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AMENDED AND RESTATED
DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

CUERNAVACA SEGUNDO
aka
COLONIA ENCANTADA

Prepared by:

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**AMENDED AND RESTATED
DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
CUERNAVACA SEGUNDO
aka
COLONIA ENCANTADA**

This Amended and Restated Declaration of Covenants, Conditions and Restrictions for Cuernavaca Segundo is made as of this 1st day of November, 1988, by Colonia Encantada Homeowners Association, Inc., an Arizona corporation (the "Association"), acting with the consent and approval of the persons and entities who have executed the Consents of Lot Owner to Amended and Restated Declaration for Cuernavaca Segundo aka Colonia Encantada which are attached hereto (collectively, the "Consenting Owners").

R E C I T A L S:

A. A Declaration of Covenants, Conditions and Restrictions for Cuernavaca Segundo Townhouses was recorded in Docket 12482, pages 1344 through 1363, records of Maricopa County, Arizona, imposing certain covenants, conditions and restrictions upon Lots 1 through 42 and Tracts A through C, Cuernavaca Segundo Townhouses, according to the plat recorded in Book 193 of Maps, page 11, records of Maricopa County, Arizona

("Unit One"). The Declaration of Covenants, Conditions and Restrictons was amended by the First Amendment to Declaration of Covenants, Conditions and Restrictons for Cuernavaca Segundo Townhouses recorded in Docket 1286, pages 630 through 653, records of Maricopa County, Arizona. The Declaration of Covenants, Conditions and Restrictons for Cuernavaca Segundo Townhouses, as amended by the First Amendment, shall be referred to in this Amended and Restated Declaration as the "Unit One Declaration."

B. A Declaration of Annexation for Cuernavaca Segundo Unit Three was recorded in Docket 14980, pages 4 and 5, records of Maricopa County, Arizona, annexing and subjecting Lots 61 through 62, Cuernavaca Segundo Unit Three, a subdivision according to the plat recorded in Book 229, page 17, records of Maricopa County, Arizona ("Unit Three"), to the Unit One Declaration.

C. A Declaration of Covenants, Conditions and Restrictions for Cuernavaca Segundo Unit Two (the "Unit Two Declaration") was recorded in Docket 13706, pages 162 through 180, records of Maricopa County, Arizona, imposing certain covenants, conditions and restrictions upon Lots 43 through 60, inclusive, Lots 63 through 79, inclusive, and Tracts A through E, inclusive, Cuernavaca Segundo Unit Two, a subdivision according to the plat recorded in Book 212, page 15, records of Maricopa County, Arizona ("Unit Two").

D. Both the Unit One Declaration and Unit Two Declaration provided that Owners of Lots subject to the Unit One Declaration or the Unit Two Declaration would automatically

become members of the Association. Thus, the Association has jurisdiction over all of Unit One, Unit Two and Unit Three.

E. The Unit One Declaration provides that the Unit One Declaration may be amended by an instrument signed by the Owners of not less than fifty-one percent (51%) of the Lots in Unit One and Unit Three. The Unit Two Declaration provides that it may be amended by an instrument signed by the Owners of at least fifty-one percent (51%) of the Lots in Unit Two. The Consenting Owners constitute the Owners of at least fifty-one percent (51%) of the Lots subject to the Unit One Declaration and at least fifty-one percent (51%) of the Lots subject to the Unit Two Declaration.

F. The Association and the Consenting Owners desire to amend and restate the Unit One Declaration and the Unit Two Declaration in their entirety for the purpose of (i) making the provisions of the Unit One Declaration and the Unit Two Declaration consistent with each other, (ii) having one Declaration of Covenants, Conditions and Restrictions applicable to the Lots and Tracts in Units One, Two and Three, (iii) clarifying and affirming that the Association has jurisdiction over all of the Lots and Tracts in Unit One, Unit Two and Unit Three, and that Unit One, Unit Two and Unit Three are to be governed, assessed, operated and managed by the Association as one project in accordance with the terms of this Amended and Restated Declaration, (iv) making those changes necessary to reflect the fact that the developer of Cuernavaca Segundo aka Colonia Encantada should no longer own any Property in Unit One, Unit Two or Unit Three, and (V) to eliminate any ambiguity or

confusion which exists or may exist regarding the proper annexation of all lots and/or tracts described on Exhibit A attached to this Declaration, it being expressly agreed that all lots and tracts on said Exhibit A are properly annexed to and made part of the Cuernavaco Segundo aka Colonia Encantada.

NOW, THEREFORE, the Unit One Declaration and the Unit Two Declaration are amended and restated to read as follows:

ARTICLE I

DEFINITIONS

Section 1. "Architectural Committee" shall mean the committee which may be created pursuant to Article VII hereof. If no such committee is created, "Architectural Committee" shall mean and refer to the Board.

Section 2. "Architectural Committee Rules" shall mean the rules adopted by the Architectural Committee.

Section 3. "Articles" shall mean the Articles of Incorporation of the Association which have been filed in the Office of the Corporation Commission of the State of Arizona, as said Articles may be amended from time to time.

Section 4. "Association" shall mean and refer to Colonia Encantada Homeowners Association, Inc., an Arizona non-profit corporation, its successors and assigns.

Section 5. "Board" shall mean the Board of Directors of the Association.

Section 6. "Bylaws" shall mean the Bylaws of the Association, as such Bylaws may be amended from time to time.

Section 7. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the Owners, which real property is more particularly described as follows:

Tracts A through C, Cuernavaca Segundo Townhouses, according to the plat recorded in Book 193 of Maps, page 11, records of Maricopa County, Arizona.

Tracts A through E, inclusive, Cuernavaca Segundo Unit Two, according to the plat recorded in Book 212, page 15, records of Maricopa County, Arizona.

Tracts A through C, Cuernavaca Segundo Unit Three, according to the plat recorded in Book 229, page 17, records of Maricopa County, Arizona.

Section 8. "Common Expenses" shall be (1) all expenses of administration of the Association and of the maintenance, operation, management, improvement, repair and replacement of common elements and of any portions of the lots required to be maintained, improved, repaired or replaced by the Association; (2) all expenses declared or contemplated to be common expenses as provided by this Declaration, the Articles of Incorporation, Bylaws or Rules and Regulations of the Association (as the same may be duly adopted and amended from time to time) or applicable statutes or regulations; and, (3) subject to the provisions hereof, all valid charges, assessments or taxes against the property as a whole.

Section 9. "Declaration" shall mean this Amended and Restated Declaration of Covenants, Conditions and Restrictions for Cuernavaca Segundo aka Colonia Encantada, as it may be amended from time to time.

Section 10. "Lease" means any agreement for the leasing or rental of any Lot or portion thereof.

Section 11. "Lot" shall mean and refer to any separate parcel of real property shown upon any recorded subdivision map of the Properties, with the exception of the Common Area, including the 79 single family residences.

Section 12. "Occupant" means a person or persons, including an Owner, in rightful possession of a Lot.

Section 13. "Operative Documents" shall mean and refer to the Declaration, Articles, Bylaws, Rules and Regulations and any amendments thereto as may be promulgated from time to time.

Section 14. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of equitable or beneficial title (or legal title if same as merged) of any Lot which is a part of the Properties, but excluding those having such interest merely as security for the performance of an obligation. For the purposes of Article III only, unless the context otherwise requires, "Owner" shall also include the family, invitees, licensees, and lessees of any Owner, together with any other person or parties holding any possessory interest granted by such Owner in any lot. A lessee or tenant shall not be deemed to be an "Owner" except for the purposes of Article III.

Section 15. "Properties" or "Property" shall mean and refer to that certain real property described on Exhibit A attached to this Declaration.

Section 16. "Public Purchaser" shall mean any person or other

legal entity who becomes an Owner of any Lot within the Properties.

Section 17. "Single Family" shall mean a group of one or more persons each related to the other by blood, marriage or legal adoption, or a group of not more than two persons not all so related together with their domestice servants, who maintain a common household in a dwelling.

Section 18. "Single Family Residence" shall mean a building, house, townhouse, or patio home used as a residence for a single family, including any appurtenant garage, carport or similar outbuilding.

Section 19. "Single Family Residential Use" shall mean the occupation or use of a Single Family Residence in conformity with this Declaration and the requirements imposed by applicable zoning laws or other state, county or municipal rules and regulations.

Section 20. "Unit" shall be synonomous with Single Family Residence, unless the context indicates otherwise.

Section 21. "Visible From Neighboring Property" shall mean, with respect to any given object, that such object is or would be visible to a person six feet tall, standing on any part of such neighboring property at an elevation no greater than the elevation of the base of the object being viewed.

ARTICLE II

PROPERTY RIGHTS

Section 1. Owner's 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 charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area.

(b) The right of the Association to suspend the voting rights and the right to use the recreational facilities by an Owner for any period during which any assessment, fine or other charge against the Owner's lot remains unpaid; and to suspend the right to use the recreational facilities for a period not to exceed sixty (60) days for any infraction of the operative documents.

(c) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless an instrument signed by Members having two-thirds (2/3) of the votes in the Association agreeing to such dedication or transfer has been recorded.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with this Declaration, the Owner's right of enjoyment to the Common Area and facilities to the members of the Owner's resident family members, tenants, guests or invitees; provided, however, that an Owner's guests and invitees may use the recreational facilities only when they are accompanied by the Owner or a resident member of the Owner's family, and that the number of guests shall be limited as set forth in the

Association's Rules and Regulations. All of the Owner's guests and invitees shall have the use rights set forth above to the extent that such use does not interfere with other Owners' use of any Common Areas.

ARTICLE III

USE RESTRICTION

Section 1. Permitted Uses and Restrictions - Single Family. The permitted uses, easements, and restrictions for all Property covered by this Declaration, except for the Common Area, shall be as follows:

A. SINGLE FAMILY RESIDENTIAL USE. Each lot shall be used, improved and devoted exclusively to Single Family Residential Use. No gainful occupation, profession, trade or other non-residential use shall be conducted on any such Property. Nothing herein shall be deemed to prevent the leasing of all such Property to a Single Family from time to time by the Owner thereof, subject to all of the provisions of this Declaration.

B. ANIMALS. No animals, birds, fowl, poultry, or livestock, other than up to a total of two (2) generally recognized house pets, shall be maintained on any Property within the Properties and then only if they are kept solely as domestic pets and not for commercial purposes. To the extent permitted above, no animal, bird, fowl, poultry or livestock shall be allowed to the extent it disturbs surrounding residents or otherwise becomes a nuisance, and no structure for the care, housing or confinement of any animal, bird, fowl, poultry or

livestock shall be maintained so as to be Visible From Neighboring Property. Upon the written request of any Owner, the Board shall conclusively determine, in its sole and absolute discretion, whether, for the purposes of this Paragraph, a particular animal, bird, fowl, poultry or livestock is a generally recognized house pet, or a nuisance.

Pets shall not run free and must be walked on a leash under human control at all times. An Owner is responsible for immediate removal of any pet droppings. Any decision by the Board shall be enforceable as other restrictions contained herein.

C. ANTENNAS. No antenna or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation shall be erected, used or maintained outdoors on any Property within the Properties, whether attached to a building or structure or otherwise, in such a manner as to be Visible From Neighboring Property.

D. UTILITY SERVICE. No lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television, and radio signals, shall be erected, placed or maintained anywhere in or upon any Property within the Properties unless the same shall be contained in conduits or cables installed and maintained underground or concealed in or on buildings or other structures as approved by the Architectural Committee. No provisions hereof shall be deemed to forbid the erection of temporary power or telephone structures incident to construction approved by the Architectural Committee.

E. ALTERATIONS, ADDITIONS OR IMPROVEMENTS. No alterations, additions or improvements, including any building, fence, wall or other structure, excavation, landscaping or other work which in any way alters the exterior appearance of any Property within the Properties or the improvements located thereon shall be commenced, erected or maintained unless or until the plans and specifications showing in detail the nature, kind, shape, height, width, materials, color and location of the same shall have been submitted to and approved in writing by the Board, or by an Architectural Committee, as more fully set forth in Article VII hereof, and written consent must be obtained from any adjoining Owner in the event such alteration, addition or improvement in any manner affects a party wall. Any Owner may make non-structural alterations, additions or improvements within the interior of a Unit without the prior written approval of the Board or its designated committee. No changes or deviations in or from such plans and specifications once approved shall be made without the prior written approval of the Board or the designated committee. All decisions of the Board or designated committee shall be final and no Owner or other party shall have recourse against the Board or Architectural Committee for its refusal to approve any such plans or specifications or plot plan, including lawn area and landscaping. By way of information and not by limitation, no basketball standards or fixed sports apparatus shall be attached to any Unit or garage or erected on any Lot, nor shall any window or window opening, or similar opening be installed in any wall which does not have such window or opening installed in the original construction. The Owner accepts full

responsibility for any damage to any other Unit, Lot, or the improvements thereon, or to the Common Areas and the improvements thereon, which may result from such alteration, addition or improvement. The damage and any costs, including reasonable attorneys' fees, resulting from such action shall be the personal obligation of the Owner (as with all other amounts set forth in this Declaration), and shall be secured by a lien against the Lot in the same manner as assessments (as with all other amounts set forth in this Declaration), until paid in full.

In the event any Owner makes any alteration, addition or improvement without the approval of the Association as set forth above, the Association may require the Owner to restore the Property to its original condition within thirty (30) days. If the Owner fails to do so, the Association may take such action as it deems appropriate to restore the Property. Any costs, including reasonable attorneys' fees, so incurred shall be the personal obligation of the Owner, and shall constitute a lien against the unit in the same manner as assessments.

