to the Common Area and for operating expenses of the Common Area. Payments made pursuant to this Section shall be nonrefundable and shall not be offset or credited against or considered as advance payment of the annual assessment or any other Assessments levied by the Association pursuant to this Declaration.

Section 6. Individual Assessment. Individual Assessments shall be levied by the Association against a Lot and its Owner to reimburse the Association for costs incurred in bringing an Owner and such Owner's Lot into compliance with the provisions of this Declaration or the Rules, any costs incurred by the Association due to the Owner's misconduct or other failure to comply, any other charge designated as an Individual Assessment in this Declaration, and all attorneys' fees, interest, and other charges relating thereto.

Section 7. Transfer Fee. In addition to all other Assessments and charges, the Association may charge a transfer fee upon each transfer of ownership of a Lot. The amount of the transfer fee shall be as set by the Board of Directors from time to time, in accordance with applicable law.

Section 8. Uniform Rate of Assessment. Both Annual Assessments and Special Assessments must be fixed at a uniform rate for all Lots and may be collected as directed by the Board.

Section 9. No Exemption from Assessments. No Owner may exempt him/her self from personal liability for assessments duly levied by the Association, nor release the Lot owned by him/her from the Assessment Lien, by waiver of the use and enjoyment of the Common Areas and the facilities thereon or by abandonment of his/her Lot.

Section 10. Certificate of Payment of Assessment. The Association shall, upon written request, furnish to a person acquiring an interest in any Lot and to a lienholder, escrow agent, Owner or person designated by an Owner, a certificate in writing signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A reasonable charge may be made by the Board for the issuance of these certificates. Such certificate will be provided within the time period required by law. Such certificates shall be conclusive evidence of payment of any Assessment therein stated to have been paid.

Section 11. Effect of Nonpayment of Assessments; Remedies of the Association. Any assessment or charge not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of twelve percent (12%) per annum or at such other interest rate as may be determined from time to time by the Board. Additionally, the Board may impose late charges as established by the Board and as permitted by applicable law. The Board is permitted to record a "Notice and Claim of Lien" against any Lot on which any Assessment is due. In the event of a default in payment of any such Assessment when due, in which case the Assessment shall be deemed delinquent, and in addition to any other remedies herein or by law provided, the Board may enforce each such obligation in any manner provided by law or in equity, or without any limitation of the foregoing, by either or both of the following procedures (and the exercise by the

Association of one or more of the remedies set forth below shall not prevent the Association from exercising any other remedy available):

(a) The Board may bring a suit at law against each Owner or former Owner to enforce each such personal assessment obligation. Each Owner agrees that any judgment rendered in any such action shall include all attorneys' fees and costs incurred by the Association, as set forth above, plus all its court costs and necessary expenses and accounting fees incurred by the Association, plus interest on the amount of said Assessment at the rate of twelve percent (12%) per annum (or at such other interest rate as may be determined from time to time by the Board) from the date the assessment becomes delinquent until paid in full.

(b) The Board may foreclose the Assessment Lien against the Lot in accordance with the then-prevailing Arizona law relating to the foreclosure of realty mortgages (including the right to recover any deficiency), and the Lot may be redeemed after foreclosure sale as provided by law. Each Owner agrees that any judgment rendered in any such action shall include all attorneys' fees and costs incurred by the Association, as set forth above, plus all court costs, title search fees, interest and all other costs and expenses to the extent permitted by law, and such costs and expenses shall be added to the Assessment Lien.

Section 12. Subordination of the Lien to Mortgages. The Assessment Lien provided for herein shall be subordinate to the lien of any first mortgage or first deed of trust. Sale or transfer of any Lot shall not affect the Assessment Lien. However, the sale or transfer of any Lot pursuant to foreclosure of an institutional first mortgage or first deed of trust (including without limitation the exercise by the trustee of a power of sale thereunder), or any proceeding or deed in lieu thereof, shall extinguish the Assessment Lien as to payment which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any Assessments or charges thereafter becoming due or from the lien thereof, not relieve the Owner (at the time the assessment accrued) of personal liability therefor.