F. TEMPORARY OCCUPANCY. No trailer, tent, shack, garage or barn, and no temporary buildings or structure of any kind shall be used at any time for a residence on any Property within the Properties either temporary or permanent, other than one private, Single Family Residence. No boat, truck, trailer, camper or recreational vehicle shall be used as a living area while located on the Property, if otherwise permitted on the Property. Temporary buildings or structures permitted by the Board to be used during the reconstruction of a dwelling on any

such Property shall be removed immediately after the completion of construction.

G. TRAILERS AND MOTOR VEHICLES. No mobile home, boat, recreational vehicle, trailer of any kind, truck (pickup or otherwise), camper, commercial or delivery vehicle, off-road vehicle, inoperable vehicle or permanent tent or similar structure shall be kept, placed, maintained or constructed, reconstructed or repaired, nor shall any motor vehicle be constructed, reconstructed or repaired upon the Properties in such a manner as to be Visible From Neighboring Property. (Without limiting the foregoing, and for clarification purposes only, enclosed vehicles - i.e., vehicles without a truck-type bed, shall not be classified as an inappropriate vehicle under this Section.) Any vehicle described above shall be maintained on the premises only within an enclosed garage. The provisions of this Paragraph shall not apply to emergency vehicle repairs or temporary construction shelters or facilities maintained during, and used exclusively in connection with, the construction of any improvement approved by the Board, and only upon approval of the Board or the designated Architectural Committee. Commercial and delivery vehicles shall be permitted on the Properties for short durations while services are being performed and/or goods are being delivered to a Unit.

H. GARAGES AND PARKING. Garages shall be used for parking vehicles and storage purposes only and shall not be converted for living or recreational purposes, temporary or permanent. Except as provided above, only automobiles in operating condition shall be parked in uncovered parking areas.

Car covers are not permitted on any vehicle within the Properties, except within an enclosed garage. Automobiles and other motor vehicles owned by Lot Owners shall not be parked in or on the streets or private drives constituting part of the Common Areas for any period in excess of two (2) hours, except when using an adjacent recreational facility. Cars parked in violation hereof will be subject to fines and/or towing in a reasonable amount to be set by the Board as more fully set forth in the Rules and Regulations. Other than the enclosed garage areas, parking shall be allowed for two (2) additional authorized vehicles. The additional vehicles shall be parked in the applicable driveway. Guest parking shall be limited to guest vehicles only and may be permitted to remain overnight for a period of not more than two (2) weeks of a six (6) week period, upon approval of security personnel or the property manager only. Guest parking shall be permitted on the streets, when parked on the right hand side of the street and where not on a "blind" corner or in an obstructive fashion, but in no event shall any vehicle remain parked on any street overnight.

Further, Any vehicle parked in such a manner as to impede, block or prevent ready access to the driveway or garage of any Lot to which the vehicle does not belong, shall be subject to immediate towaway at the applicable owner's expense. Parking exceptions may be permitted under special circumstances only when granted in writing by the security personnel or the property manager. The Board shall also adopt reasonable Rules and Regulations regarding parking and traffic safety as more fully set forth in this Declaration.

I. LAWNS AND PLANTINGS.

(1) The Association shall care for and maintain the lawns and plantings on the Common Area and on the front of Owners' Lots, and shall keep all shrubs, trees, grass and plantings of every kind thereon neatly trimmed, properly cultivated and free of trash, weeds and other unsightly material. No Owner shall remove, alter, injure or interfere in any way with any front yard shrubs, trees, grass or plantings placed upon any such Property without the written consent of the Board or Architectural Committee first having been obtained. The Association and authorized agents of the Association shall have the right to enter upon, and the Owners shall permit the entry upon the front yards of the Owners, at any reasonable time, for the purpose of planting, replacing, maintaining or cultivating the shrubs, trees, grass or plantings, and shall not be liable for trespass for so doing.

(2) Removal or replacement of any tree that is fifteen (15) feet high or higher shall be at the expense of the Owner upon whose Lot the tree is situated. Any charge incurred by the Association shall be paid by the Owner within thirty (30) days notice thereof and shall be secured by a lien enforceable in the same manner as other assessments provided in this Declaration.

J. MAINTENANCE. Except as otherwise provided herein, each Owner shall be responsible for the upkeep and maintenance of the Owner's Lot, including improvements thereon, including, without limitation, all fixtures and equipment installed within the dwelling unit. Termite control shall be the responsibility

of the Owner, and the Owner shall do no act nor any work that will impair the structural soundness or integrity of a Unit or impair any easement, nor shall an Owner do any act or allow any condition to exist which will adversely affect the other Units or their Owners. No building or structure upon any Property within the Properties shall be permitted to fall into disrepair, and each such building and structure shall be at all times kept in good condition and repair and adequately painted or otherwise finished. In the event any Owner fails to keep any building or structure on his Lot in good condition and repair and adequately painted, the Association shall have the right (but not the obligation) to do so and shall charge the Owner the reasonable cost thereof, which charge shall be paid by the Owner to the Association, within thirty (30) days, and shall be secured by a lien as any other assessment provided in this Declaration. Each Owner shall also maintain a fire extinguisher within each Unit and shall notify security as to its location. Further, all interior Lots, more particularly described as Lots 20, 21, 22, 24 through and including 36, 39 through and including 42, 44, 45, 48, 49, 50, 52, 53 and 63 through and including 79, shall be equipped with sump pump and such other devices as are necessary and required by the Association as determined by the Board, to drain natural water, rain water, broken pipe water, or any other water from the Lots to a Common Area street. The interior Lots indicated above may be required to connect the water security device to an alarm system, if required by the Board at its discretion.

K. NUISANCES. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Property within the Properties, 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 Owner shall permit or suffer anything to be done or kept about or within the Owner's Lot which will obstruct or interfere with the rights of other Occupants, or annoy them by unreasonable noises or otherwise, nor will an Owner commit or perform any other nuisance about or within a Lot or commit or suffer any immoral or illegal act to be committed thereon. The Owner shall comply with all the requirements of the health authorities and of all other governmental agencies with respect to Owner's Unit. Further, if by reason of the occupancy or use of any Lot by an Owner, family member, tenant, guest or invitee, the rate of insurance on the Property is increased, the Owner shall be responsible for such additional insurance premiums. No nuisances shall be permitted to exist or operate upon any Property so as to be offensive or detrimental to any other Property in the vicinity thereof or to its Occupants. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on any Property. Further, No motorcycles (except for ingress and egress to and from the Properties), unlicensed motor driven vehicles (except lawn maintenance equipment), skates or skateboards shall be permitted

on any walkways or roadways within the Properties. Bicycles, tricycles and other non-motorized vehicles are prohibited on Common Area lawns, any landscaped areas, in the swimming pool areas and the tennis court areas. The Board in its sole discretion shall have the right to determine the existence of any such nuisance.

L. COMMERCIAL OPERATIONS. No religious, professional, commercial or industrial operation of any kind shall be conducted in or upon any Lot or the Common Areas. The foregoing restrictions shall not, however, be construed in any manner as to prohibit an Owner from maintaining a personal and/or a professional library in a Unit or keeping personal business records therein.

M. TRASH CONTAINERS AND COLLECTION. No garbage or trash shall be placed or maintained on any Property within the Properties except in covered trash containers of the type, size and style originally furnished by the Association and/or City of Scottsdale. In no event shall such containers be maintained so as to be Visible From Neighboring Property. The Board shall have the right, in its sole discretion, to require all Owners to subscribe to a trash collection service. All rubbish, trash, or garbage shall be removed from the Lots and shall not be allowed to accumulate thereon. No incinerators shall be kept or maintained on any Lot. The Board shall adopt reasonable rules and regulations regarding setting out trash containers for collection and removal of containers following collection.

N. CLOTHES DRYING AND MISCELLANEOUS. Outside drying or airing of clothing shall not be permitted to the extent such

clothing is Visible From Neighboring Property. Further, nothing shall be hung from or placed on the exterior of any Unit, including, but not limited to, any wall, window, door, balcony, atrium, patio or fence, without the prior written approval of the Board or Architectural Committee.

O. ENCROACHMENTS. No tree, shrub, or planting of any kind on any Lot shall be allowed to overhang or otherwise to encroach upon any sidewalk, street, pedestrian way, other Lot or other area from ground level to a height of twelve (12) feet, without any prior approval of the Board or Architectural Committee.

P. MINERAL EXPLORATION. No Property within the Properties shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth or any earth substance of any kind.

Q. MACHINERY AND EQUIPMENT. No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Property within the Properties except such machinery or equipment approved by the Board and as is usual and customary in connection with the use, maintenance or reconstruction of a residence, appurtenant structures, or other improvements, and except that which the Association may require for the operation and maintenance of the Properties.

R. DISEASES AND INSECTS. No Owner shall permit any thing or condition to exist upon any Property within the Properties which shall induce, breed or harbor infectious plant diseases or noxious insects.

S. RESTRICTIONS ON FURTHER SUBDIVISION, LEASES AND SUBLEASES. No Lot within the Properties shall be further subdivided or separated into smaller lots or parcels by any Owner, and no portion less than all of any such Lot, nor any easement or other interest therein shall be conveyed or transferred by any Owner. No portion of a Lot, but for the entire Lot, together with the improvements thereon, may be rented, and then only to a Single Family; provided, however, that no Lot may be leased or subleased except as set forth in this Declaration. The Board shall adopt reasonable rules and regulations governing leases and tenants, including, but not limited to, requiring prior review by the Board of lease agreements and the Board's consent thereto, incorporation of the Association's operative documents in the lease agreement and a lease provision terminating the lease if the tenant or tenant's guests or invitees violate any of the operative documents of the Association.

T. SIGNS. No signs whatsoever, including, but not limited to "for sale", "for rent", "open house" or other commercial, political or similar signs, shall be erected or maintained in, on or about any Lot or portion of the Properties except as otherwise approved by the Board. Street number identification signs must be compatible with or identical to the original street number identification sign provided by the builder.

U. APPROVAL REQUIRED FOR SALES, TRANSFERS, LEASES, ETC. No sale, transfer, conveyance, lease or sublease (hereinafter collectively "transfer") of any Lot shall be made

without securing the prior written approval of the Board. The Board shall be given notice, in writing, of any intended transfer, together with a copy of any lease, contract or bona fide offer received, and an application, on a form prescribed by the Board, which application shall be completed by the present Owner or Occupant and the proposed Owner or Occupant. The Board shall have fifteen (15) days after receiving such notice, copy of contract, lease or offer and application, to approve or disapprove same. During said fifteen (15) day period the Association, or a nominee of the Association, shall have the option to purchase, lease or sublease the Lot, as the case may be, upon the same terms of transfer as set forth in the bona fide offer and as described in the notice and application. In the event that the Board fails to either notify the selling Owner of its disapproval of the proposed transfer, or to notify the selling Owner of its intention to exercise its right of first refusal as set forth above, within the fifteen (15) day period set forth herein, approval of the Board shall be deemed granted. Notwithstanding, no transfer shall be considered valid except upon full compliance herewith. Copies of any documents of transfer shall be supplied to the Board, together with a transfer fee in an amount to be determined by the Board, but in an amount not less than One Hundred Dollars (\$100.00). The Board has the right to exclude any person, other than an Owner, who attempts to occupy a Lot or any portion thereof, without an approved transfer, or who attempts to hold over. No Owner shall permit his Lot or the improvements thereon to be used for transient or hotel purposes nor shall an Owner enter into a lease for less

than the entire Lot, including improvements. For purposes of this section, any lease for a period of less than three (3) months in duration shall be conclusively considered to be for transient or hotel purposes. No Unit may be leased for more than two (2) time periods per year. Additionally, no lease shall be to more than two (2) unrelated persons and no more than two (2) unrelated persons shall be permitted to reside in a leased unit. Any lease shall be in writing, shall in all respects be subject to and in compliance with the provisions of the Operative Documents and shall expressly provide that a violation of any provision of the Operative Documents shall be a default under such lease. Any Owner who leases or rents a lot shall deliver to the tenant, prior to the start of the tenancy, a copy of the Operative Documents. Each Owner shall deliver to the Association, within ten (10) days of commencement of the tenancy, a fully executed tenant registration form, as may be established by the Board, a copy of the lease agreement and a signed acknowledgement that a copy of the Operative Documents has been delivered to the tenant. Any Owner who fails to observe the provisions of this section shall be subject to a fine according to the schedule set forth in the Association's then current Rules and Regulations. Additionally, the Association may require that the Owner terminate the lease agreement, and obtain any other remedies as may be available to it by law. The Association shall be entitled to recover any costs, including its reasonable attorneys' fees incurred in connection with the enforcement of this section. Any such lease as set forth herein shall be limited in duration for a period of one (1) year, subject to

renewal by approval from the Board. Renewal shall not be unreasonably withheld, and shall be granted if there have been no violations of the operative documents at any time by the Owner, family members, tenants, guests or invitees. Further, if an Owner shall at any time lease a Lot and shall default for a period of more than one (1) month on the payment of any assessment, the Board, at its option, so long as such default shall continue, demand and receive from any tenant or subtenant of the Owner occupying the Lot, the rent due or becoming due. Payment of such rent to the Board shall be sufficient payment and discharge of such tenant or subtenant and the Owner to the extent of the amount so paid, less the cost of collection, including reasonable attorneys' fees.

V. EXTERIOR PEST CONTROL. The Association will provide pest control services deemed appropriate in the discretion of the Board to the exterior portions of all improved and occupied lots. Each Owner agrees to accept this service and to facilitate the rendering of this service, and hereby grants those easements more particularly described in Article VIII, Section 3.

W. GUARD SERVICE. Full-time (24-hour) guard services will be provided by the Association, at least at the street entry of the Properties from McCormick Parkway. The Association shall not, however, be liable to any Owner, family member, tenant, guest or invitee for any reason by virtue of maintaining or failing to maintain guard services.

X. PARTY WALLS AND FENCES. The rights and duties of Owners with respect to Party Walls or Party Fences shall be as follows:

(1) Each wall, including patio walls and fences, which is constructed as part of the original construction of any structure, any part of which is placed on the dividing line between separate Lots, shall constitute a party wall. With respect to any such wall, each of the adjoining Owners shall assume the burdens and be entitled to the benefits of these restrictive covenants and, to the extent not inconsistent herewith, the general rules of law regarding party walls shall be applied thereto.

(2) In the event any such party wall or party fence is damaged or destroyed through the act of an adjoining Owner, or any of his guests, tenants, licensees, agents or members of the Owner's family (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 wall, then the first of such Owners shall forthwith proceed to rebuild or repair the wall to as good condition as formerly without cost to the adjoining Owner.

(3) In the event any such party wall or party fence is damaged or destroyed by some cause other than the act of one of the adjoining Owners, his/her agents, tenants, licensees, guests or family member, including ordinary wear and tear and deterioration from lapse of time, then in such event both such adjoining Owners shall proceed forthwith to rebuild or repair the

same to as good condition as formerly at their joint and equal expense.

(4) Notwithstanding anything to the contrary herein contained, there shall be no impairment of the structural integrity of any Party Wall or Party Fence without the prior consent of all Owners of any interest therein, whether by way of easement or in fee.

(5) In the event of a dispute between Owners with respect to the construction, repair or rebuilding of a Party Wall or Party Fence, or with respect to the sharing of the cost thereof, such adjoining Owners shall submit the dispute to the Board, the decision of which shall be binding.

(6) Each Owner shall permit the Owner of adjoining Lots, or their representatives, when reasonably required, to enter the Owner's Lot for the purpose of repairing or maintaining a Party Wall or for the purpose of performing installation, alterations or repairs to the property of such adjoining Owner, provided that requests for entry are made in advance and that such entry is at a time reasonably convenient to the Owner. In case of an emergency, such right of entry shall be immediate. An adjoining Owner making entry pursuant to the terms of this Paragraph shall not be deemed guilty of trespass by reason of such entry.

(7) In the event an Owner does not repair a Party Wall as set forth herein, the Association may, at the Association's option, repair the wall at the Owner's expense. Any such amounts incurred by the Association shall be collected and secured as any other assessment as set forth herein.

Y. LOTS ADJACENT TO GOLF COURSE. The Board shall have the right, but not the duty, to construct, reconstruct, repair, replace or refinish any yard areas, or exposed back or side yard areas, particularly on Lots 1 through and including Lot 19, which lots are adjacent to the golf course. These Lots shall be maintained in a neat and orderly condition. No items may be maintained in the rear yard of these Lots, except barbecue grills, patio furniture and planters. All tools, boxes, equipment, pet supplies, lawn mowers, garbage containers and similar items shall be kept in the garage or an enclosed storage area. Swimming pool equipment, such as heaters and pumps, shall be concealed so as not to be visible from the golf course. The Board has the right, but not the duty, to enter onto any Lot to clean and maintain the rear yard at the expense of the Owner at an amount not less than the maintenance cost plus a twenty-five percent (25%) surcharge, plus any costs of collection. Such amounts shall be collected and secured as any other assessment sets forth herein. The Board shall have the right to remove any offensive item from the rear yard of any Lot adjacent to the golf course after notice to the Owner to remove the same and failure to remove the offensive item within five (5) days of the date of the notice.

Section 2. Permitted Uses and Restrictions - Common Area. The permitted Uses and restrictions for Common Areas shall be as follows:

A. MAINTENANCE BY ASSOCIATION. The Association shall maintain the Common Areas and may, at any time, as to any Common

Area, conveyed, leased, or transferred to it, or otherwise placed under its jurisdiction, in the discretion of the Board, without any approval of the Owners being required:

(1) The Board may reconstruct, repair, replace or refinish any improvement or portion thereof upon any such area (to the extent that such work is not done by a governmental entity, if any, responsible for the maintenance and upkeep of such area) in accordance with (a) the last plans thereof approved by the Board, (b) the original plans for the improvement, or (c) if neither of the foregoing is applicable and if such improvement was previously in existence, then in accordance with the original design, finish or standard of construction of such improvement as same existed.

(2) The Board may construct, reconstruct, repair, replace or refinish any road improvement or surface upon any portion of such area used as a road, street, walk or parking area.

(3) The Board may replace injured and diseased trees or other vegetation in any such area, and plant trees, shrubs and ground cover to the extent that the Board deems necessary for the conservation of water and soil or for aesthetic purposes; and

(4) The Board may place and maintain upon any such area such signs as the Board may deem appropriate for the proper identification, use and regulation thereof.

(5) The Board may do all such other and further acts which the Board deems necessary to preserve and protect the

property and the beauty thereof, in accordance with the general purposes specified in this Declaration.

(6) The Board shall be the sole judge as to the appropriate maintenance of all ground within the Common Area.

(7) No improvement, excavation or work which in any way alters any portion of the Common Area or any landscaping thereon from its natural or existing state on the date following conveyance of such area to the Association shall be made or done by any person other than the Association or its duly authorized agents.

(8) Maintenance personnel employed or contracted by the Association shall not perform duties for any homeowner while on duty as an employee or contractor of the Association.

B. DAMAGE OR DESTRUCTION OF COMMON AREA BY OWNER. In the event any Common Area or other Association real or personal property is damaged or destroyed by an Owner or any of his guests, tenants, licensees, agents or members of his family, such Owner does hereby authorize the Association to repair said damaged area, and the Association shall so repair said 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 Board. The cost of such repairs, shall be paid by said Owner, upon demand, to the Association and the Association may enforce and secure collection of same in the same manner as any other assessment as set forth herein.

C. INSURANCE.

(1) Fire and Casualty Insurance. The Association shall carry a blanket policy of fire and casualty insurance covering all of the improvements on the Properties, but not covering the personal property of the Owners. Each Owner must pay his share of the cost of said insurance policy, and the Association may enforce and secure collection of same in the same manner as provided elsewhere in this Declaration for the collection and enforcement of assessments. The policy limits, types of coverage, and all terms and conditions of such insurance policy shall be as determined by the Board in the exercise of its sole discretion. Except as otherwise provided herein, the Association may carry such other policies of insurance in such amounts and types as may be determined by the Board. The Board, in its sole discretion, may include the cost of the insurance premium in the monthly dues or make a separate assessment for the insurance premium. Any such increase in monthly dues or separate assessment shall not require a vote of the Association membership and shall be independent of and in addition to the provisions of Article VI of the Declaration.

(2) Fidelity Coverage. The Association shall obtain Fidelity coverage against dishonest acts on the part of directors, managers, trustees, employees or volunteers responsible for having funds belonging to or administered by the Association. The Fidelity bond or insurance must name the Association as the named insured and shall be written in an amount sufficient to provide protection which is in no event less than a sum equal to three (3) months aggregate assessments on all

Lots, plus reserve funds. The management agent shall also be required to maintain Fidelity bond coverage for its employees, officers and agents handling or responsible for funds of or administration on behalf of the Association. In connection with such coverage, an appropriate endorsement to the policy to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers.

(3) **Workmen's Compensation and Employer's Liability Insurance.** The Association shall obtain and maintain workmen's compensation and employer's liability insurance to the extent necessary to comply with applicable law, if any.

(4) **Owner Insurance.** Each Owner shall be free to obtain such additional or other insurance as the Owner deems desirable, including, by way of illustration, insurance covering furnishings and personal property, and any additions, alterations and improvements which may have been made to the Lot, and covering the personal liability of the Owner and his employees, agents and invitees and any persons for whom such Owner may be responsible. Any insurance policy obtained by an Owner must not diminish or adversely affect or invalidate any insurance or insurance recovery under policies covered by the Association and must, to the extent possible, contain a waiver of the rights of subrogation by the insurer as to any claim against the Association, its officers, directors, agents or employees.

D. **ADDITIONAL MAINTENANCE POSSIBLE.** In addition to maintenance of the Common Area and the landscape maintenance of the Lots, the Association shall have the right at any time to

determine if the Association shall undertake the following maintenance services:

(1) Maintenance of roofs of all buildings located on Lots of Owners.

(2) Pest control covering the Common Area and Lots, except the interior portions of the dwelling units.

E. WATER LINES. The Association may furnish water to the Properties, at the risk to the Owner, or may require that each Owner irrigate from water lines that belong to the Owner, rather than from common water lines. The Association maintains an easement on each Property for water lines and drainage. No duty is created hereby on the part of the Association regarding water lines or any damage that might result from breakage. The Association shall have the right, but not the duty to repair any broken water lines, not otherwise located on Common Area.

F. PAINTING OF EXTERIOR WALLS. The Association shall have the right to enter onto any Lot to paint the exterior of any Unit. No Owner shall have the right to paint any exterior walls. This includes, but is not limited to, trim, windows, window casings, doors, fences, gates, eaves and/or driveways. Owners shall be assessed for such painting on a proportional basis considering exterior square footage.

ARTICLE IV

ASSOCIATION

Section 1. Duties of Association. The Association is a non-profit Arizona corporation charged with the duties and invested with the powers prescribed by law and set forth in the Articles,

Bylaws, Rules and Regulations, and in this Declaration. Neither the Articles nor the Bylaws shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration. Unless otherwise restricted by the Declaration, the Association shall also be empowered to exercise all rights as set forth in A.R.S. Section 33-1242.

Section 2. Subsidiary Associations. The Association shall have the right to form one or more subsidiary associations, for any purpose or purposes deemed appropriate by the majority vote of the Board of Directors of the Association.

Section 3. Board of Directors. The affairs of the Association shall be conducted by a Board of Directors and such officers as the Board may elect or appoint, in accordance with the Articles and the Bylaws, as same may be amended from time to time. The Board may delegate to the managing agent of the Association or to any other person, any delegable right or duty, upon a majority vote of the Board.

Section 4. Association 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 (hereinafter "Association Rules"). The Association Rules may restrict and govern the use of the Common Area and any other area within the Properties, except as to the interior of any dwelling unit of an Owner. By way of illustration, and not of limitation, the Board may adopt Association Rules deemed necessary for the safety, care and cleanliness of the Properties, to secure the comfort and convenience of all residents, and to implement the provisions of

this Declaration and any amendments thereto. The Association Rules may not discriminate among Owners and shall not be inconsistent with this Declaration, the Articles, or Bylaws. A copy of the Association 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. Upon such mailing or delivery, said Association Rules shall have the same force and effect as if they were set forth in and were a part of this Declaration to the extent not inconsistent herewith.

Section 5. Liability. No member of the Board or any Committee of the Association, or any officer of the Association, shall be personally liable to any Owner, or to any other party, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of the Association, the Board, or any other representative or employee of the Association, or the Architectural Committee, or any other committee, or any officer of the Association, provided that such person has, upon the basis of such information as may be possessed by him/her acted in good faith without willful or intentional misconduct. To the extent not inconsistent herewith, such persons shall be reimbursed for any costs, fees, and expenses incurred in the defense of any action brought by an Owner. Should a lawsuit be brought by an Owner and a decision entered against the Owner, the Owner shall reimburse the Association for costs, fees, including reasonable attorneys' fees, and expenses, plus reasonable compensation for the time of the directors, officers or other committee members, to the extent

permitted by law. Any such amounts shall be collected and secured in the same manner as any other assessments.

Section 6. Professional Management. The Association shall at all times engage the services of a professional manager or a professional management company to maintain the Common Area, collect assessments and attend to such other duties and fulfill such other functions as may be determined by the Board.

ARTICLE V

MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. Every Owner of a Lot which is subject to assessment shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment. Membership shall automatically terminate when an Owner ceases to be an Owner, and any new Owner shall likewise automatically succeed to such membership in the Association. Membership in the Association shall not be transferred, pledged or alienated in any way, except upon the sale of the Lot to which it is appurtenant, and then only to such purchaser, or by intestate succession, testamentary disposition, foreclosure of a mortgage of record or other legal process transferring title to such Lot and then only to the person to whom such title is transferred. Any attempt to make a prohibited transfer of a membership will be void and will not be recognized or reflected upon the books and records of the Association. In the event an Owner of any Lot shall fail or refuse to transfer the membership held in his name upon the sale or other transfer of his Lot to the purchaser of such Lot, the Association shall have the right to record a transfer upon the

books of the Association, and the membership held in the name of the seller or transferor shall be null and void as though the same had been surrendered.

Section 2. Member Voting. Each Member shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members, except as otherwise provided in this Declaration. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

Section 3. Voting Rights of Joint Owners. The vote for each Lot must be cast as a unit, and fractional votes shall not be allowed. In the event that joint Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Owner or Owners casts a vote representing a certain Lot, it will thereafter be conclusively presumed for all purposes that he or they were acting with the authority and consent of all other Owners of the same Lot. In the event more than one vote is cast for a particular Lot, none of said votes shall be counted and said votes shall be deemed void.

Section 4. Additional Member Rights. Each Member shall have such other rights, duties and obligations, as set forth in the Articles and Bylaws of the Association, as same may be amended from time to time.

Section 5. Rights Appurtenant to Lot. The Association membership of each Owner of a Lot within the Properties shall be appurtenant to said Lot. The rights and obligations of an Owner and membership in the Association shall not be assigned,

transferred, pledged, conveyed, or alienated in any way, except upon transfer of ownership to the Owner's Lot, and then only to the transferee of ownership to such Lot, or by intestate succession, testamentary disposition, foreclosure of a mortgage of record, exercise of a power of sale under a deed of trust, or such other legal process as is in effect or as may hereinafter be established under or pursuant to the laws of the State of Arizona. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership to a lot shall operate to transfer said membership to the new Owner thereof.