## **ARTICLE VI MAINTENANCE**

Section 1. Maintenance by the Association. The Association shall have the duty to maintain the Common Area. In addition, the Association shall maintain the landscaping and improvements in the Walkway Easement Areas and shall replace the light bulbs and sensors as needed for the street lamps located on each Lot. The Board shall be the sole judge as to the appropriate maintenance of the Common Area and all other areas of Association responsibility.

Section 2. Maintenance by Owners. Each Lot Owner shall be individually responsible for maintaining, repairing and replacing of such Owner's Lot and all buildings, structures, patios, yards, landscaping, fences, and all other improvements located on the Lot. Termite and other pest control shall be the responsibility of each Owner. No improvement or structure upon any Lot maintained by an Owner shall be permitted to fall into disrepair, and all such improvements and structures shall at all times be kept in good condition and repair. All grass, hedges, shrubs, vines and plants of any type on a Lot shall be irrigated, mowed, trimmed and cut at regular intervals so as to be maintained in a neat and attractive manner.

Section 3. Maintenance of Utility Lines and Fixtures. Each Lot Owner is responsible for keeping each utility line and fixture in his or her dwelling on the Lot in good order and repair. The Owners are responsible for repairing and replacing utility lines serving the Lots, wherever located, to the extent not maintained by the utility service provider. The Association is responsible for repairing and replacing utility lines serving the Common Area, to the extent not maintained by the utility service provider.

Section 4. Repairs Necessitated by Owners. In the event any Common Area or portion of a Lot maintained by the Association is damaged or destroyed by an Owner or any of such Owner's family members, guests, licensees, or agents, such Owner hereby authorizes the Association to repair said damaged area, and the Association shall repair such damaged area in a good workmanlike manner in conformance with the original plans and specifications of the area involved, or as the area may have been modified or altered subsequently by the Association, in the discretion of the Association. The amount necessary for such repairs shall be paid by said Owner, upon demand, to the Association and such amount shall be added to and become a part of the Assessment Lien on the Lot.

Section 5. Improper Maintenance of Lots. In the event that any improvement upon any Lot maintained by an Owner is maintained (i) in violation of the standards established herein, (ii) so as to create a public or private nuisance or (iii) so as to impair substantially the value or desirability of the surrounding Lots, the Board may by resolution make a finding to that effect, specifying the particular condition or conditions which exist, and pursuant thereto give notice to such Owner that unless corrective action is taken within a reasonable time frame as determined by the Board, the Association may cause such action to be taken at such Owner's expense. If, as of the expiration of such time frame the requisite corrective action has not been taken, the Association may cause such action to be taken; and the cost thereof shall be added to and become part of the Assessment to which such Owner's Lot is subject and shall be secured by the Assessment Lien on such Owner's Lot.

Section 6. Party Walls. Each wall which is built as a part of the original construction of the structures upon the Lots and placed on the dividing line between the Lots shall constitute a Party Wall. The rights and duties of the Owners of Lots with respect to Party Walls shall be governed by the following and, to the extent not inconsistent with the provisions of this Section, the general rules of law regarding Party Walls shall apply thereto:

(a) In the event any such Party Wall is damaged or destroyed through the act of one adjoining Owner or any of his or her agent(s), guest(s) or family members (whether or not such act is negligent or otherwise culpable) so as to deprive the other adjoining Owner of the full use and enjoyment of such Party Wall, then the first of such Owners shall forthwith proceed to rebuild or repair the Party Wall to as good condition as formerly without cost to the adjoining Owner.

(b) In the event any such Party Wall is damaged or destroyed by some cause other than the act of one of the adjoining Owners, his or her agent(s), guest(s) or family members (including ordinary wear and tear and deterioration from lapse of time), then both such adjoining



Owners shall proceed forthwith to rebuild or repair the Party Wall to as good condition as formerly at their joint and equal expense.

(c) In addition to meeting the other requirements of this Declaration and of any building code or similar regulations or ordinances, any Owner proposing to modify, make extensions, additions or other alterations to any Party Wall shall first obtain the written consent of the adjoining Owner.

(d) These Party Wall covenants shall remain in full force and effect until modified or abrogated as to any particular Party Wall by the agreement of all persons then having an interest therein.

(e) These covenants shall be binding upon the heirs and assigns of the Owners but no person shall be liable for any act or omission respecting any Party Wall except such as took place while an Owner.

Section 7. Other Walls. Except for Party Walls and except as otherwise provided herein, each Owner shall be responsible for all maintenance, repair, replacement and painting of walls and fences located on the Lot. Any wall or fence which is placed on or adjacent to the dividing line between the Lot and Common Area, Lot and Walkway Easement Area, or Lot and public land shall be maintained, repaired and replaced by the Owner of the Lot. Notwithstanding the foregoing, with respect to walls on or adjacent to the dividing line between the Lot and Common Area and between the Lot and a Walkway Easement Area, the Association shall be responsible for maintaining the surface of the wall facing the Common Area or Walkway Easement Area. The Association's responsibility for maintenance shall be limited to repair and patching of cracks and voids on the wall surfaces facing the Common Area or Walkway Easement Area and painting the wall surfaces facing the Common Area or Walkway Easement Area.

## ARTICLE VII ARCHITECTURAL CONTROL

Section 1. Committee Membership. The Architectural Committee ("Committee") shall be composed of no fewer than three (3) Association Members appointed by the Board. At least one Director must serve on the Committee as the chairperson of the Committee and the Committee may be comprised entirely of Directors. The members of such Committee shall not be entitled to compensation for services performed.

Section 2. Committee Duties. The Architectural Committee shall consider and act upon any and all proposals or plans submitted to it pursuant to the terms hereof, perform other duties delegated to it by the Board, and carry out all other duties imposed upon it by the Declaration. The Committee shall meet from time to time as necessary to perform its duties hereunder. The vote of two of the Committee members at a meeting of the Committee shall constitute the act of the Committee. The Committee shall keep and maintain a written record of all actions taken by it and shall present the same to the Board in advance of each regular Board meeting.

Section 3. Architectural and Landscaping Guidelines. In support of its duties, the Architectural Committee may propose Architectural and Landscaping Guidelines (“Guidelines”) to be adopted by the Board. The Standards may govern any topic related to the Committee’s powers and/or duties including, but not limited to:

- (a) Policies, procedures, processes, application forms, consent forms, timelines, checklists, notices, and recommendation forms;
- (b) Guidelines for architectural design, placement of landscaping, structures and buildings, exterior finishes and materials and similar features which are recommended and/or discouraged for use in the Property; and
- (c) Color schemes and/or palette.

Section 4. Standard of Review. The Committee shall have the right, in its sole and absolute discretion, to deny approval of any plans or specifications which, in its opinion, are not suitable or desirable for aesthetic or any other reasons. In this regard the Committee shall have the right to take into consideration the suitability of the proposed landscaping, building or other structure and of the materials of which it is to be built, to the site upon which it is proposed to be erected or installed, the harmony thereof with the surroundings, and the effect of the landscaping, building or other structure as planned upon adjacent Lots and Property as a whole.

Section 5. Changes or Alterations from Approved Plans. All subsequent additions to or changes or alterations in any landscaping, building, fence, wall or other structure, including exterior color scheme and building materials, shall be subject to the prior approval of the Committee. No changes or deviations in or from such plans and specifications once approved shall be made without the prior written approval of the Committee.