ARTICLE VI

FUNDS AND ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Owner of a 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, charges or other Common Expenses; and (2) special assessments, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorneys' fees, other collection expenses and late charges as established herein, if such assessments are not timely paid shall be a charge against the applicable Lot and shall be a continuing lien upon the property against which each such assessment is made pursuant to A.R.S. Section 33-1256. The recording of this Declaration shall constitute record notice and perfection of any

lien arising by virtue of this Declaration. As such, further recordation of any claim of lien is not required. Any lien arising by virtue of this Declaration shall also be exempt under Chapter 8 of Title 33, Arizona Revised Statutes, dealing with homestead and personal property exemptions. Each such assessment, together with interest, costs, and reasonable attorneys' fees, other collection expenses and a late charge, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. By way of additional clarification and not limitation, any fees, charges, late charges, monetary penalties, interest or other amounts charged pursuant to the Operative Documents are enforceable as assessments under this section.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the Properties and for the improvement, maintenance, and replacement of the Common Areas, or any improvements upon the Properties, and of the dwelling units situated on the Properties, and for such other purposes as may be appropriate under this Declaration, the Articles, Bylaws, Rules and Regulations or applicable law.

Section 3. Annual Assessments - Maximum Amounts. Commencing January 1, 1986, the initial maximum annual assessment (dues) shall be \$3,000.00 per each Lot.

(a) From and after January 1, 1987, the maximum annual assessment may be increased each year not more than ten percent (10%) above the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1, 1987, the maximum annual assessment may be increased above the maximum annual assessment by a majority of the votes of those Members who are voting in person or by proxy at a meeting duly called for this purpose.

(c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum without Owner approval.

Section 4. Special Assessments. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of an improvement upon the Common Area, including fixtures and personal property related thereto, replacement of damaged or destroyed Common Areas, or other Common Expenses, provided that any such assessment shall have the assent of a majority of the votes of those Members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Meetings: Notice and Quorum for Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all Members not less than ten (10) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast thirty-three percent (33%) of all the votes of the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same

notice requirements, 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.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots, and may be collected on a monthly, quarterly, or annual basis, as determined by the Board of Directors of the Association. The Board of Directors shall determine when an assessment is due and payable, and when the payment of an assessment shall be deemed delinquent. Absent another determination by the Board, 1/12th of the total annual assessments (dues) shall be payable monthly in advance on the 1st day of each month.

Section 7. Assessment Certifications. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid subject to the provisions of this Declaration.

Section 8. Late Charges. Each Owner shall pay the sum of twenty-five dollars (\$25.00) for each assessment or other charge not paid by the tenth (10th) day of the month in which the assessment or charge is due.

Section 9. Enforcement of Assessments. Each assessment levied hereunder shall be a separate, distinct and personal debt and obligation of the Owner or Owners against whom the same is assessed, and shall constitute a lien and charge upon the Lot to which the assessment relates. Each Owner by acceptance of a deed relating to a Lot or Lots or by acceptance of any other document

or instrument conveying an ownership interest therein, whether or not it shall be expressed in any such deed or other document or instrument, is and shall be deemed to covenant and agree to pay to the Association the assessments, both annual and special, or as otherwise provided for herein, and agree to the enforcement of the assessments in the manner herein specified. In the event the Association employs an attorney or attorneys for collection of any assessment, whether by suit or otherwise, or to enforce compliance with or specific performance of the terms and conditions of this Declaration, or for any other purpose in connection with the breach of this Declaration, each Owner agrees to pay reasonable attorneys' fees, accountants' fees and costs thereby incurred in addition to any other amounts due from the Owner or any other relief or remedy obtained against said Owner. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of eighteen percent (18%) per annum. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Areas or abandonment of a Lot. Failure of the Association or its management agent to perform any of the duties set forth under the Operative Documents or management agreement shall not be an excuse for non-payment of assessments. 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 Association 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:

(a) Enforcement by Suit. The Association may bring a suit at law against each Owner or Owners to enforce each assessment obligation. Each Owner agrees that any judgment rendered in any such action shall include a sum for reasonable attorneys' fees in such amount as the Court may adjudge against the defaulting Owner, plus all court costs and necessary expenses and accounting fees incurred by the Association, plus interest on all amounts from the date the assessment becomes delinquent until paid in full, and an amount for accruing assessments, attorneys' fees and costs, until all amounts due and owing under any such judgment are paid in full.

(b) Enforcement by Lien. Each default in payment of an assessment shall constitute a separate basis for a claim of lien or a lien. The amount of the lien shall include, but not be limited to, all unpaid assessments, plus interest on all amounts from the date the assessment becomes delinquent until paid in full, plus legal and accounting expenses incident thereto. Any such lien may be foreclosed by appropriate action in Court, or in the manner provided by law for the foreclosure of a realty mortgage, or the exercise of a power of sale in a trust deed, as elected by the Association, as set forth by the laws of the State of Arizona, as the same may be changed or amended. The lien provided for herein shall be in favor of the Association and shall be for the benefit of all other Lot Owners. The Association shall have the power to bid in its interest at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any such Lot. In the event such foreclosure is by action in Court, reasonable attorneys' fees, Court costs, title

search fees, interest and all other costs and expenses shall be allowed to the extent permitted by Law. Each Owner hereby expressly waives the defense of the Statute of Limitations applicable to the bringing of any suit or action thereon.

(c) Notification. The Board may notify all Owners of the names of all persons who have defaulted in the payment of any assessment when due and the amount thereof in the discretion of the Board of Directors.

Section 10. Subordination of the lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage or trust deed. Sale or transfer of any Lot shall not affect the assessment lien. The sale or transfer of any unit pursuant to mortgage foreclosure of the first mortgage or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payment which became due prior to such sale or transfer. The extinguishment of such lien shall not in any way affect the personal obligation of the Owner of the Lot at the time the payment giving rise to such lien became due. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from liens related thereto. Any person acquiring an interest in any Lot shall, upon giving written notice to the Board, be entitled to a statement from the Association, within twenty (20) business days of the receipt of the request, setting forth the amount of unpaid assessments and other charges, if any, and such person shall not be liable for any past due amounts not disclosed by the Association, except for assessments and other charges which accrue or become due after the date the person acquired said

interest. Further, in the event of foreclosure, the Owner shall be required to pay a reasonable rental for the Lot, and the Association in the foreclosure action shall be entitled to the appointment of a receiver to collect the rental without regard to the value of the mortgage security.

ARTICLE VII

ARCHITECTURAL CONTROL

Section 1. Delegation of Rights. All rights and powers granted to the Board in this Declaration regarding Architectural control may, in the discretion of the Board, be delegated to an Architectural Committee. All decisions of the Board or the Architectural Committee, if one is established, shall be final, and no Owner or other party shall have recourse against the Board or the Architectural Committee for its refusal to approve any proposed improvement or alteration.

Section 2. Architectural Committee. The Architectural Committee, if established by the Board of Directors of the Association, shall consist of such regular members and alternate members as may be determined by the Board. In the absence of a specific Architectural Committee, the Board of Directors shall be responsible for architectural control. No member of the Architectural Committee shall be required to be an architect or to meet any other particular qualifications for membership on the committee. A member of the Architectural Committee need not be, but may be, a member of the Board of Directors or an officer of the Association. The Board of Directors shall have the right to establish such rules and regulations governing the activities and

procedures of the Architectural Committee as the Board deems appropriate including, but not limited to, determining the requirement for a quorum and the required vote for approval or disapproval of any item. The Board shall have the right to appoint and remove all regular and alternate members of the Architectural Committee at any time for any reason, and to fill any vacancies in the Architectural Committee however caused. Members of the Architectural Committee shall not be entitled to compensation for their services.

Section 3. Applications. The Board shall establish a procedure for the preparation, submission and determination of applications for any improvement or alteration. The Board may, from time to time and in its sole and absolute discretion, adopt, amend, and repeal by majority vote or written consent, rules and regulations which shall interpret and implement the provisions contained in this Article VII and set forth the standards and procedures for architectural control review and the guidelines for architectural design, placement of buildings, landscaping, color schemes, exterior finishes, use of materials, and similar features and items in accordance with this Declaration. The Board, or the Architectural Committee, as the case may be, shall keep and maintain a written record of all actions taken in connection with architectural control.

Section 4. Failure to Approve or Disapprove. In the event the Board, or the Architectural Committee, as the case may be, fails to approve or disapprove an application for improvement or alteration within thirty (30) business days after submission of said application, duly prepared in accordance with the rules

promulgated by the Board or the Architectural Committee, approval will not be required and this Article will be deemed to have been fully complied with.

Section 5. Subsequent Plans. The approval by the Board or the Architectural Committee, as the case may be, of any plans, drawings, or specifications, for any work done or proposed, or for any other matter requiring prior written approval by virtue of this Declaration, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification or matter subsequently submitted for approval.

Section 6. Liability. Neither the Board, nor the Architectural Committee, nor any member thereof shall be liable to the Association, to any Owner, or to any other party, for any damage, loss, or prejudice suffered or claimed on account of (a) the approval or disapproval of any plans, drawings, or specifications, whether or not defective, (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications, (c) the development of any Property within the Properties, or (d) the execution and filing of any estoppel certificate, whether or not the facts therein are correct; provided, however, that with respect to the liability of a member of the Board or the Architectural Committee, such member shall have acted in good faith on the basis of such information as may be possessed by the members. Without in any way limiting the generality of any of the foregoing provisions of this Section, The Board or the Architectural Committee, or any member thereof may, but is not required to, consult with or hear the views of the Association or any Owner with respect to any plans,

drawings, specifications, or any other proposal submitted to the Board or the Architectural Committee.

Section 7. Exterior Appearance Rules. Anything to the contrary notwithstanding contained in this Declaration or otherwise, the Board shall have the right at any time and from time to time to promulgate, adopt, amend, and repeal reasonable rules and regulations concerning the landscaping, color scheme, and other related matters affecting the exterior appearance of improvements located upon the Properties.

ARTICLE VIII

EASEMENTS

Section 1. Utility Easements. There is hereby created a blanket easement upon, across, over and under the above described Properties for ingress, egress, installation, replacing, repairing and maintaining all utility and service lines and systems, including, but not limited to, water, sewers, gas, telephone, electricity, television cable and antenna systems, and other communication and security lines and systems. By virtue of this easement, it shall be expressly permissible for the providing utility or service company to install and maintain facilities and equipment on the said Properties and to affix and maintain wires, circuits and conduits on, in, above, across and under the roofs and exterior walls of said dwelling Units, provided, however, that in no event shall entry to the interior of any residence be authorized hereby. Notwithstanding anything to the contrary contained in this Paragraph, no sewers, electrical lines, water lines, or other utilities or service

lines may be installed or relocated on said properties except as approved by the Association's Board of Directors. This easement shall in no way affect any other recorded easement on said Properties. This easement shall be limited to improvements as originally constructed by the developer of the Properties, or as subsequently approved by the Board of Directors of the Association.

Section 2. Encroachments. Each dwelling Unit and the Common Areas shall be subject to an easement for encroachments created by construction, settling and overhangs as initially designed and constructed. A valid easement for said encroachments and for the maintenance of same, so long as it stands, shall and does exist. In the event the a structure is partially or totally destroyed, and then rebuilt, the Owners agree that minor encroachments of parts of the adjacent dwelling units or Common Areas due to construction shall be permitted and that a valid easement for said encroachment and the maintenance thereof shall exist. Anything herein to the contrary notwithstanding, any such encroachment or easement shall not exceed one (1) foot.

Section 3. Easement for Ingress and Egress. There is hereby created a blanket easement of ingress and egress upon, over and across the Properties for the Association, its authorized officers, directors, agents, employees and subcontractors to provide such repairs, pest control services, landscaping services and such other services as may be authorized or required by the Declaration, Articles, Bylaws or any duly adopted resolution of the Board or of the Members of the Association.

ARTICLE IX

GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration or any provision of the Operative Documents. Failure by the Association or by an Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. If any provision of this Declaration, the Articles, Bylaws or Rules and Regulations of the Association, or any section, clause, sentence, phrase or word, where the application thereof in any circumstance, is held invalid by a Court of competent jurisdiction, the validity of the remainder of this Declaration, the Articles, Bylaws or the Rules and Regulations of the Association, and of the application of any such provision, section, sentence, clause, phrase or word in any other circumstance, shall not be affected thereby, and the remainder of this Declaration, the Articles, Bylaws or the Rules and Regulations of the Association shall be construed as if such invalid part were never included therein. Further, title to a Lot shall not be rendered unmarketable or otherwise affected by reason of the failure of the Operative Documents to comply with applicable law.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded,

after which time they shall automatically extend for successive periods of ten (10) years. The provisions of this Declaration may be changed, modified or amended by an instrument in writing setting forth such change, modification or amendment, provided that the Owners of not less than fifty-one percent (51%) of the Lots have consented in writing to any such change, modification or amendment. An acknowledgement by an authorized officer of the Board indicating appropriate consent, in any recorded document setting forth such change, modification or amendment, shall be deemed prima facie evidence of such consent.

Section 4. Right of Entry and Right of Board to Correct Violations and Levy Fines. The Board of Directors shall have a right of entry granted herein, and except as otherwise provided, the Board or its authorized agents or employees may enter any Unit in which a violation of these restrictions exists and may correct such violation at the expense of the Owner of such Unit, and the Board shall be empowered to levy fines upon the Owner of any Unit for any such violation. The Board shall be authorized to establish, assess and collect fines for violation of the Operative Documents in a manner to be determined by the Board or in the Rules and Regulations. The Board shall also be authorized to impose and collect late fees for any delinquency in the payment of any amounts owed the Association, including previously imposed late fees. Such expenses, fines, and late fees, and other amounts shall be collected in the same manner as assessments herein.