## **ARTICLE VIII INSURANCE**

Section 1. Insurance by the Association. The Board of Directors, or its duly authorized agent, shall have the authority to and shall obtain fire and extended coverage insurance for all Common Area insurable property, against loss or damage by fire or other hazards sufficient to cover the full current replacement cost in an amount not less than one hundred percent (100%) of the insurable value, after application of deductibles, and shall also obtain a broad-form public liability policy in a minimum amount of \$1,000,000.00 covering all Common Areas, and all damage or injury caused by the negligence of the Association or any of its agents. Said insurance may include coverage against vandalism. The Board of Directors, on behalf of the Association, may also carry worker’s compensation insurance to the extent necessary to meet the requirements of the laws of Arizona, directors’ and officers’ liability insurance to meet the Association’s indemnification responsibilities under the Articles of Incorporation and Arizona law, and such other insurance as the Association shall determine from time to time to be appropriate to protect the Association or the Owners. Premiums for all such

insurance shall be part of the Assessments. All such insurance coverage attained by the Board of Directors shall be written in the name of the Association.

Section 2. Damage or Destruction of Common Area. In the event of damage or destruction to the Common Area by fire or other casualty, the Board of Directors shall, upon receipt of the insurance proceeds, contract to rebuild or repair such damaged or destroyed portions of the property to as good a condition as formerly unless an alternative plan is approved by the Members at a meeting of the Members. Such meeting of the Members may be called by the Board of Directors at any time after the damage or destruction or by petition of the Members signed by Owners of not less than thirty percent (30%) of the Lots) received by the Association within thirty (30) days after the date of the damage or destruction. In the event that it is determined by the Association in the manner described above that the damage or destruction of any part of the Common Area shall not be repaired or reconstructed and no alternative improvements are authorized, then the property shall be maintained by the Association in a neat and attractive condition as an undeveloped portion of the Common Area. In the event the insurance proceeds are insufficient to pay all the costs of repairing and/or rebuilding the Common Area to the same condition as formerly, the Board of Directors shall levy a Special Assessment against all Owners to make up any deficiency and a vote of the Owners shall not be necessary to approve such Special Assessment. In the event such insurance proceeds exceed the cost of repair and reconstruction, such excess shall be retained by the Association.

Section 3. Owner's Responsibility. If an Owner desires insurance on his or her Lot, improvements or personal property located thereon, it is the responsibility of such Owner to obtain and maintain such insurance. The Association insurance is not intended to cover these items.

Section 4. Damage to Improvements on Lots. In the event of damage or destruction by fire or other casualty to any dwelling or other structure on the Lot, regardless of whether such Owner shall repair or rebuild such damage to destroyed portions of the structures that form a party wall and/or are Visible From Neighboring Property in a workmanlike manner in conformance with the original plans and specifications for the structures unless alternative plans are approved in accordance with Article VII herein. In the event such Owner refuses or fails to so repair and rebuild any and all such damage within a reasonable time frame (as determined by the Board of Directors), the Association is authorized, but not obligated, to perform such repairs or rebuilding, and charge the Association's costs in doing so to the Owner, which amount shall be secured by the Assessment Lien and collectible in the same manner as Assessments.

## **ARTICLE IX GENERAL PROVISIONS**

Section 1. Binding Effect. The covenants, restrictions, reservations and conditions contained herein shall run with the land and shall be binding upon all persons owning and occupying any Lot or Lots. All instruments of conveyance of any interest in all or any part of said subdivisions shall contain reference to this instrument and shall be subject to the covenants, restrictions, reservations and conditions herein as fully as though the terms and conditions of this instrument were therein set forth in full; provided, however, that the terms and conditions of this



instrument shall be binding upon all persons affected by its terms, whether express reference is made to this instrument or not.

Section 2. Enforcement. The Association shall have the right to enforce all provisions of this Declaration, the Rules and any other documents governing the Association. In addition, any Owner of a Lot may enforce the provisions of this Declaration, the Rules, and any other documents governing the Association, except for the obligation to pay Assessments. This right of enforcement shall be in any manner provided for in this Declaration or by law or in equity, including, but not limited to, an action to obtain an injunction to compel removal of any improvements or structures constructed or altered in violation of this Declaration or to otherwise compel compliance with this Declaration, the Rules, and any other documents governing the Association. Nothing herein shall be construed as meaning that damages are an adequate remedy where equitable relief is sought. Each remedy provided by this Declaration is cumulative and not exclusive. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

(a) Notice of Violation. Notwithstanding the generality of the foregoing, the Association shall have the right to record a written notice of a violation by any Owner or resident of any restriction or other provision of this Declaration or the Rules. The notice shall be executed by an officer of the Association and shall contain substantially the following information: (i) the name of the Owner or resident violating, or responsible for the violation of, this Declaration or the Rules; (ii) the legal description of the Lot against which the notice is being recorded; (iii) a brief description of the nature of the violation; (iv) a statement that the notice is being recorded by the Association pursuant to this Declaration; and (v) a statement of the specific steps which must be taken by the Owner or occupant to cure the violation. Recordation of a notice of violation shall serve as notice to the Owner and resident(s), and any subsequent purchaser of the Lot, that there is such a violation. If, after the recordation of such notice, it is determined by the Association that the violation referred to in the notice does not exist or that the violation referred to in the notice has been cured, the Association shall record a notice of compliance which shall state the legal description of the Lot against which the notice of violation was recorded, and the recording data of the notice of violation, and shall state that the violation referred to in the notice of violation has been cured or that the violation did not exist.

Section 3. Costs of Enforcement. In the event the Association acts to enforce this Declaration, the Rules, and any other documents governing the Association, regardless of whether suit is filed, the Association shall be entitled to recover, in addition to any other remedy, reimbursement for attorneys' fees, court costs, costs of investigation and other related expenses incurred in connection therewith including but not limited to the Association's administrative costs and fees. Said attorneys' fees, costs and expenses shall be imposed and collectible in the same manner as Assessments. If, however, a lawsuit is filed, and the Owner is the prevailing party in such lawsuit, the Owner shall not be required to pay the Association's attorneys' fees, court costs, costs of investigation and other related expenses incurred therewith. If any lawsuit is filed by any Owner to enforce this Declaration, the Rules, and any other documents governing the Association, the prevailing party in such action shall be entitled to recover from the other party all attorneys' fees incurred by the prevailing party in the action.

Section 4. Amendment. This Declaration may be amended at any time with (i) the approval of the Board and (ii) the affirmative vote (in person or by absentee ballot) or written consent, or any combination thereof, of Owners of at least seventy-five percent (75%) of all Lots. In addition, the Board of Directors may amend the Declaration, without a vote of the Owners, solely for the purpose of complying with the law. Any such amendment to this Declaration shall be effective when recorded.

Section 5. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 6. Interpretation. Except for judicial construction, the Association shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all persons and Properties benefited or bound by this Declaration.

Section 7. Violation of Law. Any violation of any state, municipal, or local law, ordinance or requisition, pertaining to the ownership, occupation or use of any property within the Property is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth in this Declaration.

Section 8. Survival of Liability. The termination of membership in the Association shall not relieve or release any such former Owner or Member from any liability or obligation incurred under, or in any way connected with, the Association during the period of such ownership or membership, or impair any rights or remedies which the Association may have against such former Owner or Member arising out of, or in any way connected with, such ownership or membership and the covenants and obligations incident thereto.

Section 9. Guests. Each Owner shall, to the extent permitted by Arizona law, be responsible for compliance by his guests, agents, invitees, licensees and their respective agents and employees with the provisions of this Declaration, the Bylaws, Articles, Rules, and any other documents governing the Association. An Owner's failure to ensure compliance by such persons shall be grounds for the same action available to the Association or any other Owner by reason of such Owner's own noncompliance.

Section 10. Joint and Several Liability. In the case of joint ownership of a Lot, the liabilities and obligations of each of the joint Owners set forth in, or imposed by, this Declaration, the Bylaws, Articles, Rules, and any other documents governing the Association shall be joint and several.

Section 11. Construction. In the event of any discrepancies, inconsistencies or conflicts between the provisions of this Declaration and the Articles, the Bylaws or the Rules, the provisions of this Declaration shall prevail.

Section 12. Topic Headings. All captions, titles and headings of the Articles and Sections in this Declaration are for the purpose of reference and convenience only and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof, or to be used in determining the intent or contents hereof.