Section 5. Violations and Other Nuisances. Every act or omission whereby any provision of this Declaration is violated in

whole or in part is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by the Association or any Owner or Owners of Lots within the Properties. However, any other provision to the contrary notwithstanding, only the Association, the Board, or any duly authorized agents of any of them, may enforce by self-help any of the provisions of said Restrictions.

Section 6. Violation of Law. Any violation of any state, municipal or local law, ordinance or regulation, including zoning laws, pertaining to the ownership, occupation or use of any Property within the Properties 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 7. Remedies Cumulative. Each remedy provided by this Declaration is cumulative and are in addition to any other remedies provided herein or otherwise available in law or in equity. The Association or the Board may proceed as outlined herein or under any other provision of this Declaration, the Articles, Bylaws or Rules and Regulations or any of them to enforce its remedies.

Section 8. Delivery of Notices and Documents. Any written notice or other documents relating to or required by this Declaration may be delivered either personally or by mail. If by mail, it shall be deemed to have been delivered twenty-four hours after a copy of same has been deposited in the United States mail, postage prepaid, addressed as follows: If the Association, at 7500 McCormick Parkway, Scottsdale, Arizona 85258, and to the address of the then current management company; and if to an

Owner, to the address of any Lot within the Properties owned by the Owner or to any other address last furnished by an Owner to the Association; provided however, that any such address may be changed at any time by the party concerned by recording a written notice of change of address and delivering a copy thereof to the Association. Each Owner of a Lot shall file the correct mailing address of such Owner with the Association, and shall promptly notify the Association in writing of any subsequent change of address. In the event more than one person shall own a Lot, notice to one Owner shall be deemed notice to all Owners of the Lot. If a Lot is owned by more than one Owner, the Owner shall designate a single Owner to receive all notices. Upon written request to the Board, the holder of any recorded mortgage or the trustee or beneficiary under any recorded trust deed encumbering any Lot shall be given a copy of all notices permitted or required by this Declaration to be given to the Owner or Owners of a Lot subject to such mortgage or trust deed. Notwithstanding anything in this Declaration to the contrary, no person shall be considered as an Owner who claims other than an undivided equal ownership interest in a Lot with all other persons purporting to be Owners of the applicable Lot.

Section 9. The Declaration. By acceptance of a deed or by acquiring any ownership interest in any of the real property included within this Declaration, each person or entity, the heirs, personal representatives, successors, transferees and assigns, agree to be bound by all of the provisions, restrictions, covenants, conditions, rules and regulations now or hereafter imposed by this Declaration and any amendments thereof.

In addition, each such person by so doing thereby acknowledges that this Declaration sets forth a general scheme for the improvement and development of the real property covered thereby and hereby evidences his interest that all the restrictions, conditions, covenants, rules and regulations contained herein shall run with the land and be binding on all subsequent and future Owners, grantees, purchasers, assignees, and transferees thereof. Furthermore, each such person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the various subsequent and future Owners.

Section 10. Construction of Operative Documents. If any conflict exists between the provisions of this Declaration, including amendments, and the Articles, Bylaws or Rules and Regulations, or any amendments thereto, the provisions of the Declaration prevail. If any conflict exists between the provisions of the Articles, including amendments thereto, and the Bylaws or Rules and Regulations, or any amendments thereto, the provisions of the Articles prevail. If any conflict exists between the provisions of the Bylaws, including amendments thereto, and the Rules and Regulations, or any amendments thereto, the provisions of the Bylaws prevail.

Section 11. Perpetuities. If any of the options, privileges, covenants or rights created by this Declaration shall be declared unlawful, void or voidable for violation of the Rule Against Perpetuties, then such provisions shall continue until twenty-one (21) years after the death of the survivors of the now living

descendants of the president of the United States or the Governor of Arizona.

Section 12. Waiver. Any right or remedy provided for in this Declaration shall not be deemed to have been waived by any act or omission, including, but without limitation, past failure or acquiescence of or by the Board or the management agent to enforce similar provisions in the Declaration, Bylaws, Articles or Rules and Regulation adopted prior to this Amended Declaration of Covenants, Conditions and Restrictions, or any acceptance of payment or partial performance or any forbearance, except by an instrument in writing specifying such right or remedy and executed by the person against whom enforcement of such waiver is sought.

Section 13. Headings. The headings used herein are for convenience only and are not intended to relieve any person or entity from reading and becoming familiar with all provisions herein, nor are the headings binding or limiting in any manner.

DATED this 6th day of December, 1988.

COLONIA ENCANTADA HOMEOWNERS
ASSOCIATION, INC., an Arizona
corporation

By Edward S. Levy
Its President

88 593236

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me
this 6th day of December, 1988, by Edward J. Levy
Levy, the President of Colonia
Encantada Homeowners Association, Inc., an Arizona corporation,
on behalf of the corporation.

WITNESS my hand and official seal.

Carol A. Reiser
Notary Public

My Commission Expires:

9-23-89

EXHIBIT A

88 593236

Lots 1 through 42, inclusive, and Tracts A through C, inclusive, Cuernavaca Segundo Townhouses, according to the plat recorded in Book 193 of Maps, page 11, records of Maricopa County, Arizona.

Lots 43 through 60, inclusive, Lots 63 through 79, inclusive and Tracts A through E, inclusive, Cuernavaca Segundo Unit Two, according to the plat reorded in Book 212, Page 15, records of Maricopa County, Arizona.

Lots 61 and 62, inclusive, and Tracts A through C, inclusive, Cuernavaca Segundo Unit Three, according to the plat recorded in Book 229, page 17, records of Maricopa County, Arizona.

When recorded mail to:

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Hoyp

Charles E. Maxwell, Esq.
MAXWELL & MORGAN, P.C.
2500 South Power Road, Suite 103
Mesa, Arizona 85209

FIRST AMENDMENT TO AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
CUERNAVACA SEGUNDO
aka
COLONIA ENCANTADA

This First Amendment to the Amended and Restated Declaration of Covenants, Conditions and Restrictions for Cuernavaca Segundo aka Colonia Encantada (the "First Amendment") is made this 17th day of August, 2010.

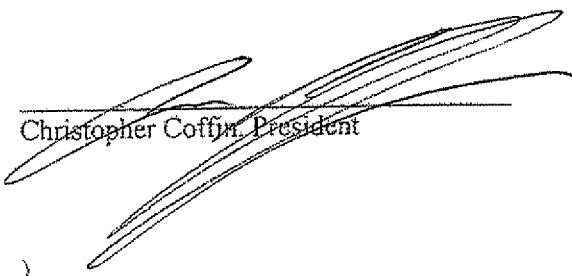
RECITALS

Pursuant to Article IX, Section 3, of the Amended and Restated Declaration of Covenants, Conditions and Restrictions for Cuernavaca Segundo aka Colonia Encantada dated and recorded December 6, 1988 at Instrument No. 88-593236 (the "Declaration"), the undersigned officer certifies that not less than fifty-one percent (51%) of the Lots have consented in writing to the following Amendment to the Declaration:

Article III, Section 1(U) of the Declaration is amended in part by changing the minimum three month lease to no less than six months, as follows: "For purposes of this section, any lease for a period of less than six (6) months in duration shall be conclusively considered to be for transient or hotel purposes." In all other respects, Article III, Section 1(U) shall remain unaffected.

Except as identified, all other provisions of the Declaration shall remain in full force and shall be unaffected by this First Amendment.

Pursuant to Article IX, Section 3 of the Declaration, the undersigned President of Colonia Encantada Homeowners Association, Inc., hereby certifies that he is authorized to execute this First Amendment and that the same was consented to in writing by not less than fifty-one percent (51%) of the Owners of Lots as more fully set forth above; that all requirements regarding this First Amendment will be satisfied upon the recording of this First Amendment; and this First Amendment will be effective upon recordation.

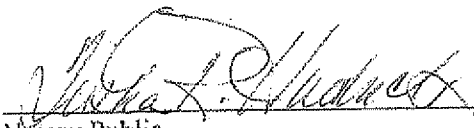

Christopher Coffin, President

State of Arizona)

) ss.

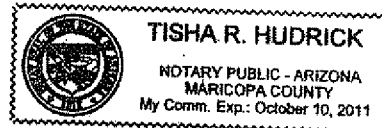
County of Maricopa)

On this 17th day of August, 2010, before me, the undersigned Notary Public, appeared Christopher Coffin, the President of Colonia Encantada Homeowners Association, Inc., known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged that he signed the same for the purposes therein contained.


Notary Public

My commission expires:

OCTOBER 10, 2011



When recorded mail to:

Charles E. Maxwell, Esq.
MAXWELL & MORGAN, P.C.
2500 South Power Road, Suite 103
Mesa, Arizona 85209

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chagollaj

SECOND AMENDMENT TO AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
CUERNAVACA SEGUNDO
aka
COLONIA ENCANTADA

This Second Amendment to the Amended and Restated Declaration of Covenants, Conditions and Restrictions for Cuernavaca Segundo aka Colonia Encantada (the "Second Amendment") is made this 17th day of August, 2010.

RECITALS

Pursuant to Article IX, Section 3, of the Amended and Restated Declaration of Covenants, Conditions and Restrictions for Cuernavaca Segundo aka Colonia Encantada dated and recorded December 6, 1988 at Instrument No. 88-593236 (the "Declaration"), the undersigned officer certifies that not less than fifty-one percent (51%) of the Lots have consented in writing to the following Amendment to the Declaration:

Article III, Section 1 of the Declaration is hereby amended by adding the following new subpart Z:

Z. ADDITIONAL LEASING LIMITATIONS/RESTRICTIONS. Notwithstanding anything in the Declaration to the contrary, and except as otherwise set forth below, and for the purpose of attempting to protect and enhance property values and to encourage Owner occupancy, no Public Purchaser can lease his/her Lot for the first twelve (12) months from the time the applicable deed becomes a matter of record. The Board can consider hardship exceptions in its sole and absolute discretion during said twelve (12) month period, but no "hardship" will be deemed to exist if the Lot was never intended to be occupied by the Public Purchaser, was never in fact occupied by the Public Purchaser and/or the Lot was purchased by a person or entity that purchases property for speculative purposes.


Except as identified, all other provisions of the Declaration shall remain in full force and shall be unaffected by this Second Amendment.

Pursuant to Article IX, Section 3 of the Declaration, the undersigned President of Colonia Encantada Homeowners Association, Inc., hereby certifies that he is authorized to execute this Second Amendment and that the same was consented to in writing by not less than fifty-one percent (51%) of the Owners of Lots as more fully set forth above; that all requirements regarding this Second Amendment will be satisfied upon the recording of this Second Amendment; and this Second Amendment will be effective upon recordation.


Christopher Coffin, President

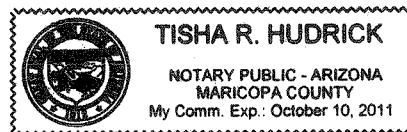
State of Arizona)
) ss.
County of Maricopa)

On this 17th day of August, 2010, before me, the undersigned Notary Public, appeared Christopher Coffin, the President of Colonia Encantada Homeowners Association, Inc., known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged that he signed the same for the purposes therein contained.


Notary Public

My commission expires:

OCTOBER 10, 2011



When recorded mail to:

20160CETamend-3-1-1--
Hoyp

Charles E. Maxwell, Esq.
MAXWELL & MORGAN, P. C.
4854 E. Baseline Road, Suite 104
Mesa, Arizona 85206

THIRD AMENDMENT TO AMENDED AND RESTATED DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS FOR
CUERNAVACA SEGUNDO AKA COLONIA ENCANTADA

This Third Amendment to the Amended and Restated Declaration of Covenants, Conditions and Restrictions for Cuernavaca Segundo aka Colonia Encantada (the "Third Amendment") is made this 25 day of March, ~~2015~~ 2016

RECITALS

Pursuant to Article IX, Section 3 of the Amended and Restated Declaration of Covenants, Conditions and Restrictions for Cuernavaca Segundo aka Colonia Encantada dated and recorded December 6, 1988 at Instrument No. 88-593236 (the "Declaration"), the undersigned officer certifies "that the Owners of not less than fifty-one percent (51%) of the Lots have consented in writing" to the following amendments to the Declaration:

1. Article III, Section 2(C)(1) of the Declaration is amended only to the extent that the first sentence thereof following the title "Fire and Casualty Insurance" is deleted and replaced by the following sentence: "The Association, to the extent reasonably available, shall carry a blanket policy of fire and casualty insurance covering all of the Common Area and all of the improvements thereon, including any and all personal property owned by the Association." In all other respects the remainder of Article III, Section 2(C)(1) shall remain in full force and shall be unaffected by this Third Amendment.

2. Article III, Section 2(C)(4) of the Declaration is hereby deleted and amended in its entirety and replaced by the following Subsection (4):

(4) Owner Insurance.

(i) Notwithstanding anything in the Declaration to the contrary, each Owner of a Lot shall obtain insurance coverage at his own expense covering the Lot and all improvements located thereon, including but not limited to the Single Family Residence. Such coverage shall include, but not be limited to an "all risks" policy and comprehensive liability insurance, in limits and pursuant to such terms as determined by the Board in the exercise of its sole discretion, but such "all risks" portion of any policy of insurance shall be in an amount not less than one hundred percent (100%) of the yearly estimated replacement value of the Single Family

Residence and all other improvements on the Lot, exclusive of any otherwise applicable insurance deductibles. Such "all risks" insurance must also take into consideration party walls, including but not limited to the party wall provisions of Article III, Section 1(X) of the Declaration.

(ii) Each Owner of a Lot that is designated as being in a flood plain according to any federal, state or local authority, must also secure flood insurance in such amounts and pursuant to such terms as determined by the Board in the exercise of its sole discretion.

(iii) Any required policies of insurance herein shall also cover all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership and maintenance of a Lot and shall be procured from carriers with a rating of "A" or better. The Association shall be named an additional insured on all such policies of insurance, and copies of such policies shall be provided to the Association within ten (10) days of receipt/procurement by each Owner, including all renewals or notices of cancellation.

(iv) In the event the required coverages are not secured or if proof of such coverages is not provided as required herein, the Association may, but is not obligated to secure such coverages and in such amounts as the Board in its sole discretion deems necessary to protect the Association's interests and that of its Members. All such expenses, plus a twenty-five percent (25%) handling fee, shall be enforceable against such Owner and his Lot as any other Assessment pursuant to the Declaration, including Article VI, Section 9.


(v) In the event of partial or complete damage or destruction by fire or any other casualty to any Lot, including but not limited to the Single Family Residence or any other improvements thereon, the Owner of the affected Lot shall immediately pursue remediation of the damaged or destroyed portions of the Lot through all available means, including but not limited to insurance proceeds. The Owner shall contract to repair or rebuild such damaged or destroyed portions of the Lot, including the Single Family Residence thereon, in a good and workmanlike manner and in conformance with the original plans and specifications for said Lot or as otherwise subsequently and properly changed pursuant to Article III, Section 1(E) of the Declaration (except for changes required by current building codes). In the event any Owner refuses or fails to so remediate such damage to all portions of the Lot Visible From Neighboring Property, including but not limited to the Single Family Residence, within sixty (60) days from the date of the damage or destruction (or such longer time as may be permitted in writing by the Board in the exercise of its sole discretion), the Association is hereby irrevocably authorized by such Owner to use any and all insurance proceeds to remediate such damage or destruction as more fully set forth above and as otherwise required by such Owner. To the extent such insurance proceeds are insufficient to fully remediate such damage or destruction, the Association may, but is not obligated to expend such additional amounts as it deems necessary to remediate all portions of the Lot Visible From Neighboring Property,

and such Owner shall be assessed all such amounts, plus a twenty-five percent (25%) handling fee. All such amounts shall likewise be enforceable against such Owner and his Lot as any other Assessment pursuant to the Declaration, including Article VI, Section 9.

(vi) Nothing herein shall prevent an Owner from obtaining such additional or other insurance as the Owner deems desirable, including but not limited to insurance covering furnishings and personal property or additional liability coverages. Nevertheless, any insurance policy obtained by an Owner must not diminish or adversely affect or invalidate any insurance or insurance recovery under policies covered by the Association or in which the Association is a named insured and must, to the extent possible, contain a waiver of the rights of subrogation by the insurer as to any claim against the Association, its officers, directors, agents, or employees.

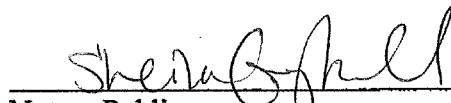
Except as identified herein, all other provisions of the Declaration, including the First Amendment and the Second Amendment thereto, shall remain in full force and shall be unaffected by this Third Amendment.

Pursuant to Article IX, Section 3 of the Declaration, the undersigned President of Colonia Encantada Homeowners Association, Inc., hereby certifies that the foregoing Third Amendment was consented to in writing by the Owners of not less than fifty-one percent (51%) of the Lots as more fully set forth above, and that all requirements regarding this Third Amendment will be satisfied upon the recording of this Third Amendment, and this Third Amendment will be effective upon recordation.


 Kristy Moore, President

State of Arizona)
)ss.
 County of Maricopa)

On this 25th day of March, 2016, before me, the undersigned Notary Public, appeared Kristy Moore, the President of Colonia Encantada Homeowners Association, Inc., known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged that she signed the same for the purposes therein contained.


 Notary Public

My commission expires:

8/14/19

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When recorded mail to:

Charles E. Maxwell, Esq.
MAXWELL & MORGAN, P. C.
4854 E. Baseline Road, Suite 104
Mesa, Arizona 85206

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morenoa

FOURTH AMENDMENT TO AMENDED AND RESTATED DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS FOR
CUERNAVACA SEGUNDO AKA COLONIA ENCANTADA

This Fourth Amendment to the Amended and Restated Declaration of Covenants, Conditions and Restrictions for Cuernavaca Segundo aka Colonia Encantada (the "Fourth Amendment") is made this 11 day of March, 2016.

RECITALS

Pursuant to Article IX, Section 3 of the Amended and Restated Declaration of Covenants, Conditions and Restrictions for Cuernavaca Segundo aka Colonia Encantada dated and recorded December 6, 1988 at Instrument No. 88-593236 (the "Declaration"), the undersigned officer certifies "that the Owners of not less than fifty-one percent (51%) of the Lots have consented in writing" to the following amendments to the Declaration:

1. Article I, Section 13 of the Declaration is hereby deleted and amended in its entirety and replaced by the following Section 13:

Section 13. "Operative Documents" shall mean and refer to the Declaration, Articles, Bylaws, Architectural Committee Rules and Association Rules, and any amendments thereto as may be promulgated from time to time. Sometimes the Architectural Committee Rules and Association Rules shall be collectively referred to as the "Rules".

2. Article I, Section 17 of the Declaration is hereby deleted and amended in its entirety and replaced by the following Section 17:

Section 17. "Single Family" shall mean a group of one or more persons each related to the other by blood, marriage or legal adoption, or a group of not more than two persons not all so related, who maintain a common household in a dwelling.

3. Article I, Section 19 of the Declaration is hereby deleted and amended in its entirety and replaced by the following Section 19:

Section 19. "Single Family Residential Use" shall mean the occupation or use of a Single Family Residence in conformity with this Declaration and other

Operative Documents, and the requirements imposed by applicable zoning laws or other state, county or municipal rules and regulations.

4. Article II, Section 2 of the Declaration is amended only to the extent that the words "and Regulations" in the first sentence thereof (and to the extent found elsewhere in the Declaration) are deleted. In all other respects the remainder of Article II, Section 2 shall remain in full force and shall be unaffected by this Fourth Amendment.

5. Article III, Section 1(A) of the Declaration is hereby deleted and amended in its entirety and replaced by the following Subsection A:

A. SINGLE FAMILY RESIDENTIAL USE. Lots and all improvements located thereon, including Units, shall be used for Single Family Residential Uses only, and no trade or business of any kind may be conducted in or from a Lot, except that the Owner or Occupants residing in a Unit may conduct "discreet business activities" within the Unit which are ancillary to a Single Family Residential Use so long as: (i) the existence or operation of the activity is not apparent or detectable by sight, sound, or smell from outside the Unit; (ii) the activity does not involve regular visitation of the Unit or involve door-to-door solicitation of Occupants of the Properties; (iii) the activity does not, in the Board's judgment, generate a level of pedestrian or vehicular traffic to or from the Lot, or a number of vehicles being parked within the Properties, which is quantifiably greater than that typical of Lots in which no trade or business activity is conducted; (iv) the activity conforms to all zoning requirements for Colonia Encantada; (v) the activity does not increase the Association's liability or property insurance obligations or premiums; and (vi) the activity is consistent with the primary Single Family Residential Use character of the Properties and does not constitute a nuisance or a hazardous or offensive use, as the Board may determine in its sole and absolute discretion. The terms "business" and "trade", as used herein, shall be construed to have their 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: (i) such activity is engaged in full or part-time; (ii) such activity is intended to or generates a profit; (iii) such activity is affiliated with and/or sponsored by a profit or nonprofit entity or organization; or (iv) a license is required therefor. Notwithstanding the foregoing, the leasing of a Lot for purposes consistent with this Subsection and other provisions of the Declaration and other Operative Documents shall not be considered a trade or business. Further, and subject to such rules as the Board may promulgate, nothing contained in this Subsection is intended to prohibit an Owner or Occupant from providing a service that solely benefits other Owners and Occupants.

6. Article III, Section 1(C) of the Declaration is hereby deleted and amended in its entirety and replaced by the following Subsection C:

C. ANTENNAS AND SATELLITE DISHES. To the extent restrictions are permitted by state and/or federal statutes or rules, including FCC Otard Rules, no antenna, satellite dish or other device for the transmission or reception of television or radio signals, or any other form of electromagnetic radiation, shall be installed on a Lot or Unit thereon except in accordance with the Architectural Committee Rules, which Rules can require the same to be installed in the least obtrusive location on a Lot and related Unit while still providing for maximum reception, and such Rules may require the same to be painted the same color as the improvement upon which the device is located. If any such device is not Visible From Neighboring Property, no advance consent or approval shall be required. Notwithstanding the foregoing, nothing in this Subsection C shall be deemed to supersede or contradict applicable state and/or federal statutes or rules, including FCC Otard Rules.

7. Article III, Section 1 of the Declaration is hereby amended by adding a new Subsection after Subsection C as amended above and before the existing Subsection D, and this new Subsection C-1 will be as follows:

C-1. SOLAR ENERGY DEVICES. Except as part of the original construction of a Unit on a Lot, no Unit shall be permitted to have any air conditioning, heating or other environmental enhancement device installed on the roof thereof, except that solar energy units may be mounted on the roof of the Single Family Residence, provided that the solar unit(s) is screened from view from any other Lot Owner or Occupant, except as otherwise permitted by law. No solar panels shall be installed on a Unit or Lot without the prior written approval and authorization of the Architectural Committee and such installation must be performed by a licensed installer, to the extent such restrictions are permitted by law. If such approval is granted, the Architectural Committee may specify the size and type of solar panels allowed, and the location where they may be installed, to the extent such restrictions are permitted by law. Notwithstanding anything herein to the contrary, the Association recognizes A.R.S. §33-1816, understands that it is subject thereto, and will comply with the same as presently constituted and to the extent it may be amended hereafter.

8. Article III, Section 1(E) of the Declaration is hereby deleted and amended in its entirety and replaced by the following Subsection E:

E. ALTERATIONS, ADDITIONS OR IMPROVEMENTS. As more fully set forth in and without limiting Article VII of the Declaration, no alterations, additions or improvements, including any building, fence, wall or other structure, excavation, landscaping or other work which in any way alters the exterior appearance of any Property within the Properties or the improvements located thereon, including but not limited to the Single Family Residence, shall be commenced, erected or maintained unless and until the plans and specifications showing in detail the nature, kind, shape, height, width, materials, color and

location of the same shall have been submitted to and approved in writing by the Board, or by an Architectural Committee, as more fully set forth in Article VII hereof, and written consent must be obtained from any adjoining Owner in the event such alteration, addition or improvement in any manner affects a party wall. Any Owner may make non-structural alterations, additional or improvements within the interior of a Unit without the prior written approval of the Board or the Architectural Committee. No changes or deviations in or from such plans and specifications once approved shall be made without prior written approval of the Board or the Architectural Committee. All decisions of the Board or Architectural Committee shall be final and no Owner or other party shall have recourse against the Board or Architectural Committee for its refusal to approve any such plans or specifications or plat plan, including lawn area and landscaping. By way of information and not by limitation, no basketball standards or fixed sports apparatus shall be attached to any Unit or garage or erected on any Lot. The Owner accepts full responsibility for any damage to any other Unit, Lot, or the improvements thereon, or to the Common Areas and the improvements thereon, which may result from such alteration, addition or improvement. The damage and any costs, including all attorneys' fees, plus a surcharge as set forth below, resulting from such action shall be the personal obligation of the Owner (as with all other amounts set forth in this Declaration), and shall constitute a Lot Specific Assessment and lien against the Lot..

In the event any Owner makes any alteration, addition or improvement without the approval of the Association as set forth above, the Association may require the Owner to restore the Property to its original condition within thirty (30) days. If the Owner fails to do so, the Association may take such action as it deems appropriate to restore the Property. Any costs plus a twenty-five percent (25%) surcharge as a handling/management fee, and all attorneys' fees so incurred shall be the personal obligation of the Owner, and shall constitute a Lot Specific Assessment and lien against the Lot.

9. Article III, Section 1(H) of the Declaration is hereby deleted and amended in its entirety and replaced by the following Subsection H:

H. GARAGES AND PARKING. Garages shall be used for parking vehicles and storage purposes only and shall not be converted for living or recreational purposes, temporary or permanent. Except as provided above, only motor vehicles in operating condition shall be parked in uncovered parking areas. Car covers are not permitted on any vehicle within the Properties, except within an enclosed garage. Vehicles owned by Lot Owners shall not be parked in or on the streets or private drives constituting part of the Common Areas for any period in excess of two (2) hours, except when using an adjacent recreational facility. Vehicles parked in violation hereof will be subject to fines in an amount to be set by the Board and/or towing as more fully set forth in the Rules. Other than the enclosed garage areas, parking shall be allowed for up to two (2) additional authorized vehicles. The additional vehicles shall be parked in the applicable

driveway. Guest parking shall be limited to authorized guest vehicles only and may be permitted to remain overnight for a period of not more than two (2) weeks of a six (6) week period, but only upon approval of the manned entry control personnel or the property manager. Guest parking shall be permitted on the streets when parked on the right hand side of the street and where not on a "blind" corner or in an obstructive fashion, but in no event shall any vehicle remain parked on any street overnight.

Further, Any vehicle parked in such a manner as to impede, block or prevent ready access to the driveway or garage of any Lot to which the vehicle does not belong, shall be subject to immediate towaway at the applicable vehicle owner's expense. Parking exceptions may be permitted under special circumstances only when granted in writing by the manned entry control personnel or the property manager. The Board may also adopt Rules regarding parking and traffic safety as more fully set forth in this Declaration.

10. Article III, Section 1(I)(1) of the Declaration is hereby amended only to the extent that the following additional sentence shall be added to the end of Subpart (1) as it presently exists: "The Board shall be the sole arbiter of what constitutes proper maintenance as required in this Subpart." In all other respects the remainder of Article III, Section 1(I)(1) shall remain in full force and shall be unaffected by this Fourth Amendment.