Section 13. Gender and Plural. Wherever the context of this Declaration so requires, words used in the masculine gender shall include the feminine and neuter genders. Words used in the neuter gender shall include the masculine and feminine genders, words in the singular shall include the plural, and words in the plural shall include the singular.

Section 14. Attorneys' Fees. In the event the Association incurs legal expenses and costs, including, but not limited to, attorney's fees, in bringing claims against Owners or defending claims brought by Owners in an administrative action or proceeding, including but not limited to, proceedings before an Administrative Law Judge, the Association shall be entitled to recover its attorney's fees and costs from the Owner involved in the administrative proceeding if the Association is the prevailing party.

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CERTIFICATION

IN WITNESS WHEREOF, the President of the Association hereby certifies that the provisions contained with this Amended and Restated Declaration have been approved by the required percentage of the Owners, as evidenced by the written instrument forms attached as Exhibit "B".

DATED this 19 day of February, 2015.

MONTEREY PARK ASSOCIATION,  
an Arizona non-profit corporation

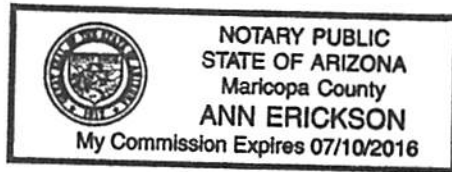
By Susan D Marchi  
Susan Marchi  
Its: President

STATE OF ARIZONA        )  
  ) ss.  
County of Maricopa        )

On this 19 day of February, 2015, before me personally appeared Susan Marchi, whose identity was proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to this document, and who acknowledged that she signed this document.

Ann Erickson  
Notary Public

Notary Seal:



**EXHIBIT A**

**LEGAL DESCRIPTION**

**VILLA MONTEREY UNIT FIVE-A**

That portion of the northeast quarter of the northeast quarter of Section 23, Township 2 north, Range 4 east, Gila and Salt River Base and Meridian, in the City of Scottsdale, County of Maricopa, State of Arizona, more particularly described as follows:

Beginning at a point which bears north  $89^{\circ}47'11''$  west 606.70 feet and north  $0^{\circ}10'48''$  east, 460 feet from the southeast corner of said northeast quarter of said northeast quarter of said Section 23, said point being the northeast corner of Villa Monterey Unit Five, according to plat hereof filed in Book 107 at page 44, Official Records of said County of Maricopa; thence north  $89^{\circ}47'11''$  west, 153.52 feet; thence north  $74^{\circ}51'49''$  west, 183.79 feet; thence north  $64^{\circ}47'11''$  west, 139.65 feet; thence west 52.88 feet; thence north  $0^{\circ}11'30''$  west, 128 feet to a point on the arc of a curve concave southerly, having a radius of 500.00 feet and whose center bears south  $8^{\circ}47'$  west from said point; thence westerly along the arc of said curve, through a central angle of  $8^{\circ}58'29''$  a distance of 78.32 feet; thence south  $89^{\circ}48'30''$  west, 42 feet; thence north  $0^{\circ}11'30''$  west, 40 feet to the beginning of a tangent curve to the left, having a radius of 600 feet; thence northerly along the arc of said curve, through a central angle of  $12^{\circ}53'02''$  a distance of 134.92 feet; thence north  $13^{\circ}04'32''$  west, 175.63 feet; thence north  $89^{\circ}48'30''$  east, 305.76 feet; thence south  $64^{\circ}47'11''$  east, 224 feet; thence south  $74^{\circ}51'49''$  east, 130.69 feet to a point in the east line of the west half of said northeast quarter of said northeast quarter of Section 23, which point bears south  $0^{\circ}10'48''$  east, along said east line, 403.78 feet from the northeast corner of said west half; thence south  $0^{\circ}10'48''$  east, 88.04 feet; thence north  $39^{\circ}49'12''$  east, 50 feet; thence south  $0^{\circ}10'48''$  east, 370.17 feet to the point of beginning.

**EXHIBIT B**

**WRITTEN INSTRUMENT FORMS**