11. Article III, Section 1(J) of the Declaration is hereby amended only to the extent that the third and fourth sentences thereof are deleted and replaced by the following sentences: "No building or structure upon any Property within the Properties shall be permitted to fall into disrepair, and each such building and structure shall be at all times kept in good condition and repair, and adequately painted or otherwise finished, and the Board shall be the sole arbiter regarding compliance herewith. In the event any Owner fails to keep any building, structure or improvement on his Lot in good condition and repair, and adequately painted, the Association shall have the right (but not the obligation) to do so and shall charge the Owner the actual cost thereof, plus a twenty-five percent (25%) surcharge as a handling/management fee, plus all attorneys' fees, which amounts shall be paid by the Owner to the Association within thirty (30) days, and shall constitute a Lot Specific Assessment and lien against the Lot." In all other respects the remainder of Article III, Section 1(J), shall remain in full force and shall be unaffected by this Fourth Amendment.

12. Article III, Section 1(K) is only amended to the extent that the words "skates or skateboards" are deleted from the seventh sentence thereof, and to the extent that the eighth sentence is deleted and replaced by the following sentence: "Bicycles, tricycles, skates, skateboards and other non-motorized vehicles, regardless of how they are described or categorized (with the exception of infant and child strollers used to exclusively for said purpose), are prohibited on Common Area lawns, any landscaped areas, in the swimming pool areas and the tennis court areas." In all other respects the remainder of Article II, Section 1(K) shall remain in full force and shall be unaffected by this Fourth Amendment.

13. Article III, Section 1(L) of the Declaration is hereby deleted in its entirety due to the amendments to Article III, Section 1(A) above.

14. Article III, Section 1(R) of the Declaration is amended only to the extent that the words "or vermin" are added to the end of said Subsection and made a part thereof. In all other respects the remainder of Article III, Section 1(R) shall remain in full force and shall be unaffected by this Fourth Amendment.

15. Article III, Section 1(S) of the Declaration is amended only to the extent that the last sentence thereof is deleted and replaced by the following sentence: "The Board may adopt Rules governing leases and tenants, including a requirement that the Association's Operative Documents shall be incorporated into the lease agreement and that the lease agreement shall contain a provision terminating the lease if the tenant or tenant's guests or invitees violate any of the Operative Documents of the Association, to the extent not otherwise restricted or limited by law." In all other respects the remainder of Article III, Section 1(S) shall remain in full force and shall be unaffected by this Fourth Amendment.

16. Article III, Section 1(T) of the Declaration is amended only to the extent that the following shall be added at the commencement of the first sentence thereof (along with the "N" in "No" being changed to a lower case "n") following the title "SIGNS": "To the extent permitted by law, including A.R.S. §33-1808, ..." In all other respects the remainder of Article II, Section 1(T) shall remain in full force and shall be unaffected by this Fourth Amendment.

17. Article III, Section 1(U) of the Declaration is hereby deleted and amended in its entirety and replaced by the following Subsection U:

U. SALES, TRANSFERS, LEASES, ETC. To the extent not inconsistent with applicable law, the Association may charge fees to facilitate transfers of title from one Owner to another Owner to comply with applicable disclosure laws and/or title company requests, but in an amount not to exceed the statutory limit then in effect (currently \$400.00). Said fees shall not apply to transfers of title from an Owner to their own trust, from a trust to the trust beneficiaries, from one spouse to the other, or from parents to children or from children to parents. As the Association is an access controlled community, the Board has the right to exclude any person who claims to be an Owner, including family members, tenants, guests and/or invitees, who attempt to access the Properties or occupy a Lot or any portion thereof when the purported owner has not provided documentary recorded proof of ownership and otherwise complied with the transfer requirements of the Association. Similarly, the Board has the right to exclude any person, other than an Owner, who attempts to occupy a Lot or any portion thereof or who attempts to hold over, if so requested in writing by the Owner. No Owner shall permit his Lot or the improvements thereon to be used for transient or hotel purposes, nor shall an Owner enter into a lease for less than the entire Lot, including improvements. For purposes of this Subsection, any lease for a period of less than six (6) months in duration shall be conclusively considered to be for transient or hotel purposes. No Unit may be leased for more than two (2) time periods per year. Additionally,

no lease shall be to more than two (2) unrelated persons and no more than two (2) unrelated persons shall be permitted to reside in a leased Unit. By way of illustration and not of limitation, under no circumstance shall any Lot be used at any time for short-term rental purposes. Short-term rental purposes shall include any attempt to allow one or more persons to occupy all or any portion of a Lot for a period of less than six (6) months in duration, regardless of whether any monetary consideration changes hands, directly or indirectly, as part of the lease transaction. All leases shall be in writing, shall in all respects be subject to and in compliance with the provisions of the Operative Documents and, to the extent permitted by law, shall expressly provide that a violation of any provision of the Operative Documents shall be a default under such lease. Any Owner who leases or rents a Lot shall deliver to the tenant, prior to the start of the tenancy, a copy of the Operative Documents. To the extent not prohibited by law, each Owner shall deliver to the Association, within ten (10) days of commencement of the tenancy, a fully executed tenant registration form as may be established by the Board, a copy of the lease agreement, and a signed acknowledgement that a copy of the Operative Documents have been delivered to the tenant. To the extent permitted by law, any Owner who fails to observe the provisions of this Subsection shall be subject to fines according to the schedule set forth by law or in the Association's then current Rules. Additionally, the Association may require that the Owner terminate the lease agreement, and obtain any other remedies as may be available to it by law. The Association shall be entitled to recover any costs, including all of its attorneys' fees and costs incurred in connection with the enforcement of this Subsection. Further, if an Owner shall at any time lease a Lot and shall default for a period of more than one (1) month on the payment of any assessment due to the Association, the Board may, at its option, so long as such default shall continue, demand and receive from any tenant of the Owner occupying the Lot, the rent due or becoming due. Payment of such rent to the Board shall be sufficient payment and discharge of such tenant and the Owner to the extent of the amount so paid, less the cost of collection, including all attorneys' fees.

In addition to the foregoing, to provide the Association with funds for capital reserves and extraordinary or unexpected expenses, each Public Purchaser of a Lot from any Owner shall pay to the Association immediately upon becoming the Owner of the Lot a fee in an amount as established from time to time by the Board (hereinafter "Capital Contribution Fee"). All Capital Contribution Fees will be deposited in the Association's reserve account or separately accounted for in the Association's operating account as a reserve fund, and all Capital Contribution Fees will be used only as directed by the Board as it may see fit in its sole discretion. Capital Contribution Fees paid to the Association pursuant to this Subsection shall be collected at the close of escrow if a title company is used to facilitate the conveyance, and may be pursued by the Association as any other assessment if a title company is not used to facilitate the conveyance. Payments made pursuant to this Subsection shall be nonrefundable, shall not be considered as an advance payment of any assessments levied by the Association pursuant to the original Declaration, and shall not be considered as a

transfer fee as set forth above or pursuant to A.R.S. §33-1806. If for any reason the Capital Contribution Fee is not paid immediately by an Owner upon becoming such, the Capital Contribution Fee shall be included in the lien and personal obligation of that Owner as a Lot Specific Assessment, plus all attorneys' fees.

18. Article III, Section 1(W) of the Declaration is hereby deleted and amended in its entirety and replaced by the following Subsection W:

W. MANNED ENTRY CONTROL SERVICES. The Association may, but is not obligated to provide manned entry control services at the street entry of the Properties from McCormick Parkway. The Association shall not, however, be liable to any Owner, Occupant, family member, tenant, guest, licensee or invitee for any reason by virtue of maintaining or failing to maintain such manned entry control services, nor shall any such manned entry control services (nor any other entry control mechanism or service) be deemed or otherwise interpreted as the Association providing or having a duty to provide security services to any Lot, Owner, Occupant, family member, tenant, guest, licensee or invitee.

19. Article III, Section 2(B) of the Declaration is amended only to the extent that the last sentence thereof is deleted and replaced by the following sentence: "The actual cost of such repairs, plus a twenty-five percent (25%) surcharge as a handling/management fee, shall be paid by said Owner to the Association within thirty (30) days, and the Association may enforce and secure collection of the same as a Lot Specific Assessment, plus all attorneys' fees." In all other respects the remainder of Article III, Section 2(B) shall remain in full force and shall be unaffected by this Fourth Amendment.

20. Article III, Section 2(D) of the Declaration is hereby deleted its entirety.

21. Article III, Section 2(F) of the Declaration is hereby deleted and amended in its entirety and replaced by the following Subsection F:

F. PAINTING OF EXTERIOR WALLS. The Association shall have the right to enter onto any Lot to paint the exterior of any Unit or other exterior wall. No Owner shall have the right to paint any exterior walls except as otherwise approved per Article III, Section 1(E) and Article VII of this Declaration. This includes, but is not limited to, trim, windows, window casings, doors, fences, gates, eaves and/or driveways. Owners shall be assessed for such painting on a proportional basis considering exterior square footage as a Lot Specific Assessment.

22. Article IV, Section 1 of the Declaration is amended only to the extent that the last sentence thereof is deleted and replaced by the following sentence: "Unless otherwise restricted by the Declaration, the Association shall also be empowered to exercise all rights as set forth by statute." In all other respects the remainder of Article IV, Section 1 shall remain in full force and shall be unaffected by this Fourth Amendment.

23. Article IV, Section 4 of the Declaration is hereby deleted and amended in its entirety and replaced by the following Section 4:

Section 4. Association 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 whose purpose and function are to further the purposes and intent of this Declaration and the other Operative Documents (hereinafter "Rules" or "Association Rules"). The Association Rules may restrict and govern the use of the Common Area and any other area within the Properties, except the interior of any dwelling Unit of an Owner, so long as such interior use is not in violation of law. By way of illustration, and not of limitation, the Board may adopt Association Rules deemed necessary for the safety, care and cleanliness of the Properties, to secure the comfort and convenience of all Occupants, and to implement the provisions of this Declaration. The Association Rules may not discriminate among Owners and shall not be inconsistent with this Declaration, the Articles, or Bylaws. A copy of the Association Rules, as they may from time to time be adopted, amended, or repealed, shall be mailed, electronically mailed, or otherwise delivered to each Owner, and may be recorded. Upon such mailing or delivery, said Association Rules shall have the same force and effect as if they were set forth in and were a part of this Declaration, to the extent not inconsistent herewith. Under no circumstance, however, can an Association Rule be more restrictive than the provisions of this Declaration.

24. Article IV, Section 5 of the Declaration is hereby deleted and amended in its entirety and replaced by the following Section 5:

Section 5. Liability. No member of the Board or any committee of the Association, or any officer of the Association, shall be personally liable to any Owner, or to any other party, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of the Association, the Board, or any other representative, employee or agent of the Association, or the Architectural Committee, or any other committees, or any officer of the Association, provided that such person has, upon the basis of such information as may be possessed by him, acted in good faith without willful or intentional misconduct. To the extent not inconsistent herewith, such persons shall be reimbursed for any costs, fees, and expenses incurred in the defense of any action brought by an Owner, unless the Association has already accepted financial responsibility therefor. Should a lawsuit be brought by an Owner and a decision entered against the Owner, the Owner shall reimburse the Association for all costs, fees, including all attorneys' fees, and expenses, plus reasonable compensation for the time of the directors, officers or other committee members, to the extent permitted by law. Any such amounts shall constitute a Lot Specific Assessment.

25. Article V, Section 2 of the Declaration is amended only to the extent that the first sentence thereof following the title "Member Voting" is deleted and replaced by the following sentence: "Each Member shall be entitled to one vote for each Lot owned and any vote shall be cast in accordance with the Operative Documents or as otherwise required by Arizona law, including the use of absentee ballots." In all other respects the remainder of Article V, Section 2 shall remain in full force and shall be unaffected by this Fourth Amendment.

26. Article V, Section 5 of the Declaration is amended only to the extent that the last sentence thereof is deleted and replaced by the following sentence: "Any properly recorded and noticed transfer of ownership to a Lot shall operate to transfer said membership to the new Owner thereof." In all other respects the remainder of Article V, Section 5 shall remain in full force and shall be unaffected by this Fourth Amendment.

27. Article VI, Section 1 of the Declaration is hereby deleted and amended in its entirety and replaced by the following Section 1:

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Owner of a 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, charges or other Common Expenses, including Capital Contribution Fees; (2) special assessments, such assessments to be established and collected as hereinafter provided; and (3) Lot specific assessments as more fully set forth in this Declaration. Such assessments, together with interest, all costs and attorneys' fees, other collection expenses and late charges as established herein, if such assessments are not timely paid, shall be a charge against the applicable Lot and shall be a continuing lien upon the Lot against which each such assessment is made. The recording of this Declaration shall constitute record notice and perfection of any lien arising by virtue of this Declaration. As such, further recordation of any claim of lien is not required. Any lien arising by virtue of this Declaration shall also be exempt under Chapter 8 of Title 33, Arizona Revised Statutes, dealing with homestead and other property exemptions. Each such assessment, together with interest, costs, and all attorneys' fees, other collection expenses and late charges, shall also be the personal obligation of the person who was the Owner of such property at the time the assessment fell due. By way of additional clarification and not limitation, any fees, charges, late charges, monetary penalties, interest or other amounts charged pursuant to the Operative Documents are enforceable as assessments under this Section.

28. Article VI, Section 2 of the Declaration is hereby deleted and amended in its entirety and replaced by the following Section 2:

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Occupants in the Properties and for the improvement, maintenance, and replacement of the Common Areas, or any improvements upon the Properties, and

of the Units situated on the Properties, and for such other purposes as may be appropriate under this Declaration, the other Operative Documents or applicable law.

29. Article VI, Section 3(a) of the Declaration is hereby deleted and amended in its entirety and replaced by the following Subsection (a):

(a) The maximum annual assessment may be increased each year above the maximum assessment for the previous year without a vote of the membership to the extent permitted by law.

30. Article VI, Section 3(b) of the Declaration is hereby deleted and amended in its entirety and replaced by the following Subsection (b):

(b) The maximum annual assessment may be increased above the maximum annual assessment to the extent permitted by law.

31. Article VI, Section 4 of the Declaration is amended to the extent that the word "proxy" is deleted and replaced by the words "absentee ballot", and to the extent that the following words are added to the end of said Section: "..., unless otherwise required by law." In all other respects the remainder of Article VI, Section 4 shall remain in full force and shall be unaffected by this Fourth Amendment.

32. Article VI of the Declaration is hereby amended by adding an additional and new Section 4.1 to Article VI as follows:

4.1 Lot Specific Assessments. Lot Specific Assessments shall be levied by the Board against Lots and the Owners thereof with respect to which particular costs have been incurred by the Association. In the event the Association undertakes to provide work, materials or services on or about a Lot which are necessary to cure or remedy a breach or violation of the Declaration or other Operative Documents that the Owner has refused to cure or remedy, including those failures otherwise identified in the Declaration, such Owner by failing or refusing to undertake or complete the required cure or remedy shall be deemed to have agreed in writing that all costs and expenses incurred in connection therewith shall be a Lot Specific Assessment, including related surcharges and associated attorneys' fees and costs. A Lot Specific Assessment may also be levied by the Board in its sole discretion against those Lots benefitting from a Common Expense where such Common Expense benefits fewer than all of the Owners in the Properties.

In addition to the foregoing, and notwithstanding anything directly or implicitly to the contrary in the Declaration, all assessments, including Lot Specific Assessments, shall be payable in the amounts specified by the assessment, and no offsets against such amounts shall be permitted for any reason, including, without limitation, a claim that the Association is not properly exercising its duties as set forth in the Declaration or other Operative Documents,

or that the Association is not enforcing or properly enforcing the Operative Documents.

33. Article VI, Section 5 of the Declaration is amended only to the extent that the title and first sentence thereof are deleted and replaced by the following title and first sentence: **"Section 5. Meetings: Notice and Quorum for Action Authorized Under Section 4.** Written notice of any meeting called for the purpose of taking any action authorized under Section 4 shall be sent to all members not less than ten (10) days nor more than fifty (50) days in advance of the meeting." In all other respects the remainder of Article VI, Section 5 shall remain in full force and shall be unaffected by this Fourth Amendment.

34. Article VI, Section 8 of the Declaration is hereby deleted and amended in its entirety and replaced by the following Section 8:

Section 8. Late Charges. Each Owner shall pay a charge for the late payment of assessments or other charges not paid by the tenth (10th) of the month in which the assessment or charges are due in an amount limited to the greater of fifteen dollars (\$15.00) or ten percent (10%) of the amount of the unpaid assessment or other charges.

35. Article VI, Section 9 of the Declaration is amended only it to extent that the second and third sentences thereof are deleted and replaced by the following sentences: "Each Owner by acceptance of a deed relating to a Lot or Lots or by acceptance of any other document or instrument conveying an ownership interest therein, whether or not it shall be expressed in any such deed or other document or instrument, is and shall be deemed to covenant and agree to pay to the Association the assessments (annual, special, fine and/or Lot Specific Assessments) as otherwise provided for herein, and agree to the enforcement of the assessments in the manner herein specified. In the event the Association employs an attorney or attorneys for collection of any assessment, regardless of whether suit is filed, or to enforce compliance with or specific performance of the terms and conditions of this Declaration, or for any other purpose in connection with the breach of the Declaration or other Operative Documents, each Owner agrees to pay all attorneys' fees, accountants' fees and costs thereby incurred, in addition to any other amounts due from the Owner or any other relief or remedy obtained against said Owner." In all other respects the remainder of Article VI, Section 9 shall remain in full force and shall be unaffected by this Fourth Amendment.

36. Article VI, Section 9, Subsections (a) and (b), of the Declaration are amended to the extent that the word "reasonable" in said Subsections is replaced by the word "all", and to the extent that the second and fifth sentences of Subsection (b) are deleted and replaced by the following sentences: "The amount of the lien shall include, but not be limited to, all unpaid assessments, plus late charges and interest on all amounts from the date the assessment becomes delinquent until paid in full, plus all legal and accounting expenses incident thereto.... The Association shall have the power to bid in its interest at any foreclosure or sheriff's sale and to purchase, acquire, hold, lease, mortgage and convey any such Lot." In all other respects the remainder of Article VI, Section 9, Subsections (a) and (b), shall remain in full force and shall be unaffected by this Fourth Amendment.

37. Article VI, Section 9(c) of the Declaration is hereby deleted in its entirety.

38. Article VI, Section 10 of the Declaration is amended only to the extent that the sixth and seventh sentences thereof are deleted and replaced by the following sentences: "Any person acquiring an interest in any Lot shall, upon giving written notice to the Board, be entitled to a statement from the Association, within twenty (20) business days of the receipt of the request, unless otherwise required earlier by law, setting forth the amount of unpaid assessments and other charges, if any, and such person shall not be liable for any past due amounts not disclosed by the Association, except for assessments and other charges which accrue or become due after the date the person acquired said interest. Further, in the event of foreclosure by the Association, and to the extent the Owner or any other Occupant voluntarily or involuntarily remains in the Unit, the Owner and other Occupants shall be liable for payment of a reasonable rental for the Lot as determined by the Board, and the Association in the foreclosure action (or the purchaser at the sheriff's sale) shall be entitled to collect the rental payments without regard to the value of any mortgage/deed of trust security, although nothing contained herein shall prohibit the prosecution of a wrongful detainer action." In all other respects the remainder of Article VI, Section 10 shall remain in full force and shall be unaffected by this Fourth Amendment.

39. Article VII, Section 1 of the Declaration is amended only to the extent that the first sentence thereof following the title "Delegation of Rights" is deleted and replaced by the following sentence: "To the extent permitted by law, all rights and powers granted to the Board in this Declaration regarding architectural control may, in the discretion of the Board, be delegated to an Architectural Committee." In all other respects the remainder of Article VII, Section 1 shall remain in full force and shall be unaffected by this Fourth Amendment.

40. Article VII, Section 2 of the Declaration is amended only to the extent that the third sentence thereof is deleted and replaced by the following sentence: "No member of the Architectural Committee shall be required to be an architect or to meet any other particular qualifications for membership on the Committee, although the chairperson must be a member of the Board of Directors as required by law." In all other respects the remainder of Article VII, Section 2 shall remain in full force and shall be unaffected by this Fourth Amendment.

41. Article VII, Section 6 of the Declaration is amended only to the extent that the second sentence thereof is deleted and replaced by the following sentence: "Without in any way limiting the generality of any of the foregoing provisions of this Section, the Board or the Architectural Committee, or any member thereof may, but is not required to, consult with or hear the views of the Association or any Owner with respect to any plans, drawings, specifications, or any other proposal submitted to the Board or the Architectural Committee." In all other respects Article VII, Section 6 shall remain in full force and shall be unaffected by this Fourth Amendment.

42. Article VIII, Section 2 of the Declaration is amended only to the extent that the word "units" is deleted and replaced by the word "Units". In all other respects the remainder of

Article VIII, Section 2 shall remain in full force and shall be unaffected by this Fourth Amendment.

43. Article IX, Section 1 of the Declaration is amended only to the extent that the following additional sentence shall be added to the end of Section 1 as it presently exists: "Notwithstanding anything herein to the contrary, only the Association shall have the right to enforce collection of assessments or other amounts due and owing the Association, including lien rights related thereto." In all other respects the remainder of Article IX, Section 1 shall remain in full force and shall be unaffected by this Fourth Amendment.

44. Article IX, Section 2 of the Declaration is amended only to the extent that the words "and Regulations" found throughout Section 2 are deleted for definitional purposes. In all other respects the remainder of Article IX, Section 2 shall remain in full force and shall be unaffected by this Fourth Amendment.

45. Article IX, Section 3 of the Declaration is amended only to the extent that the second sentence thereof is deleted and replaced by the following sentence: "The provisions of this Declaration may be changed, modified or amended at any time by an instrument in writing setting forth such change, modification or amendment, provided that the Owners of not less than fifty-one percent (51%) of the Lots have consented in writing to any such change, modification or amendment." In all other respects the remainder of Article IX, Section 3 shall remain in full force and shall be unaffected by this Fourth Amendment.

46. Article IX, Section 4 of the Declaration is amended only to the extent that the words "and Regulations" are deleted for definitional purposes. In all other respects the remainder of Article IX, Section 4 shall remain in full force and shall be unaffected by this Fourth Amendment.

47. Article IX, Section 5 of the Declaration is amended only to the extent that the first sentence thereof following the title "Violations and Other Nuisances" is deleted and replaced by the following sentence: "Every act or omission whereby any provision of this Declaration or other Operative Documents is violated in whole or in part is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by the Association or any Owner or Owners of Lots within the Properties." In all other respects the remainder of Article IX, Section 5 shall remain in full force and shall be unaffected by this Fourth Amendment.

48. Article IX, Section 7 of the Declaration is amended only to the extent that the words "and Regulations" are deleted for definitional purposes. In all other respects the remainder of Article IX, Section 7 shall remain in full force and shall be unaffected by this Fourth Amendment.

49. Article IX, Section 8 of the Declaration is hereby deleted and amended in its entirety and replaced by the following Section 8:

Section 8. Delivery of Notices and Documents. Any written notice or other documents relating to or required by this Declaration may be delivered either personally, by U.S. mail or by electronic mail (if the Owner has provided the Association with an electronic mail address). If the Owner has provided an electronic mail address, the Owner is responsible to ensure electronic mail notices do not get sent to "junk". If by U.S. mail, it shall be deemed to have been delivered twenty-four hours after a copy of same has been deposited in the United States mail, postage prepaid, addressed as follows: If the Association, at 7500 McCormick Parkway, Scottsdale, Arizona 85258, and to the address of the then current management company; and if to an Owner, to the address of any Lot within the Properties owned by the Owner or to any other address last furnished in writing by an Owner to the Association; provided however, that any such address may be changed at any time by the party concerned by recording a written notice of change of address and delivering a copy thereof to the Association. If by electronic mail, pursuant to the Association's written policy concerning notice to the Association by electronic mail. If no such written policy exists, then the Owner is obligated to ensure written confirmation that the electronic mail has been received and reviewed by the then current management company. Each Owner of a Lot shall file the correct postal and electronic mail addresses of such Owner with the Association, and shall promptly notify the Association in writing of any subsequent change of either address. In the event more than one person shall own a Lot, notice to one Owner shall be deemed notice to all Owners of the Lot. If a Lot is owned by more than one Owner, the Owner shall designate a single Owner to receive all notices. Upon written request to the Board, the holder of any recorded mortgage or the trustee or beneficiary under any recorded trust deed encumbering any Lot shall be given a copy of all notices permitted or required by this Declaration to be given to the Owner or Owners of a Lot subject to such mortgage or trust deed. Notwithstanding anything in this Declaration to the contrary, no person shall be considered as an Owner who claims other than an undivided equal ownership interest in a Lot with all other persons purporting to be Owners of the applicable Lot.

50. Article IX, Section 10 of the Declaration is hereby deleted and amended in its entirety and replaced by the following Section 10:

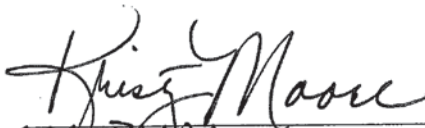
Section 10. Construction and Interpretation of Operative Documents. If any conflict exists between the provisions of this Declaration, including amendments, and the Articles, Bylaws or Rules, or any amendments thereto, the provisions of the Declaration prevail. If any conflict exists between the provisions of the Articles, including amendments thereto, and the Bylaws or Rules, or any amendments thereto, the provisions of the Articles prevail. If any conflict exists between the provisions of the Bylaws, including amendments thereto, and the Rules, or any amendments thereto, the provisions of the Bylaws prevail. If any conflict exists between the provisions of the Association Rules and the Architectural Rules, the more restrictive provision of the two shall prevail.

Except for judicial construction, the Association, through its Board, shall have the exclusive right to construe and interpret the provisions of this Declaration and the provisions of the other Operative Documents. 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 or of the other Operative Documents shall be final, conclusive and binding as to all persons and property benefitted or bound by this Declaration or other Operative Documents.

51. Article IX, Section 12 of the Declaration is amended only to the extent that the words "and Regulations" and "Amended" are hereby deleted for definitional and clarity purposes. In all other respects the remainder of Article IX, Section 12 shall remain in full force and shall be unaffected by this Fourth Amendment.

Except as identified herein, all other provisions of the Declaration, including the First Amendment, Second Amendment, and the Third Amendment thereto, shall remain in full force and shall be unaffected by this Fourth Amendment.

Pursuant to Article IX, Section 3 of the Declaration, the undersigned President of Colonia Encantada Homeowners Association, Inc., hereby certifies that the foregoing Fourth Amendment was consented to in writing by the Owners of not less than fifty-one percent (51%) of the Lots as more fully set forth above, and that all requirements regarding this Fourth Amendment will be satisfied upon the recording of this Fourth Amendment, and this Fourth Amendment will be effective upon recordation.


COLONIA ENCANTADA BOARD, President

State of Arizona)
)ss.
 County of Maricopa)

On this 11 day of March, 2016, before me, the undersigned Notary Public, appeared Sheila Gaskell, the President of Colonia Encantada Homeowners Association, Inc., known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged that he/she signed the same for the purposes therein contained.


 Notary Public

My commission expires:

8/14/19

